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The Responsibility and Accountability of CEOs: The Last Interview with Ken Lay

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ABSTRACT. Responsibility and accountability of CEOs has been a major ethical concern over the past 10 years. Major ethical dilemmas at Enron, Worldcom, AIG, as well as other well-known organizations have been at least partially blamed on CEO malfeasance. Interviews with Ken Lay, CEO of Enron, after his 2006 fraud convictions provides an opportunity to document his perceived role in the demise of Enron. Possibly no other CEO has had as much impact on the scrutiny and legalization of business ethics as Ken Lay. This analysis is timely because of many information sources now available and the recent Supreme Court decisions on Enron conviction appeals. Using Ken Lay as the focal point, a review of literature provides the background for research questions to explore the role of the CEO in developing an ethical corporate culture.

KEY WORDS: ethical leadership, honest services fraud, Ken Lay, Jeff Skilling, Enron, legalization of business ethics

Introduction

Over the past 10 years, a number of legal and ethical issues have diminished trust in business. One may ask many questions about our ability globally to develop CEOs as ethical role models and the effectiveness of regulatory approaches to legalize the foundations of effective compliance and business ethics. A major amount of theory and research focuses on the morals of individual decision makers such as CEOs (Reidenbach and Robin, 1990). Our approach to examining this issue is to look back to the beginning of this century and the business failures associated with Enron, WorldCom, Royal Ahold, and other more recent scandals including AIG and Lehman Brothers. From these earlier examples we may be able to determine what we have learned and whether there have been changes to the business and regulatory environments, which improve compliance and business ethics.

The most visible case of alleged CEO failure to act accountable and responsible is the conduct of Ken Lay and Jeff Skilling at Enron. The prosecution of these corporate leaders for honest services fraud, among other charges, and the recent U.S. Supreme Court ruling on Jeff Skilling's appeal of his conviction, provides the background for our analysis. Our purpose is to explore the role of the corporate CEO in the ethical, legal, and financial performance of the organization. The Enron case was selected because of its numerous information points that were gathered from a diversity of organizational stakeholders, including interviews on ungagged.net (''The Other Side of the Enron Story'', 2010) and many academic articles. In addition, the authors obtained key informant interviews from the founder and last CEO of Enron, Ken Lay.

In the following analysis, we summarize what happened at Enron and how this business failure was viewed by various stakeholders, including government prosecution. We also look at the role of Ken Lay in the failure of Enron. We have key informant accounts related by Ken Lay, whom we interviewed after his May 26, 2006 conviction in the Enron case. These extended encounters with Lay have provided us with a deep understanding of his views on what happened at Enron. While we cannot validate the truthfulness of his statements, these interviews will offer an accurate account of what Lay said he believed about the Enron disaster. In addition, we will analyze ethical and legal outcomes from the prosecution of Ken Lay and Jeff Skilling and assess these developments in the context of public policy. Our goal is to improve the understanding of the role of top management and criminal prosecutions in developing an ethical organizational culture. We

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provide significant updates from the 2010 Supreme Court appeal of Jeff Skilling for his conviction in 2006. To integrate and synthesize the issues covered in our analysis, we provide research questions to advance the application of theory and research in business ethics.

Enron and Ken Lay

We had the opportunity to be among a select few, perhaps the only individuals outside of family members, legal advisors, and close friends, to speak openly with Ken Lay in the days following his conviction in late May but before his death on July 5, 2006. Through an accidental meeting aboard an airplane, we were able to have personal interaction and later to conduct more than 4 h of telephone interviews. The conversations ranged from his role as CEO of Enron to his views about what caused the disaster and demise of the company. As society struggles to understand the role of the CEO in ethical decision making, the thoughts of Ken Lay are an important component, both in documenting history and assessing the present.

Ken Lay returned as Enron's CEO after its business model had failed. Nevertheless, fewer than 4 months before Enron filed for bankruptcy, Lay remained highly positive about the company's financial health. He was undoubtedly convicted with the honest services fraud statute for what he said. Statements such as "the balance sheet is strong," "third quarter is looking great," and "Enron stock is an incredible bargain at current prices" is where the jury found that Lay had crossed the line and lied about Enron's financial conditions.

At the time, most experts assumed Enron was an isolated case of CEO and corporate greed, fraud, and malfeasance. After the collapse of WorldCom and the financial misconduct at other large corporations such as Tyco International, Global Crossing, and Royal Ahold and Parmalat in Europe, many people questioned whether these were systematic failures in ethics and regulations.

