

The Enron Family Philanthropies

by Rick Cohen

Editors' Note: Readers should be aware that as this issue was going to press the death of Kenneth Lay was announced. This adds another complex wrinkle to the case, while the issues raised by the article remain the same.

THE ENRON MEGA-SCANDAL reached its climax with the convictions of Kenneth Lay on six counts and Jeffrey Skilling on 19 counts, but these dealt only with the business transgressions—the criminals' (we can call them that now) lesser known "charity" manipulations escaped most public attention. The media has referred periodically to the "philanthropy" of Ken Lay and other principals, signifying a positive balance on the other side of the ledger—some good works to offset the phenomenal harm resulting from their bad behavior.

In fact, the private philanthropy of the Enron executives who looted the corporation appears to be fully of-a-piece with Enron's penchant for the use of the artificial, off-the-books, special purpose entities that contributed fundamentally to the corporation's astonishing collapse. In the case of their charitable foundations, these corporate felons invested suspect assets to burnish their civic reputations, perhaps in unwitting preparation for the denouement of *U.S. v. Jeffrey Skilling and Kenneth Lay*.

The shockwaves of Enron's implo-

sion reverberated not only through corporate America, but through the non-profit sector as well, scouring Enron's ethical problems for their relevance to charity and philanthropy. The lessons to be learned about ethics and accountability reside not only in the corporation's highly publicized for-profit transgressions, but also in the much less well known charitable institutions established and controlled by Lay, Skilling, and the rest.

Lay's and Skilling's joint trial lends itself all too easily to ridicule. There's Lay's "idiot defense" strategy:¹ the former chairman's claim that he wasn't in a position to know some of the sordid aspects of the corporation's nefarious operations and that his subordinates simply lied to him and he didn't figure it out.² His across-the-board conviction on six counts³ suggests that the jury rated his performance as an idiot unconvincing.

As much as it may be fodder for late night comedians, Enron's collapse is also a tale of immense human tragedy—a story best told by Theodore Dreiser or F. Scott Fitzgerald. Think of Ken Lay's pretensions to being a civic leader—the man who wound up in

President George H.W. Bush's good graces for nearly singlehandedly making Houston the successful host venue for a major conference of global leaders, a potential cabinet secretary, and confidant of policymakers around the world—dissolving into the bathos of his wife publicly proclaiming the Lays' impoverishment and opening a thrift store.

And Jeff Skilling, a former wunderkind McKinsey partner who brought his genius to Enron to refashion the operations of the entire oil and gas industry (whose members now largely copy Enron's innovations despite the big E's collapse), only to fall apart completely as his handiwork disintegrated before his eyes.

Even CEO Andy Fastow's story evokes misfortune. A reasonably bright, middle class kid from New Providence, NJ, Fastow invented or perhaps perfected mechanisms for cooking the books—layers of corporate pantomime meant to misdirect investors, the markets, the banks, and government regulators—an application of criminal financial ingenuity to create America's worst corporate disaster.

The ultimate tragedy is counted not in these men's appearance in a trial that should have been scripted by a modern Shakespeare. It is the tens of thousands of Enron employees who lost their jobs, their investments, their 401(k) pension

investments due to Enron's bankruptcy, at \$66 billion in lost value, the largest corporate bankruptcy up to that time,⁴ while top execs cashed out. It is the investors throughout the country who watched the impact of Enron's bankruptcy on the stock market, costing trillions in lost investments dragged down by Enron's deadweight.⁵ Now even other corporate executives who may have tried to run their businesses based on the ethics that Enron so completely spurned now find themselves having to explain away Enron's corporate depredations as categorically different from their own business operations.

The foundations operated by Enron and its corporate executives have hardly been a focus of the Enron story, compared to the overall value of the collapse of what was the nation's fifth largest corporation at one time. But we know a bit about the role of charity and philanthropy in the Enron story, in part as a tool, in part a victim, in nearly all cases, sullied. Enron's corporate philanthropy has been discussed in the pages of the *Nonprofit Quarterly* before,⁶ but little attention has been given to the harmful effects of the related private philanthropy of Enron's executives.

Kenneth Lay

Upon his taking the helm of the corporate merger that resulted in Enron, Lay became a big player in the charitable and philanthropic environment of Houston, the state, and the nation. In his ongoing effort to clear his name, Lay maintained a Website that highlighted the importance of charity and philanthropy to his self-image.⁷ One tab displayed "personal contributions made by Linda and Ken Lay to non profit (sic) organizations from 1995–2005" and another lists all of his past and present positions on nonprofit boards, though which ones are "present" is not clear.

