From Federal Prison, Ex-Enron CEO Ponders His Case

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On June 25, 2010, the U.S. Supreme Court issued its partially favorable decision in *Skilling v. United States.* Although the Court accepted former Enron CEO Jeff Skilling's arguments on the reach of the "honest services" statute, it rejected Skilling's contention that pretrial publicity and community prejudice prevented him from receiving a fair trial.

Since his conviction in 2004, Skilling has had ample time to consider what he would do differently if given the chance. CNN contributor Archelle Georgiou posed that very question during a jailhouse interview in 2008. Anticipating the Supreme Court decision, she recently published an article based on his response. When Georgiou asked him how he would alter his legal strategy, Skilling said he would (i) plead the Fifth; (ii) go on an aggressive public-relations offensive; and (iii) avoid sarcasm. See Skilling Speaks: Enron CEO's Jailhouse Interview.

Although Georgiou's article is informative, some of her observations seem bizarre. She is astonished that the incarcerated Skilling has to ask her for a 50-cent French-vanilla latte, but discusses his yoga practice, daily four-mile walks and low-carb diet as though these might not be equally astonishing to some people. Other observations are seriously flawed (her romantic description of Skilling as a principled individual who would rather go to jail than "not give voice to his side of the Enron tragedy," is untenable given his statement that, in hindsight, he should have pleaded the Fifth!). These weaknesses aside, Skilling's first and second points amount to good advice.

Skilling pretty much admits he should have listened to his attorneys when they advised him to plead the Fifth. Like so many other corporate-officers-turned-defendants, Skilling did not listen because did not understand the differences between corporate life and criminal defense. In 2001, Skilling was the CEO of the seventh highest-revenue-grossing company in America. He had considerable charisma, power and influence. Employees, shareholders, ratings analysts and others expected him to formulate a vision for his company and articulate a plan for achieving it.

His friendly audience wanted him to inspire and lead. But all of this changed when he was indicted.

Skilling's attorneys got it; Skilling didn't. Against their advice, he tried to explain Enron's business decisions. But unlike CEO Skilling, Defendant Skilling could no longer rely on his power and influence to carry the day. More importantly, unlike CEO Skilling, who regularly sold his point of view to employees and shareholders, Defendant Skilling did not bear the burden of proving his defense. The prosecution bore the burden of proving his guilt. Unaware of how things had changed, he attempted to sell his version of the facts and, unwittingly, helped the government prove its case against him.

As to Skilling's second point, it's less clear that a public-relations offensive would have improved his outcome. It may have helped with damage control. But if Skilling thinks a PR firm would have spruced up Defendant Skilling's image as it may have helped his image in Enron's glory days, he is mistaken. One only has to consider the limited impact that BP's public-relations efforts are having in the wake of Deepwater Horizon oil spill.

For his final point, Skilling wishes he had avoided sarcasm. In particular, he regrets having said in May 2001, "They're on to us." But this is not so much a legal strategy as a personal regret. When he made the damning comment, Enron hadn't yet collapsed and he probably could not foresee that it would be used against him at his future criminal trial. That aside, if he's going to start wishing he had behaved differently, it's curious he has not focused on what actions he might have taken to prevent the "Enron tragedy"—such as 'ask more questions' or 'insist on more safeguards and controls.' At a minimum, this type of conduct would have aided his defense by showing that he was not part of the problem. At maximum, it could have prevented Enron's demise.

Crime in the Suites is authored by the Ifrah Law Firm, a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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