No other executive has had as much impact on the scrutiny of business ethics in corporate America than Ken Lay. Enron has become the ultimate symbol of corporate wrongdoing. Enron means greed, ethical disaster, corporate malfeasance, dishonesty, accounting fraud, and corporate governance failure. Enron is also associated with personal tragedy. An estimated 5600, and perhaps up to 10,000, jobs were lost, life savings and retirement accounts were wiped out, and billions were lost by investors and banks – but those losses are small compared to the 2008–2009 financial industry implosion. There were many indictments, convictions, and plea bargains in the government's attempts to find and blame whoever was responsible for the downfall. Only 22 former Enron employees were indicted or convicted, with just one acquittal; however, there were 130 unindicted co-conspirators which included most top managers that worked with Ken Lay and Jeff Skilling.

Ken Lay has been vilified by federal prosecutors and the media as being the key executive in a massive fraud that destroyed jobs, savings, and shareholder wealth. But in reality, Ken Lay was convicted for not being proactive in preventing the fraud or knowing about what was going on inside Enron. He and Jeff Skilling were convicted for "honest services fraud" that did not involve bribes or kickbacks involving the exchange of money. The law is used for alleged transgressions such as making false statements or depriving another of the intangible right of honest service. There were certainly pockets of corruption within Enron, and ethical rule bending was a part of the midlevel management corporate culture. Even the "so-called" whistle-blower Sherron Watkins claims that Ken Lay was some distance from the fraud and was not in any way involved in creating it (Watkins and Pierce, 2003). Ken Lay was convicted for allegedly not telling the truth about what was happening at Enron. Enron juror Wendy Vaughan said, "I felt it was their duty to know what was going on." This same theme was echoed by Enron juror Douglas Baggett. "For a man that knew every aspect of that business and seemed to know every deal, why didn't he know what was going on?" he asked. Ken Lay's fate was sealed when the judge told the Enron jury that they could find the defendants (Lay and Skilling) guilty of consciously avoiding knowledge about wrongdoing at the company.

The complexity of the Enron case illustrates the difficulty of a prosecution and the thin line between ethical and criminal conduct. Enron used complex computer trading models, exotic derivative products,

and extreme risk-taking without considering the ethical dimensions of decision making or the ramifications of high-risk financial instruments on stakeholders. All of these factors have made running business more difficult and elevated the importance of ethics. The focus has become excessively fixed on the bottom line. The role of human beings utilizing experience and creative skills to predict consequences beyond the reach of quantitative models has diminished in recent decades.

The interview with Ken Lay

We will document our interactions and interviews with Ken Lay to provide a more in-depth understanding of the former CEO who was the alleged mastermind behind the events leading up to the Enron disaster. It is rare to receive such direct and personal insights into such a high-profile case. The mass media and public opinion assumes that Ken Lay approved and participated in a massive fraud that inflicted great harm on many stakeholders.

O.C. and Linda Ferrell first met Ken and Linda Lay on Saturday, May 27, 2006 in the first class cabin of a flight from Houston to Denver. It was about 48 h after the judge had convicted Lay on six counts of fraud. We gave Lay a business card as he made his way to his seat. After a few moments, he returned to give us his card and to discuss his situation. Later he returned again to ask if we would have time after landing to talk more about Enron and his conviction. This resulted in our first 30-min conversation with Ken and Linda Lay. There is no doubt that Ken and Linda Lay believed that he was innocent of all wrongdoing and that the trial was unfair. Ken Lay indicated that he believed the jury never read the indictment and did not understand the complexity of the case. He stated that he really did not want to go back as CEO after Jeff Skilling resigned, but his friends on the board begged him to come back. Both Ken and Linda Lay agreed it was a mistake, but he believed that all the problems could be resolved and that Enron needed his leadership. We suggested to Lay that CEOs get too much credit for a firm's success and are blamed too often for things that go wrong. Ken Lay said that he was not sure about our statement because CEOs do deserve a lot of credit for successes. After discussing how difficult the trial had been and the circus environment after the conviction, Ken Lay wanted to talk about the future. He believed that Houston was the wrong place for the trial and that there were excellent grounds for an appeal. The appeal, filed later by Jeff Skilling, was rejected by the Supreme Court; however, three justices felt the Houston trial venue to be questionable. Lay came off as confident and appeared to feel in control of his future. If Lay had lived, he would have seen his conviction for honest services fraud overturned by the U.S. Supreme Court.