His political credentials are much in evidence, serving on the Bush-Cheney

Transition Advisory Committee, the 1990 Presidential Thank You Celebration Committee (for George H. W. Bush), George (H.W.) Bush for President (1988), the Kay Bailey Hutchinson Leadership Trust, and the Republican National Convention Committee (1992). Although closely associated with the Bush dynasty, like a smart corporate executive Lay worked both sides of the aisle, serving on President Clinton's Council on Sustainable Development—an ironic assignment given the limited life of his own mega-corporation.

Lay had his intellectual pretensions toward conservative think tanks, serving on the board of the American

It is hard to overlook the irony of Lay's role as a corporate leader associated with The Nature Conservancy.

Enterprise Institute, the James A. Baker III Institute for Public Policy (at Rice University), and that favorite of conspiracy theorists of the left and right, the Trilateral Commission (founded 30 or so years ago by David Rockefeller, Henry Kissinger, and Zbigniew Brzezinski). But these aren't bastions of the hard right, and Lay's nonprofit and charitable involvements comprised an image of a free-markets advocate who saw himself as interested in societal benefit.

His list includes his role as chairman of the citywide campaign of the United Way of the Texas Gulf Coast and co-chairman of UW's Alexis de Tocqueville Society Steering Committee (dedicated to attracting big donors, not small payroll deduction givers), chairman of the Greater Houston Area YMCA, and service on the boards of Resources for the Future, The Nature Conservancy's International Leadership Council, and the President's Council on Environmental Quality (under George H.W. Bush).

His family foundation's grantmaking also lent him to make grants to powerful and name-recognized charities and players: large grants to the likes of General Colin Powell's America's Promise (\$70,000 in 1999) and Barbara Bush's Foundation for Family Literacy (\$21,700 in 1998, \$14,500 in 1999, \$28,900 in 2000), and big money for churches, museums, universities, and civic groups (the United Way, the Urban League, the YMCA, the YWCA, and many more) throughout greater Houston.

It is hard to overlook the irony of Lay's role as a corporate leader associated with The Nature Conservancy in light of the role TNC played as an Enron-like poster child for the Senate Finance Committee's investigations into charitable accountability. The Joint Committee on Taxation's reports on Enron⁸ and the Senate Finance Committee's conclusions on TNC⁹ stand as compelling indictments of sinkholes of corporate irresponsibility—one, unfortunately, a very influential national nonprofit.

Ken Lay's management, which fell somewhere between porous oversight and the rapacious savaging of Enron's assets for his own self-enrichment, hardly helped TNC's longstanding position that it was ahead of the curve on nonprofit accountability long before the exposés of its board's questionable behavior were on the front page of the *Washington Post*.¹⁰

Lay's own foundation gave grants to charities that certainly benefited him in terms of the Enron board's lax oversight of the imploding behemoth. For example, in the five years leading up to the disintegration of Enron, Lay's foundation and the Enron corporate foundation awarded a combined \$600,000 to the M.D. Anderson Cancer Center at the University of Texas.¹¹ Like a good civic philanthropist, Lay's grantmaking to this center might not have raised questions were it not for the fact that the president of the Anderson Cancer

Center was one John Mendelson, an Enron board member who served on its audit committee, and the president emeritus was Charles LeMaistre, another Enron board member who chaired its compensation committee. The Anderson Cancer Center may have received as much as \$1.3 million in donations from Enron during Mendelson's term on the board.¹² Overlapping with his service on the Enron board, Mendelson also served on the board of directors of ImClone Systems, Inc., the company whose misrepresentation of the standing of one of its cancer drugs with the Food and Drug Administration led to the jailing of ImClone founder Sam Waksal and major investor Martha Stewart. Their "crimes" were selling their ImClone stock before the value plummeted, leaving other ordinary investors high and dry, much like the way Enron executives cashed out their holdings while ordinary Enron employees watched their Enron-dependent 401(k)s dematerialize.

Similarly, the Lay and Enron foundations provided philanthropic support to the Mercatus Center at George Mason University in Virginia. Most people know George Mason as a final four NCAA basketball team this year, but in the corporate world, the Mercatus agenda on reducing government regulations has policy significance. For Enron, Wendy Gramm's role at Mercatus as a Distinguished Senior Scholar (she had been director of the Center's Regulatory Studies Program) was important, not only for her image as "the Margaret Thatcher of financial regulation,"¹³ but for her role as a member of the Enron board of directors, serving on the audit, governance, and nominating committees, and her marriage to longtime Texas Republican Senator Phil Gramm. She joined the Enron board shortly after a term as chairperson of the Commodities Futures Trading Commission, which ruled that Enron's energy derivatives trading business would be exempt from regulation.¹⁴ The

Senator, meanwhile, was the second-largest recipient of Enron's campaign contributions in Congress between 1989 and 2001 according to Federal Elections Commission reports.¹⁵

