

# The Enron Revisionists

Court reversals empower a new group of apologists for the corporate scofflaw.

By [Mark Gimein](#)

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When Ken Lay, the chairman of Enron, died in the middle of his 2006 trial, the *New York Post* put a picture of a coffin on its front page with the memorable headline “Make Sure He’s In It.” It’s safe to assume that Lay is indeed dead and buried. But now, close to a decade after Enron’s collapse in the seminal corporate scandal of the new century, Enron’s reputation is undergoing a surprising resurrection.

From the appeals courts to the business press to blogs, a name once synonymous with corporate scandal is having a new life, with a lengthening chorus of defenders. They see Enron and its executives as the victim of overreaching prosecutors, a broader anti-business climate, and bad luck.

And sometimes even as heroes. “I wish,” a onetime Enron employee named Cara Ellison writes in her blog, in an entry titled “[Enron Men Bring the Hotness](#),” “all men were like Enron men. I wish men today didn’t have to be babied and pacified but would take the reins of their own destiny and just be brilliant.”

“Whenever I’m writing fiction,” Ellison continues, “whenever I’m stuck on a male character, and I wonder what direction to go, I just think,

‘What would Jeff Skilling do?’” The answer, in case you’re wondering, is never “Cook the books” or “Get an opinion from the accountants.”

Ellison—a lower-level employee not directly involved with the scandals, who’s now studying to be a paralegal—has been covering the ins and outs of the Enron case for the last several years. She is without a doubt the most breathless of the Enron defenders. But even within the tamer confines of the mainstream media, there is no shortage of outrage and ardor on Enron’s behalf.

Sometimes the defense is nuanced, focused less on the successes of Enron than on the failures and misdeeds of prosecutors—an approach exemplified by Joe Weisenthal’s bluntly titled story “[The Complete Humiliation of the Enron Task Force](#)” in *Business Insider*. In other places, though, the efforts at prettifying the corpse of Enron’s reputation go a good deal further. In the editorial pages of the *Wall Street Journal*, the unfairness of the Enron prosecution is a settled fact, the go-to example of anti-business attitudes in white-collar prosecutions.

“Ken Lay,” *WSJ* columnist Holman Jenkins [wrote last year](#), “was prosecuted not for the sins that brought down Enron, but for failing to tell investors that the company was predestined to fail even as he tried to save it.” In death, and close to a decade later, the man who once was pilloried for having made many millions selling Enron shares before it all fell apart is now recast as the unfortunate person faced with the Herculean task of trying to keep the company afloat. And with the tidal wave of revelations of Wall Street malfeasance that followed the Lehman Brothers bankruptcy in 2008, the severity of Enron’s sins arguably fades in the rear-view mirror.

The gathering force of Enron revisionism has been fueled by a series of court-room reversals in the still-ongoing Enron saga. For anybody genuinely concerned with civil liberties, parts of the Enron story do give serious pause. The prosecution theories used in the Enron case were aggressive and relied on vaguely worded statute—something underlined by the 9-0 [decision of the Supreme Court](#) in June to send CEO Jeff Skilling’s conviction on one charge back to the lower courts.

Of the Enron cases that went to trial (in many cases prosecutors secured guilty pleas), few ended in convictions that haven’t been reversed. Prosecutors piled on huge numbers of charges. There’s meaningful evidence that the threat of indictment kept some at Enron from cooperating with the defense of others. Beyond that, the decision to [prosecute Lea Fastow](#), the wife of financial chief Andrew Fastow—is deeply troubling (and was from the start even to some in the government, as Enron prosecutor John Kroger details in his book [Convictions](#)).

For those who would defend Enron today, the lesson of the Enron story is that what appear as crimes after the fact were merely mistakes of judgment. They see Enron as a case not of a company looted through fraud, but of one faced with the consequences of its misjudgments. “What happened at Enron,” says the *Business Insider*’s Weisenthal, “was more like a typical bank run or a Wall Street collapse than a case of criminal fraud. Due to weakness in the business and an inability to trust management there was a run on the bank.”

The resonance of Enron for today’s economy is clear to everyone. Enron’s defenders look with suspicion at the efforts to prosecute Wall Street bankers in the wake of the financial crash. The Enron story makes them

skeptical of charges against Wall Street banks—and each failed attempt at bringing Wall Street charges reinforces the sense that the failure of Enron was just how business sometimes works. “What happened at Enron was the same thing that happened at Bear Stearns,” says Cara Ellison, “People were just shocked and they looked for a criminal element.”

As we pull further away from the Enron debacle, however, the failings of the Enron cases have come to obscure the basic facts about Enron’s operations that led to the debacle. Indeed, to say, as folks like Holman Jenkins do, that Enron’s executives were trying to save the company invites the question, “Save it from what?” It is clearly true that there was something like a “run on the bank”—a drying up of credit lines and an inability to continue doing business as creditors and partners braced for an impending collapse. It’s also true that Enron’s executives tried to keep it going, furiously arguing with short-sellers like James Chanos and reporters at *Fortune* and the *Wall Street Journal* who told investors that the company was in dire shape.

What the revision of the Enron history misses, however, is the bottom-line truth: What doomed Enron was not the vultures in the press. Whether it could have been delayed by few months by executives “trying to save it” or not, its collapse was a certainty. It was a company filled with bogus business (like the largely fictional Enron Broadband), with a balance sheet propped up by complicated accounting that built up phantom gains and obscured losses.

If those who demonize business go overboard and assume that every failed company is corrupt, the defenders of Enron tilt in the opposite direction. They discount any evidence of corporate dishonesty and deception that cannot yield a conviction and a clear story of executives

with their hands in the cookie jar. That will always be a rarity in a world in which corporate mismanagement is veiled by deception and a forest of opaque accounting.

The Enron trials were supposed to send a signal that white collar crime would be pursued and punished. In fact, the signal may be the opposite: Yesterday's unpardonable misdeeds are today's vague memories. Enron's failings were pursued by prosecutors far more aggressively than the more devastating ones of the subprime fiasco. Now, just a few years after the fact, the sins of Enron executives ("sweet, good men," in Ellison's view) are well on their way to forgiveness—while those of the latest wave of scandals haven't even made it to court.