Lay indicated that with 30,000 employees in 30 countries and 200 executives at the vice president level he was surprised that the corruption existed without him knowing about it. According to Lay, he had relied on lawyers, accountants, and senior executives to keep him informed of issues such as misconduct. It became apparent that he felt that he had been protected from certain knowledge that would have been beneficial and would have enabled him to engage in early correction of the misconduct. Lynn Brewer, a former Enron Executive, has confirmed with us that Lay was not told about misconduct in her division. Until the end he asserted his confidence that Enron could recover and continue its innovative business model. He believed that the basic business model, mainly an Internet trading company, and growth patterns could sustain the business even though certain events occurred to create a scandal. He pointed out that many firms have had scandals, recovered from them, and have gone on to be profitable and successful. Lay believed in the Enron business model and the corporate culture that created one of the largest and most profitable companies in the world.

At our first meeting, we asked Ken Lay if he would read a copy of our Enron case that was being revised for our Business Ethics textbook (Ferrell et al., 2008). We did not expect to hear from him again, but he called on June 4, 2006 and set an interview time for 2 h on June 6. He stated that he had always been interested in business ethics and wanted to help in any way possible. As expected Ken Lay called right on time, and he had carefully read and prepared comments on the case. As we discussed the case he took control and addressed areas where he thought there should be more or better explanations. Overall, he thought the case was accurate and had no major problems, admitting that things

had gone wrong at Enron with corruption that resulted in a negative impact on many stakeholders. Ken Lay indicated that he had publicly expressed concerns before employees that the only way that Enron could fail was to become overconfident or too "prideful." He commented on having young, aggressive highly educated employees that were reinventing the rules of the energy industry, with the average age of employees at only 35. Young managers were bending rules and inventing new rules related to energy trading and distribution. He said they probably needed more gray hairs to provide balance. He indicated that many young employees at Enron were inexperienced. His concern was that many employees felt invincible, and he often indicated in closed meetings that "the only way we can fail is to kill ourselves." During the course of our interviews Lay made the following statements (but we cannot verify these statements as accurate).

- He did not hold the board, lawyers, and accountants responsible, but did indicate that they approved all of his decisions.
- Off-the-balance-sheet partnerships were legal and approved by lawyers and accountants.
- Enron failed because of falling stock prices (dot-com bubble), the uncovering of the Fastow conflict of interest issues related to off-the-balance-sheet partnerships (fraud), Wall Street Journal articles about the fraud, and short sellers who drove the stock price down even further. Once the stock price fell, it destroyed equity in the off-the-balance-sheet partnerships. There was a $1.2 billion write-off of assets on October 16th and then bankruptcy on December 3, 2001.
- He had no knowledge of the Fastow fraud and how it related to the off-the-balance-sheet partnerships until a meeting with lawyers when it became general knowledge.
- It was not until the October 9, 2001 board meeting before Lay knew that anything was wrong.
- Lay said he did not blame Skilling, but did blame Fastow for the fraud that destroyed Enron. He believed there were only three or four individuals who engaged in major misconduct that created the negative news events and assumption of widespread corruption. Most of the damage came from the negative press that destroyed investor confidence and caused the collapse, as Enron stock was their asset base in the off-the-balance-sheet partnerships.
- Lay believed he was convicted for "what he should have known" and his failure to prevent business failure. He believed that the law should not convict you for information that you did not know. The judge told the jury that he could be convicted if he purposely did not know. Ken Lay said there was no evidence presented that his lack of knowledge was intentional.
- Lay did not have daily knowledge of how schemes and deals were developing to meet the numbers. On top of that, he confirmed that the internal controls broke down, resulting in the implosion. He said that as hard as he tried, the internal controls did not uncover the most significant misconduct.

Throughout our interactions, Lay maintained his innocence and said that he was not purposely lying to the employees and the investor community, but trying to save the company that he loved. He knew it was a mistake to return as CEO and try to save the company.

Ken Lay's beliefs and defense at the end

On June 20th, Ken Lay's administrative assistant called and asked if we had time to talk more. Lay asked us not to record any of our interviews, but allowed us to take notes. Lay explicitly stated that he did not want us to make any public statements on our conversations until after the final appeal of his conviction. This final conversation occurred about 2 weeks before his death.