Corporate self-interest ran through much of Lay's personal and corporate philanthropy. For example, the Lay Foundation gave a half-million to the environmental think tank Resources for the Future (RFF) for its general operations¹⁶ and \$2 million to establish an endowed chair for an RFF Senior Fellow.¹⁷ Lay was a board member of and philanthropic donor to RFF for several years, but there was another attraction: the convergence of RFF's

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advocacy for creating a market in trading pollution emissions credits and Enron's approach to transforming Enron from a clunky gas pipeline company into a new age firm that marketed nearly anything.¹⁸ Enron was hardly the only corporate donor to RFF, but RFF's innovations in trading emissions credits¹⁹ fit Enron's corporate strategy like a glove. Having a respected, middle-of-the-road environmental think tank like RFF, replete with corporate board members plus sterling economists like MIT's Robert Solow and Stanford's Joseph Stiglitz, couldn't but help Enron make its case both in the market and with the government.²⁰

Enron's subsequent collapse compelled RFF President Paul Portney to write a statement (which looked a lot like the PR-crafted statements of other nonprofits and corporations receiving unwanted scrutiny) in the RFF newsletter outlining Lay's philanthropic contri-

butions to the organization and acknowledging his role as a paid member of an advisory committee to Enron on environmental and public policy issues.²¹

After the Enron debacle, Linda Lay got some desired media attention for her family's impoverishment (compared to other Enron execs who seemed to cash out and save their dough), opening up a high-end second-hand store, "Jus' Stuff," to sell some of the family's belongings for some quick cash.²² Although later reports suggested Ken and Linda were not as hard up as Linda's weepy *Today Show* interview suggested,²³ they did impoverish their foundation. The foundation was largely if not totally capitalized by Ken's donations of Enron stock, something in the neighborhood of \$48 million in Enron shares. It would be hard to believe that Ken Lay didn't take advantage of substantial charitable giving write-offs for the fair market value of the appreciated Enron stock, soon to become worthless. In fact, the foundation's assets nosedived in 2001, dropping from \$52 million to \$2.4 million, the latter number in the black only because Linda, in her role as foundation manager, had put some money into non-Enron equities.²⁴

Perhaps the philanthropic tragedy of Ken Lay is best reflected in his foundation's repeated and generous grants to the Horatio Alger Association,²⁵ the nonprofit dedicated to the epitome of the American reverie of young people born into poverty becoming successful due to honesty and hard work. Founded by Norman Vincent Peale, with members having included Oprah Winfrey, Clarence Thomas, Colin Powell, Bob Hope, and Billy Graham, the Horatio Alger Association of Distinguished Americans gives an annual Horatio Alger Award, "role models for overcoming humble beginnings" plus \$8.5 million in Alger Scholarships.²⁶ Lay's bio on the Alger Web site tracks what many of the books about Enron

have described: his father's dual jobs as a Baptist minister and general store owner who lost the store when a truckload of chickens he was shipping were killed, his mother cooking lunchmeat for Thanksgiving dinner, his own childhood maintaining three newspaper routes, driving farm tractors for local farmers, and doing construction work.²⁷ The bio notes that Lay, the Association's man of the year in 1998,²⁸ left Enron in 2002, but doesn't mention the public ignominy that enveloped and crushed this modern Horatio Alger.

The Lay Foundation's 2002 990PF contains an unusual statement: "The market value of the Foundation's assets declined significantly in 2001 due to the reduction in the market value of public securities owned. As of December 31, 2002, the amounts approved for future payment exceed the value of the Foundation's assets. The Foundation officers and directors are reviewing the timing and payments previously approved." The scandal reached the Lay's family foundation, not only in the massive losses that Lay's management of the corporation caused, but in the announcement of a 2004 investigation by the Department of Justice's Enron Task Force looking into Linda Lay's sale of 500,000 shares of Enron stock through the foundation—a sale that took place after the credit-rating for Enron's stock was issued, but before trading in Enron stock was halted, leading to the bankruptcy.²⁹ In order to salvage some of the Lays' philanthropic reputation and deliver on a few of the pledges that the foundation could not legitimately meet, Linda Lay had the foundation sell stock at \$2.36 a share, before the value plummeted to 61 cents a share only a week later. Linda probably knew what was happening; Ken certainly had to have known, but the investors were snookered—with the defense that the beneficiary was philanthropy, or that Ken's communications with Linda were covered by marital confidentiality.

Andy Fastow

The Fastow Family Foundation produced a 990PF that contained language even more surprising than the Lay Foundation's disclaimer. Exhibit A of the 2002 Fastow Family Foundation reads as follows: "In August 2002 the Justice Department of the U.S. government froze the foundation's only asset, account Q65183-00-8 with JP Morgan Private Bank. As a result, the foundation could not complete its planned grant distributions for the year. Given these circumstances, the foundation requests that any otherwise applicable excise tax penalty be abated." Attached to the 990 is the federal government's complaint filed in the Southern District Court looking to Lea and Andy Fastow to forfeit not only the foundation assets, but several other accounts plus their insurance policies and a 2000 Lexus. The Foundation's 2003 990PF reports no net assets at the end of the year, having forfeited \$4,573,906 to the federal government.

Enron's CFO Andrew Fastow lacks the absolute rags to riches bona fides of Ken Lay, but his story contains its own social pathos. Like the hero in a Greek tragedy, he was brought down by his own excesses—his enthusiastic criminal application of his investment skills in the creation of dubious investment ventures, various "special purpose entities" (SPEs) that structured Enron's debt (as much as \$500 million) off-the-books and away from the see-no-evil Arthur Andersen auditors.³⁰ Recruited to Enron by Skilling for his asset-securitization successes at Chicago's Continental Bank, Fastow became the star of Enron's successes, profiled as the wunderkind CFO responsible for Enron's "amazing transformation from pipelines to piping hot"³¹ and ultimately as the architect of the financing that led to the firm's total collapse.³²

Not nearly as interested in the civic philanthropist mantle that attracted Ken Lay and others,³³ Fastow's philanthropy seems strongly connected to his

wife Lea, who unlike Andy was born to wealth, the daughter of the Weingarten family and their supermarket fortune. Enron's assistant treasurer when she left the corporation in 1997, Lea was the "driving interest" behind Enron's collection of art to furnish its headquarters designed by Cesar Pelli. Enron's art collection included masterpieces by the likes of Claes Oldenburg and Martin Puryear, purchased not when Enron was on the upswing, but as Enron's stock values began to sink beginning in 2000, under the direction of a corporate art committee that Lea Fastow directed and dominated.³⁴

The connection to philanthropy? Part of the Fastows' rise in the Houston art world was connected to the grant-making of their family foundation. The biggest recipient was the Menil Collection, scoring \$25,000 in 2000 and \$17,500 in 2002, but other art museums received Fastow largesse as well, earning Lea a seat on the board of trustees of Houston's Contemporary Arts Museum. Menil's executive director, before leaving for the helm of the Hirshhorn Museum in Washington, served on Enron's corporate art committee under Lea Fastow, and the Puryear sculpture that never made it to the Enron building was loaned and displayed at the Menil.³⁵ Some charged that the Fastows' contributions to the Menil were aimed at elevating both their social standing in Houston and the value of the artwork they personally acquired and displayed there.³⁶

The Fastow philanthropists used their foundation to support mainstream charities such as Houston's Holocaust Museum, the United Way, the Boys' and Girls' Clubs of Greater Houston, private schools, and synagogues, in addition to the art museums. The problem with the foundation was simple: the money wasn't theirs.

In 2000, Andrew Fastow made a \$50,000 personal gift to the Fastow Family Foundation. That may have been his personal money or it may have been

part of a kickback from one of Fastow's Enron associates from one of the illegal SPEs he created (either JEDI or Chewco, the Star Wars inside joke for naming these financial shells pretty obvious).³⁷ The foundation then invested \$25,000 in another ultimately illicit SPE, called Southhampton Place, and received an almost immediate windfall of more than \$4.5 million, a return on investment of 17,765 percent.³⁸

The Fastow Family Foundation was a little tight with its money, even with favored grant recipients such as the Menil, making total grants of only \$62,850 in 2000, \$59,700 in 2001, and \$39,125 in 2002 before the federal government reclaimed the \$4.5 million booty (total payout percentages of 3.1 percent, 1.5 percent, and 1.3 percent for the three years). One might imagine that the cost of the foundation's first and perhaps only annual meeting in June 2001 at the luxury Cheeca lodge and resort in the Florida Keys, reportedly with foundation-paid massages, manicures, tennis lessons, and fly-fishing for the Fastows and their trustees, all for a 30-minute business meeting,³⁹ cost as much as the foundation paid out in grants in any one year.

During Enron's heyday, Ken Lay was putting a sizeable chunk of his massive salary into his foundation, based on corporate income now revealed to be a racket, but in some ways no more horrendous than the income-generating activities of many corporations before the Enron-inspired advent of Sarbanes-Oxley. For the Fastows, the philanthropy capital was unadulterated thievery, quickly targeted as part of their forfeiture of some \$24 million in off-the-books plunder.