Lay wanted to know if we had read an article in the New York Times entitled "The Enron Case That Almost Wasn't" (Eichenwald and Barrionuevo, 2006). According to Eichenwald and Barrionuevo, while the press and public perceived Ken Lay as the mastermind of the corruption, there was no evidence to bear this out. Privately, prosecutors worried if they would ever be able to charge Lay with any crime according to the article. Lay was never linked

to any of the crimes at Enron. There was no evidence that he had deceived the board. Prosecutors had to focus on the big picture, not individual transactions. The only charge was that ''Ken Lay stuck his head in the sand about aggressive accounting and wrongdoing at the company.'' The final question was whether Lay had lied to stakeholders, employees, and banks, and whether these lies could be construed as crimes. The jury ultimately decided that Lay was guilty of honest services fraud. Lay continued to maintain his innocence to us, saying that he never made a decision that was not approved by his lawyers, accountants, and board of directors.

The reliance on accountants and lawyers who were so well compensated that they lost their professional objectivity may have been part of the problem. In our opinion, Ken Lay did a good job building the company, but not in managing legal and ethical risks and the company's downturn in performance. He avoided finding misconduct and dealing with the individuals involved. He also continued to claim publicly that all was well with the company, even after he found out that Enron was in trouble. While Ken Lay said he did not know about any misconduct, internal reports told a different story. Ken Lay's perception was not accurate, as we know from whistle-blower's reports. Although he did not remember ever seeing the reports in question, internal whistle-blower reports had increased 300% between when Lay was CEO and when Skilling took over (Brewer et al., 2006). This means that there had been a significant increase in reports of misconduct. The CEO and Board of Directors should have examined this rise in reports to determine the causes. If Lay had investigated the problems when he returned as CEO and told the employees and public the truth, Enron might have survived.

On the morning of July 5, 2006, Ken Lay died of a massive heart attack. The press and late night shows exploited his death and continued to hold him up as almost the single cause of the Enron disaster. Those who knew Ken Lay or met him once at events tried to explain what he was like in real life. The real Ken Lay created a unique business model that had never been tested under the existing legal system. He relied on accountants, lawyers, and board of director members for guidance and developed a different business model for the energy industry. He made mistakes and did not have the advantage of an effective ethical compliance system, good corporate governance, or effective internal controls that were later created by the Sarbanes–Oxley Act of 2002. Finally, the perfect storm of events imploded Enron, and Lay became the scapegoat of all that went wrong at the company. There is a tremendous challenge in helping society understand the complexity of corporate ethical decision making and the social networks that are present in decisions.

Significance of the Lay and Skilling convictions

John C. Coffee, Jr., Columbia Law Professor and corporate governance expert, stated in the *National Law Journal* that the ''Lay indictment is surprising in what it does not allege'' (Coffee, 2004). There were no allegations of knowledge or participation in ordering or creating a specific fraudulent event. Lay was indicted and convicted more for optimistic puffing than for predatory fraud. Lay's first allegation from prosecutors was that he made statements to Enron employees on an online form on September 21, 2001. Lay told employees that the third quarter was looking great. In personal conversations on June 6, 2006 with O.C. and Linda Ferrell, Lay focused on a defense of the third quarter and why he thought that Enron's financial condition was good. Lay thought that Enron had $10 billion in physical assets and 90% of its revenue was generated through wholesale operations. He maintained that third quarter profits were $754 million compared with $589 million in the third quarter of 2000. He believed that Enron would be a good long-run investment. Lay never indicated that he was fully aware of the accounting trickery in which certain divisions of the company were engaging. Coffee writes that ''Lay seems mainly a bystander to the tragedy of Enron…nothing that he did post-return mattered, because Enron was beyond saving'' (Coffee, 2004).

The government case was that Lay and Skilling purposely misrepresented the company's financial conditions to stakeholders to enrich themselves. Coffee indicates that ''this sounds more like the traditional CEO acting as motivator-in-chief, trying to sustain employee morale during a crisis'' (Coffee,

2004). Lay said in the third quarter of 2001 that Enron stock is an incredible bargain at current prices. He appears to have believed what he said, as Lay had just bought $4 million in Enron stock. The government focused on his sale of $24 million at an earlier date. According to Coffee (2004), these sales resulted in alleging that Ken Lay ''omitted material facts and breached a fiduciary duty of honest services.'' Yet, Lay made a major point to us in his defense that these earlier sales ($24 million) were the result of margin calls over which he had little control. One of the members of the jury said after the conviction that Lay should have managed his personal finances better. As the price of the stock went down, Lay's personal financial portfolio was based on the value of Enron stock and had to be sold to meet the obligations.