What does a nonprofit do when it discovers that it is receiving and living off money that was purely and simply stolen? That's an ethical question that goes to the heart of some of nonprofits' dealings with pieces of the Enron philanthropic empire. In dealing with cor-

porate philanthropy and its "strategic" corporate self-interested priorities, nonprofits have to at a minimum move carefully to make sure that they do not become manipulated, used, and abused. Enron's corporate philanthropy had no end of such charges, including charges that Enron used its corporate grantmaking to buy relationships with groups such as the Natural Resources Defense Council and others to win support for its gas emissions trading and other corporate initiatives⁴⁰ and with powerful people through its annual "Enron Prize" given to the likes of Colin Powell, Mikhail Gorbachev, and, three weeks before Enron's bank-

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ruptcy, Alan Greenspan (who lectured on corporate ethics).⁴¹ These are the thickets that require all nonprofits to be aware of what they are getting into when they sign on to a corporate grant.

But a grant from the Linda and Ken Lay Foundation or the Fastow Family Foundation, both private family charities, poses other, different questions for nonprofits. Should nonprofit grant recipients have dug into how the Lays and Fastows earned their millions? Should they do that for other private foundations too? Since even the SEC didn't act on Enron until after it read a blurb in the *Wall Street Journal*,⁴² why should nonprofits have been expected to figure out what the nation's top securities and auditing firms missed? But after the crimes have been revealed, and nonprofit grant recipients have been used as charitable fences, what then?

One national nonprofit leader has counseled charities to keep the money

and warned the SEC not to look for restitution, suggesting that those nonprofit recipients "are on the front lines helping those company employees most affected by the corporate scandals."⁴³ Maybe in some cases, but that is hardly the case with the bulk of Fastow's or Lay's foundation grantmaking. Harvard's Peter Frumkin divides the issue with the question, "Is the mission being undermined?" observing that a grant from a disgraced Enron executive doesn't harm the credibility of an opera company, for example, but could do damage to a group that teaches young people how to get into business, presumably on the up-and-up, like Junior Achievement.⁴⁴ Rushworth Kidder of the Institute for Global Ethics, a nonpartisan think tank with philanthropists Cole Wilbur and James Joseph on its governing and advisory boards respectively, takes a harder line, suggesting that if the nonprofits know the money is tainted, it shouldn't be retained: "We clearly have a moral obligation not to take what isn't ours . . . It was never Fastow's, and therefore how on earth did he have a right to give it away?"⁴⁵ Is it whether the "boundary between clean and unclean becomes undeniable or becomes so glaring that others will notice it"⁴⁶ or something more fundamental to the ethics of the recipient organizations or to the ethics and probity of the entire nonprofit sector?

Jeffrey Skilling

The tragic story of Jeff Skilling could have been written by Arthur Miller. Maybe Ken Lay was caught up in being a famous CEO, maybe Andy Fastow was caught up in inventing techniques for cooking the books with no other thoughts than fooling the auditors and pocketing a few dozen extra millions in compensation, but Skilling looks and feels different. He was the McKinsey consultant who envisioned the transformation of Enron from a pipeline company to a bank that traded and speculated in gas rather than money, an

idea so revolutionary that his Enron clients couldn't grasp it—except for then-President and COO Rich Kinder, who hired Skilling to create the “Gas Bank” and then brought Skilling in full-time.⁴⁷

The notion of creating markets for nearly anything—power, energy, pollution emissions, broadband capacity—anything that could be purchased and sold without having ever to take control of the asset was the innovation that Skilling's Gas Bank heralded, making Enron ultimately exceptionally rich and then completely insolvent. Skilling made his millions like the others, but he was a true believer in Enron's free market model, a business and political libertarian.

Yet when he finally rose to the position of CEO, Skilling had what reads like a nervous breakdown. Three months into his position at the top, he wrote but never sent a resignation letter; a few months after that, he walked into Ken Lay's office to announce that he really was quitting.⁴⁸ He was a wreck, trying to figure out how to stave off the impending Enron freefall while Ken Lay was planning his retirement and picking fabric swatches for the interior of Enron's newest corporate jet. As Skilling suffered as CEO in the first half of 2001, one can see him as a corporate Willy Loman, unable to face up to and comprehend the impending debacle that he had helped create, finding himself unable to explain his angst to the various corporate versions of Biff and Happy who surrounded him. In a Willy Loman moment, Skilling was taken by police to a hospital in New York City after being found intoxicated on Park Avenue in the aftermath of a fracas with bar patrons.⁴⁹

Skilling's personal philanthropy has some of the feel of a true believer in his theories of how business and markets should work. While Lay used his foundation to pursue free market theories with Mercatus, the National Center for Policy Alternatives, and RFF, Skilling

was different. Certainly in 1998 and 1999, Skilling made the obligatory grants to local health charities and the United Way, but his payout rate crept up, to 10 percent in 1998 and 9 percent in 1999, but then, almost like a premonition of his corporation's looming dissolution, Skilling began to spend down his foundation assets while Enron was still, in the view of the market and its competitors, riding high. His payout for 2000 jumped to 58 percent, that is, he granted out half of the foundation's assets, including more than \$100,000 to Houston's Episcopal High School and new grants of \$20,000 to the community foundation and nearly \$86,000 to Junior

Should nonprofit grant recipients have dug into how the Lays and Fastows earned their millions?

Achievement. In 2001, he continued with \$50,000 to the United Way and another \$83,000 to Episcopal High School, for a 51 percent payout.

Inexplicably, as he left Enron and the corporation melted, in 2002 he *donated* more money to his foundation and then made another \$166,000 grant to the high school, followed by still another \$86,000 grant in 2003. Ken Lay had also given money to Episcopal, but spread additional gifts to other mainline charities in the city: over \$1,000,000 to Rice, \$380,000 to the University of Houston, \$123,000 to the Museum of Fine Arts, and \$107,000 to the Holocaust Museum, and many more, establishing Lay's rank and status as a philanthropist. Skilling left Enron spurning a \$20 million severance payment that he was in theory entitled to, a perk that is hard to imagine anyone else in the rapacious culture of Enron executives rebuffing, and left before a \$2 million company loan would have

been forgiven.⁵⁰ Likewise, Skilling, like Lay, could have spread some philanthropic green around town to burnish his image, but he put it into Junior Achievement, the training ground for potential new young Skillings of the world, and to the high school that educated his son. But Skilling flouted convention, running his foundation with only one trustee—himself—contrary to the typical corporate exec practice of sprinkling a few family members on the board,⁵¹ and cultivating none of the civic persona that Ken Lay wrapped around himself like Cicero's toga.

Although protesting his innocence to the end, Skilling was convicted like Lay on conspiracy and fraud, though acquitted on insider trading. Maybe, in the end, Skilling's true believer persona was as much of an act as Lay's idiot-CEO performance; maybe he was simply one more gluttonous monster who violated the corporation, its employees, and its shareholders. Perhaps digging through Skilling's philanthropy might uncover hitherto untold charitable depravity. Like some of the suddenly distressed recipients of grants from Jack Abramoff's Capital Athletic Foundation,⁵² the head of the Junior Achievement program that received \$86,000 from Skilling's foundation claims his records show only a \$2,000 grant.⁵³ Perhaps the IRS ought to be matching up the grant lists on 990PFs with the grants received by nonprofits to search for phantom philanthropy, but the potential philanthropic shenanigans of Lay, Fastow, and Skilling simply do not add up to enough money to be worth the effort.

Post-Enron

In some Shakespearean tragedies, the bad guys are virtual monsters, epicenters of evil like Richard III or Lear's Edmund. If there are glimmers of human tragedy in the stories of Lay, Fastow, and Skilling, the demise of Enron contains other characters who seem to lack the dimension for even a

scintilla of empathy. The executive who ran various iterations of Enron's trading operations, Lou Pai, developed some interesting obsessions for strip clubs and exotic dancers, but was known for his "unerring instinct for pocketing the most personally from every financial opportunity."⁵⁴

No surprise, while the fortunes of Lay, Fastow, and Skilling are in various sorts of ruin, in part because of their starring roles as defendants or government witnesses, Pai has not been indicted yet with any of the Enron crimes and cashed out with millions (he left having sold \$270 million of Enron stock), bought enough land to become the second largest property owner in Colorado,⁵⁵ and now with his new wife, a former exotic dancer, runs a horse-breeding facility in Texas.

Pai also established a foundation, whose most notable grant—perhaps the only one—was \$153,000 to the San Cristobal Ranch Academy in 2001. What is the San Cristobal Ranch Academy? Apparently, it was previously called the Pai Ranch Academy. The President of the board? Lou Pai. The secretary of the board? Second wife Melanie. Between 2001 and 2002, the salary of the vice president, one Anthony Geraci, jumped from \$62,000 to \$141,000, according to the organization's 990. The 990 filed in 2002 for the Academy is the last one posted on *GuideStar*, though the Academy is still apparently in operation. It may be that with Pai's help, the Academy became for-profit, given the 2006 press release announcing the naming of the Academy's new CEO and "Owner."⁵⁶ For someone with Pai's documented extracurricular behaviors, the Academy was an odd charitable choice, with an educational mission of "creat[ing] an enriched therapeutic environment in which young men struggling with self-esteem issues, anger, depression, school failure and substance abuse can improve their minds, bodies, and spirits."⁵⁷