While the legal theory and facts behind Enron's failure are complex, it really came down to one issue: ''Lay should have known what was going on and was responsible for the complete disaster.'' This was emphasized by Jill Ford, a member of the Enron jury, who we interviewed in February, 2007.[1] Jill Ford seemed to like Ken Lay as a person, although she and the rest of the jury convicted him on what he should have known about Enron. She indicated that there was no direct evidence that he either participated in or knew about illegal acts that occurred at Enron. She said that when the judge stated that they could convict Lay for what he should have known, then the jury had no alternative but to convict him.

Legal and ethical outcomes in the prosecution of Lay and Skilling

On June 24, 2010, the United States Supreme Court ruled that the honest services law could not be used for convicting Jeff Skilling (Supreme Court 561, 2010). Skilling and Lay were accused of deceiving accountants and the investment community, not seeking personal gain. The Supreme Court ruled that the honest services law could only be used for bribes and kickbacks, not for conduct that is ambiguous or vague. The Supreme Court decision did not confirm that there was no misconduct, but that the conduct was not in violation of a criminal fraud law. The courts' decision did not overturn the conviction (19 counts of conspiracy, securities fraud, insider trading, and lying to auditors) completely and sent the case back to a lower court for evaluation.

This decision somewhat confirmed Ken Lay's assertion that he was trying to save the company, not obtain personal gains. Ken Lay used the loyal agent's argument; in other words, he was acting solely for the benefit of his principle in all matters, although the American Restatement of the Law of Agency makes it clear that an agent such as Ken Lay should not engage in an illegal or unethical manner for his principle – in this case, Enron (Smyth and Soberman, 1968). A Webumentary (''The Other Side of the Enron Story'') provides interviews about the way the U.S. Department of Justice prosecuted the Enron case. Mike Ramsey, the lead attorney for Ken Lay's defense, claimed that Lay was not aware of most things in the indictment. The defense was informed that 130 of Enron's top management, who could have served as defense witnesses, were unindicted co-conspirators with Lay and Skilling. Therefore, the defense could not obtain witnesses from Enron's top management teams under fear that witnesses would be indicted. There was also the charge that the Enron Task Force hindered the discovery of facts and blocked timely delivery of documents. Plea bargains were used to gain quick cooperation for the prosecution. In addition, the media biased the Houston jury according to Ramsey, but the Supreme Court differed with Ramsey. There were charges that federal prosecutors could go after anyone by grouping a number of laws together and alleging fraud. According to Bill Anderson, Professor of Economics at Frostburg State University, the Enron case was built around the theory that Enron failed because of greed and criminal activity – the public was scared and angry, with the mentality that ''somebody has to pay.'' However, Anderson believes that the business cycle, including the dot.com demise, caused the bankruptcy (''The Other Side of the Enron Story'', ungagged.net). There has always been distrust of people in business. From an ethical perspective, it should be expected that the defendants get a fair trial that is transparent and free from manipulation (either by the media or the legal system), avoiding any wrongful convictions. The website ungagged.net (''The Other Side of the Enron Story'') features numerous interviews,

including with law and business professors, questioning this expectation in the Enron case. They feel that the justice department engaged in unfair tactics and was guilty of abuse of power in the case of Enron.

In addition, the ''honest services'' statute, the backbone of the prosecution's arguments, had originally made it a crime to not act in the best interests of a company's constituents and employers. The 2010 Supreme Court decision has weakened this law by requiring a bribe or kickback to make it a crime. On the other hand, most act utilitarian philosophers would say that the agent is not obligated to perform illegal or unethical acts. In other words, utilitarians use moral principles as first-line principles of action. This means that ethical values and principles would produce the best outcome for the corporation and society (Michalos, 1979). The Supreme Court may not be recognizing this philosophical principle in its decision.