The mélange of perfidious behaviors by Enron executives is not unique. In the months leading up to the convictions of Lay and Skilling, other corporate criminals stood trial, many of them using their personal and corporate philanthropy to fashion images and win friends, notably HealthSouth's Richard Scrushy and Tyco's Dennis Kozlowski, with Scrushy reinventing himself as a TV evangelist.⁵⁸

Because philanthropy amounts to small potatoes within the billions of dollars sacrificed in the corporate plunder of Lay, Skilling, Fastow, and others, their foundations have received scant attention in the press and, with the notable exception of Fastow's asset forfeiture, similarly negligible concern from prosecutors at the SEC, the IRS, and Justice. In the detritus of the Enron collapse may be the impetus for a new look at the accountability and ethics intersections of some corporations, corporate executives, and their foundations.

Endnotes

1. "Enron's CEO's Lawyers Expected to Use 'Idiot Defense,'" Associated Press (January 6, 2006); the idiot defense is also known as the "Sergeant Schultz defense," the character known for saying "I know nothing! Nothing!" on the TV sitcom *Hogan's Heroes*.
2. "Enron's Lay Says He Was Duped, Not Dumb," *Houston Chronicle* (March 14, 2005).
3. Brett Arends, "Verdict's In—Lay, Skilling Guilty in Enron Collapse," *Boston Herald*, <http://business.bostonherald.com/business-News/view.bg?articleid=140807>.
4. Barry Ritholtz, "Apprenticed Investor: Protect Your Backside," www.thestreet.com/comment/barryritholtz/10250118.html (10/28/2005); apparently WorldCom's bankruptcy may have been the largest ever.
5. The market lost \$8 trillion in value in the Enron-extended bear market that started in 2000 through 2002. The corporate scandals of Enron and WorldCom, among others, cost American workers \$175 billion in lost retirement savings as the market plunged. Cf.

"Business Scandals in the New Millennium: Backgrounder and Research Guide," http://ca.encyarta.msn.com/guide_corporatescandals/Business_Scandals_Backgrounder_and_Research_Guide.html.

6. Rick Cohen, "Corporate Giving: De-Cloaking Stealth Philanthropy," *Nonprofit Quarterly* (Fall 2002).

7. www.kenlayinfo.com/public/default.aspx.

8. www.enron.com/corp/por/tax2.html.

9. www.senate.gov/~finance/sitepages/TNC%20Report.htm.

10. This was the position articulated by Stephanie K. Meeks, TNC's Chief Administrative Officer, in her presentation, "NGO Accountability: Is There a Case for Greater Transparency," at Ethical Corporation Business/NGO Partnerships and Engagement conference in Washington DC (May 24, 2005). The *Washington Post* series exposing The Nature Conservancy's accountability shortcomings maybe found at www.washingtonpost.com/wp-dyn/nation/specials/natureconservancy/.

11. [www.reservebank.co.za/internet/Publication.nsf/LADV/5E46BFE74777BDE742256D24004D1523/\\$File/Annexure_D1.pdf](http://www.reservebank.co.za/internet/Publication.nsf/LADV/5E46BFE74777BDE742256D24004D1523/$File/Annexure_D1.pdf), p. 42.

12. Jim Jubak, "Companies Whose Boards Need a Scare," www.thestreet.com/funds/jubak/10015517.html (04/02/2002).

13. www.mercatus.org/people.php/35.html.

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19. cf. Robert N. Stavins, Experience with Market-Based Environmental Policy Instruments (Washington DC: Resources for the Future, November 2001).

20. www.bear-left.com/original/2002/0210layfamily.html.
21. Paul R. Portney, "Ensuring RFF's Independence," *Resources* (Winter 2002).
22. www.telegraph.co.uk/news/main.jhtml?xml=/news/2002/09/29/wenron29.xml&Sheet=/news/2002/09/29/ixworld.html.
23. www.usatoday.com/money/energy/2002-01-30-lay-assets.htm.
24. "Dwindling Lay Foundation," op cit.
25. According to the 990PFs of the Lay Foundation, \$200,000 in 1998, \$48,000 in 1999, \$70,000 in 2000, and another \$68,000 in 2001.
26. www.horatioalger.org.
27. www.horatioalger.com/members/member_inco.cfm?memberid=LAY98.
28. www.bear-left.com/original/2002/0210layfamily.html.
29. www.foxnews.com/story/0,2933,138864,00.html; also Kurt Eichenwald, "Enron Inquiry Turns to Sales by Lay's Wife," *New York Times* (November 17, 2004).
30. Marcy Gordon, "Lawmakers Criticize Enron Executives," *Houston Chronicle*, www.chron.com/disp/story.mpl/front/1168987.html (January 17, 2002).
31. Russ Banham, "Andrew S. Fastow—Enron Corp.," *CFO Magazine* (October 1, 1999); *CFO Magazine* gave him its "CFO Excellence Award for Capital Structure" in 1999, a prescient double entendre if there ever was one.
32. Bill Saporito, "How Fastow Helped Enron Fall," *Time* (February 10, 2002).
33. Enron's former president and COO, Rich Kinder, left Enron when Lay refused to name him CEO and started his own firm, Kinder-Morgan. As he was leaving the corporation, he purchased some unwanted Enron assets such as a rail-to-barge coal transfer terminal, and turned the organization into an energy behemoth worth \$14 billion, making him reportedly the third-wealthiest person in Houston. In the process, Kinder and his wife Nancy became Houston area philanthropists, donating \$11 million to local and regional charities such as museums and hospitals as of 2003. Cf. Julie Credwell, "The Anti-Enron," *Fortune* (November 24, 2003).
34. Bill Murphy, "Enron's Art Hopes Just a