Preventing another Enron

Since the 1991 passage of the U.S. Sentencing Guidelines for Organizations, incentives have been in place for firms to create effective ethics and compliance programs (Ferrell et al., 1998). An ethical organizational culture should be a goal of any such program. The 2004 Amendments to the U.S. Sentencing Guidelines state that the development of ethics and compliance programs and an ethical culture provide mitigation of fines to firms in case they are facing a criminal offense. With the addition of the Sarbanes–Oxley Act in 2002, new rules established by the Securities Exchange Commission, and new incentives for ethical conduct outlined by the United States Sentencing Commission in 2004, the regulatory environment should have been in place for improved ethical conduct. However, these groups failed to recognize that the underlying incentives for misconduct remained. The problem has been that regulatory bodies function as silos, without overarching supervision in major areas of decision making, especially as it relates to the ethical dimensions of business decisions. There is ample evidence that many public companies have approached ethics from a compliance perspective, without bothering to build up an ethical organizational culture, which would address more of the underlying causes of ethical risk. The Ethics Resource Center National Business Ethics Survey found that over half of employees who observed misconduct failed to report it to management. This signals a lack of support for organization-wide compliance with ethical codes and policies (Ethics Resource Center, 2007). Academic research continues to point to the importance of an ethical culture to support integrity to avoid major misconduct, which includes extreme risk-taking that can damage many stakeholders (Maignan and Ferrell, 2004). If ethics and compliance programs remain superficial and legislative statutes do not address all potential misconduct, then the many loopholes that exist will persist for CEOs with no ethical compass.

''An absence of support for ethical role models in public companies may signal the failure of broad-based federal corporate governance initiatives like Sarbanes–Oxley'' (Heminway, 2008, p. 224). There is general agreement that businesses today are under extreme pressure to produce quarterly results, increase productivity, decrease costs, and fend off competition (Kayes et al., 2007). This was one of the prime factors that led to the 2008–2009 financial crises.

Most ethics experts believe that we will never be able to create enough laws to prevent schemes designed to inflate earnings and engage in other forms of misconduct. To prevent future Enron-type failures, the corporate ethical culture, corporate governance, and reward systems will have to change in many organizations. In most cases, a CEO acting alone cannot ''sink the ship'' and many of the structural, cultural, and corporate governance conditions that caused the collapse of Enron still pervade corporate America. The lessons learned from the Enron case are many. Ethics and compliance starts at the top. If the senior officers and board of directors do not develop effective ethics and compliance programs, there are increased risks of ethical misconduct disasters. Top management and the board of directors are responsible for risk assessment, ethics audits, and the development of an ethical culture. Ethics is more than the character of a few individuals; it requires resources and proactive management associated with understanding and preventing misconduct.

Therefore, the CEO and the board of directors must shoulder the responsibility of building a transparent business model that balances risk with market opportunity. The ethical risks increase as lower-level

managers are allowed to use high-risk manipulation to create profits through using regulatory loopholes. The downfall of Enron and Ken Lay were helped by decisions approved by lawyers and accountants. The CEO must develop a holistic understanding of risk. Transparency and ethical decision making should be the guides of a business model, and corporate culture will provide long-term value and success. Internal controls should be enterprise-wide to insure that rogue employees do not engage in misconduct or in dangerous risk-taking. The important observations for the future relate to understanding the systemic risk areas that destroy a business.

The regulatory system has attempted to prevent future misconduct mainly by examining past misconduct and trying to fix the problem. Again, regulatory systems must examine business conduct from a holistic perspective. Regulatory agencies need to work together to prevent gaps in oversight. With the implementation of transparency measures, the mass media, academic research, and other stakeholders, we are able to evaluate the decisions and conditions that influence outcomes. Different types of scandals characterize different systems of corporate governance. Much about the recent scandals in the United States can be explained by modifications in the corporate landscape. For example, executive compensation shifted in the United States during the 1990s from a cash-based to a more heavily equity-based system (Coffee, 2005). This compensation shift was not accompanied by a meaningful change in corporate governance. The change toward equity means that executives changed from long-term performance goals to short-term financial manipulation, accounting gamesmanship, and utilizing high-risk products to gain quick returns. In fact, economists have found a strong positive correlation between levels of equity compensation and both earnings management and financial restatements (Coffee, 2005). Even companies with great reputations such as Apple have been associated with misconduct in awarding and implementing options. As stock options increase, so does the risk associated with such holdings, and this produces increased efforts to inflate earnings to prevent a stock decline. There is no doubt that rethinking executive compensation and incentives are at the heart of aligning managerial incentives, with the interests of shareholders and regulatory oversight in order to promote responsibility (Coffee, 2005).

Enron's problems were not unique nor were they distinctive (Coffee, 2003). Problems with corporate governance pervaded the company. Coffee looks beyond the few managers that engaged in misconduct, and he discounts the widely embraced theory that Ken Lay orchestrated companywide fraud. He instead chooses to focus on the gatekeepers and managers, and believes that this provides a better perspective for analyzing both what caused the scandal and the resulting legislation such as the Sarbanes–Oxley Act. His view is that the responsibility for Enron falls on three different groups: (1) Gatekeepers, (2) Shareholders, and (3) Managers. Coffee defines gatekeepers as "the reputational intermediaries who provide verification and certification of services to investors." This includes independent auditors, lawyers, and rating agencies. Enron had experienced erosion in the quality of financial reporting and had offered more incentives to managers. Shareholders and investment analysts are often anxious to punish any company that does not meet or exceed their stock market and earnings expectations. According to Coffee, it was this environment that created the perfect storm to create an Enron (Coffee, 2003).

Ethics and public policy research questions

Questions persist about the effectiveness of legislated business ethics compliance versus increased ethics education to encourage individuals to act more responsibly. One study found that educators recommend external forces (compliance) as a remedy for ethics more often than increased business ethics education (Beggs and Dean, 2007). On the other hand, there is support that an ethical corporate culture is the most important factor in creating ethical decision makers in the organization (Sims and Brinkmann, 2003). A strong combination of an effective corporate ethical culture and legislation to provide compliance on high-risk issues, in addition to business ethics education, appears to be a sound approach to eliminating unethical and illegal conduct (Rockness and Rockness, 2005).

New legislation is continually created in an attempt to curb various types of misconduct (Sarbanes–Oxley Act, Federal Sentencing Guidelines for Organizations and amendments, and more). Individuals are often seen as the key to organizational conduct and are held accountable for their actions.

In many organizations such as Enron, individuals are rewarded for carrying out potentially unethical activities in support of personal as well as organizational gains. The individual loyal agent defense that "I acted to serve the organization" has been questioned by moral philosophy and the legal system (Michalos, 1979). When individuals are rewarded indirectly for supporting organizational objectives, they may not see their actions as a personal ethical issue and may refuse to take responsibility.

Research Question 1: What are the roles of legislative compliance, corporate culture, and business ethics education in preventing ethical misconduct?
Research Question 2: How can the loyal agent of a corporation use ethical principles in decisions without being in conflict with the interests of the organization?

Top executives, especially the CEO, are often held responsible for the ethical, legal, and financial performance of the corporation. Ken Lay and Jeff Skilling were viewed as responsible for the misconduct, fraud, and bankruptcy at Enron. Angelo Mozillo, Countrywide Financial, and Maurice (Hank) Greenberg, AIG, who were both long-term CEOs of their companies, were blamed for developing a corporate culture that created ethical failures and the demise of their companies. In the United States, the honest services statute has been used to allege fraud for misrepresenting the financial health of a company. Ken Lay and Jeff Skilling were convicted for conspiring to defraud Enron's shareholders by misrepresenting the company's fiscal health, thereby artificially inflating their stock price. It was the government's findings at the trial that Skilling and Lay profited from the fraudulent scheme through the receipt of salary and bonuses and the sale of Enron stock. This conviction on honest services was overturned by the U.S. Supreme Court because of the existence of no bribes or side payments to a third party for making these representations. Proving CEO intent to misrepresent financial conditions is very difficult. However, because of Enron, we now have an opportunity for a better understanding of the responsibility and accountability of CEOs in their discussions of the company's financial condition.

There has been a tendency to overemphasize legal mechanisms focused on accountability rather than ethical responsibilities to provide accurate statements. The tendency not to focus on fraudulent practices, such as providing honest service, fails to address fundamental ethical responsibility issues (Arjoon, 2005).

Research Question 3: What is the scope of a CEO's accountability and responsibility in preventing ethical misconduct and illegal activities within the organization?
Research Question 4: Should the unethical actions of a CEO be considered a criminal offense?
Research Question 5: Should the CEO be held responsible for the ethical conduct of employees that act outside the scope of awareness of the CEO?