Pipe Dream," *Houston Chronicle*, www.chron.com/disp/story.mpl/special/enron/1511908.html (June 9, 2003).

35. Jennifer Frey and Hanna Rosin, "Enron's Green Acres," *Washington Post* (February 25, 2002).

36. www.chinaartnetworks.com/bbs/read.php?id=66&here=70.

37. Bethany McLean and Peter Elkin, *The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron* (Penguin Books, 2003), pp. 169-179. Kopper became the first senior executive of Enron to plead guilty.

38. *Ibid.*, pp. 196 and 206.

39. *Ibid.*, p. 365; the "business" was to hire Andrew's father Carl as the foundation's

In the detritus of the Enron collapse may be the impetus for a new look at the accountability and ethics intersections of some corporations.

executive director, for which he was paid \$10,417 for 15 hours of work a week in 2001 (for the period after which he was hired) and \$28,333 for the alleged 15 hours he worked each week for the foundation in 2002.

40. Sharon Beder, "How Environmentalists Sold Out to Help Enron," www.prwatch.org/pr/issues/2003Q3/enviros.html (10/20/2004); also Alexander Cockburn and Jeffrey St. Clair, "Enron and the Green Seal," *Counterpunch* (December 21, 2001).

41. Kristen Hays, "Lay Faces Uncertain Future Ahead of Trial," Associated Press Online (January 20, 2006).

42. *Smartest Guys*, pp. 370-371.

43. Ariana Eunjung Cha, "Corporate Scandals Tainting Donations," *Washington Post* (September 15, 2002).

44. *Ibid.*

45. Alan Bernstein, "Nonprofit and Loss for Fastow Charities," *Houston Chronicle* (August 23, 2002).

46. Peter Frumkin quoted on National Public Radio (December 9, 2003) in a story headlined, "Charities Choosy about Contribution

Sources."

47. Kurt Eichenwald, *Conspiracy of Fools* (Broadway Books, 2005), pp. 42-44.

48. *Smartest Guys*, pp. 337-339.

49. "New Trouble for Ex-Enron CEO," <http://www.cbsnews.com/stories/2004/04/22/national/main613084.shtml> (April 22, 2004), and "Former Enron Chief in Police Incident," <http://www.nytimes.com/2004/04/10/business/10skilling.html?ei=5007&en=0cf8a637ce1e267b&ex=1396929600&partner=USERLAND&pagewanted=print&position=> (April 10, 2004).

50. David Streitfeld and Dana Calvo, "After Enron, Skilling Had Kept Low Profile," *Cincinnati Post* (2/20/2004).

51. Skilling and his first wife Susan divorced in 1997 after several years of difficulty (cf. *Smartest Guys*, pp. 68-69 and 100-101), following which there appeared the Susan Long Skilling Foundation, later the Lowe-Skilling Foundation (Lowe is the surname of the stockbroker she married after Skilling). Presumably, the roughly half-million-dollar capitalization of her foundation came from some portion of the divorce settlement, although she also received Enron stock which she admitted, in the Lay/Skilling trial, having sold at the peak of Enron's stock value for \$14 million. (http://blog.washingtonpost.com/enron/2006/04/the_apparition_of_the_first_wi_1.html).

52. Cf. Rick Cohen, "Abramoff: More Unanswered Questions," *Responsive Philanthropy* (Winter 2006).

53. Cha, op. cit.

54. *Smartest Guys*, p. 58.

55. http://en.wikipedia.org/wiki/Lou_Pai.

56. www.strugglingteens.com/news/press%20releases/sancristobal-ranch060509.htm.

57. www.sancristobalranchacademy.org/philosophy.html.

58. Cf. the Web site of Richard and Leslie Scrushy Ministries, www.scrushy-ministries.com.

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