An ethical culture can prevent complacency through codes of conduct, training, and identification of potential ethical issues, as well as the development of systems to monitor and enforce ethical standards. Organizations are increasingly using internal systems to report misconduct. In addition, third parties are providing professional reporting and case management software so employees can ask questions, voice concerns, or report misconduct. There is strong evidence that organizations with advanced ethics programs can avoid major ethical disasters. Both the U.S. Sentencing Commission and the Open Compliance and Ethics Group (OCEG) provide evidence that strong ethics programs prevent ethical misconduct and prevent ethical and legal disasters like Enron (Open Compliance and Ethics Group, 2010).

Enron did not have an effective ethics and compliance program. Ken Lay stated in our interviews that "the internal control systems failed." It is also clear that the external checks and balances of accountants and lawyers also failed Enron. Regulations and internal controls required by Sarbanes–Oxley did not exist at that point in time. The board of directors approved all key decisions, providing evidence of a corporate governance failure. Potential elements of an effective ethics program either failed or did not exist in the Enron culture. Enron was trying to create a new energy model in a deregulated "wild west" environment. Top management and the board of directors were only looking at the numbers and trying to achieve earnings. Everyone thought ethics just happens while keeping your eye on the main business goal of maximizing profits. Enron turned into the perfect ethical storm and disaster. The question is, will organizations and stakeholders go beyond required compliance and

regulations and keep demanding and supporting ethical climates and effective corporate governance? The role of social networks and evaluation systems must be understood to improve business ethics. These factors created a complacent corporate culture at Enron. Many people believe business ethics is about personal character, and if you're a ''good apple'' you can survive in the most ''rotten of barrels.'' Everyone involved with Enron was damaged in some way.

Understanding the relationship between corporate governance, business ethics, and the role of proactive ethical leadership is important for management success (Minkes et al., 1999). There is a general belief that leaders are responsible and accountable for enhancing the intangible resource of integrity (Petrick and Quinn, 2001). To decrease the pressure to behave unethically, there is general consensus that the organization's ethical culture is of primary importance (Chen et al., 1997).

Research Question 6: How do the CEO and board of directors create an ethical organizational culture?
Research Question 7: Is the driving force for ethical conduct part of the employees' personal moral perspective or the influence of the organizational culture through significant others?

Conclusions

There appears to be agreement among public policy decision makers, the judicial system, and other stakeholders that CEOs are responsible and accountable for decisions or their complacency related to the ethical and legal performance of the corporation. The Enron disaster and the decisions of Ken Lay provide an excellent case study of accountability and responsibility in ethical and legal decision making. By conducting the last known interviews with Ken Lay, former CEO of Enron, we were able to document his statements after his conviction for honest services fraud as well as additional charges. His honest services fraud conviction would have been overturned by the U.S. Supreme Court if he had lived for the final appeal.

Our analysis of Ken Lay's role at Enron reveals insights about his viewpoint and perspective that he was showing due diligence as a CEO through outside auditors, lawyers, accountants, and the board of directors. He did take responsibility for Enron's demise and admitted that the company took excessive risk and that the internal controls failed. He was convinced that young aggressive employees pushed the boundaries of acceptable conduct for financial rewards. He claimed that he did not understand all of the complex factors in the operations of Enron that contributed to its downfall until the bankruptcy. In addition, the competitive culture at Enron shielded top management from warning signs, and he claims not to have seen the increased number of internal whistle-blower reports. The prosecution's case was that Ken Lay purposefully orchestrated the most misconduct for personal gain. The conviction for honest services fraud has now been overturned by the Supreme Court. While Ken Lay may have been guilty of complacency and the failure to develop an effective ethical culture at Enron, apparently, most of the charges against him were not a crime.

This analysis tries to provide a different perspective about Ken Lay and the Enron disaster. We are aware of the extensive documentation, articles, and mass media accounts of Ken Lay being described as the ultimate symbol of corporate wrongdoing. Ken Lay's name has been associated with greed, corporate malfeasance, and dishonesty. Our approach has been to create questions about systemic defects in ethical leadership, corporate culture, and public policy that could create a future Enron.

Finally, the development of research questions to guide research and to analyze existing best practices in developing corporate ethics programs provides a thoughtful synthesis of this analysis. It is important to not simplify corporate ethical failures such as Enron as the moral and legal failure of one individual. A focus on effective corporate governance, CEO ethical leadership, and the development of an ethical culture provides a potentially fruitful direction for future research.

Note

[1] A podcast of the Jill Ford interview is available at www.e-businessethics.net.

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