Class and justice in America: The Supreme Court and Enron felon Jeffrey Skilling

Barry Grey
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The US Supreme Court's treatment of convicted Enron CEO Jeffrey Skilling is an object lesson on the social interests upheld by the US judiciary and the class divisions that dominate every aspect of American life.

On Monday, the Supreme Court heard arguments in Skilling's appeal of his 2006 conviction for fraud and conspiracy in connection with the December 2001 collapse of the energy giant Enron, then the seventh largest corporation in the country. Skilling resigned his post as CEO four months before the company fell into bankruptcy, having played the central role, along with Enron Chairman Kenneth Lay, in masking the firm's losses and lying to employees and shareholders in order to keep Enron stock prices high.

Skilling quickly sold 500,000 shares of Enron stock, netting $15 million in profit, before the shares became worthless. Meanwhile, company officials were assuring employees that the firm was healthy and their retirement funds, loaded with Enron shares, were secure.

The criminal activities of Skilling and other top officials cost the jobs of 5,000 employees and the life savings of 20,000 more. Houston, where the firm was headquartered, was economically devastated.

Skilling and Lay were both found guilty by juries. The former CEO was sentenced to 24 years in prison and sent to a minimum security facility in Littleton, Colorado. Enron Chairman Lay died of a heart attack before he had exhausted his appeals, and his conviction was set aside.

When this corporate criminal went before the high court, he found a sympathetic audience. Two of the nominal liberals, Stephen Breyer and Obama appointee Sonia Sotomayor, declared they were deeply concerned over the trial judge's "truncated," in Sotomayor's words, handling of jury selection. They were echoed by the "swing" justice, Anthony Kennedy.

One of Skilling's arguments for the overturning of his conviction and a new trial is the claim that he could not receive a fair trial in Houston and the trial judge failed to adequately vet the jurors for prejudice against Enron executives.

"I am worried about a fair trial in this instance," said Justice Breyer. "I am concerned about the five hours, about the lack of excusal for cause," he added, referring to the fact that jury selection took five-and-a-half hours and the judge failed to reject one potential juror who said he had lost $60,000 as a result of Enron's bankruptcy. (The woman was excluded when the defense used a peremptory challenge).

Sotomayor asked, "How can we be satisfied that there was a fair and impartial jury picked, when the judge doesn't follow up on a witness who says, 'I'm a victim of this fraud'?"

Three justices from the right-wing bloc on the court, Chief Justice John Roberts and associate justices Samuel Alito and Antonin Scalia, homed in on the other issue raised by Skilling—the claim that a law used in his conspiracy conviction, the so-called "honest services" statute, is unconstitutional.

That law makes it a crime to "deprive another of the intangible right of honest services." It has been widely used to prosecute corporate executives for corruption and fraud. Scalia, the ideological leader of the right-wing block on the court, has been leading the charge to overturn this law, thereby opening the way for voiding the convictions of scores of corporate law-breakers and making it more difficult to prosecute others in the future. At the hearing, Scalia and Roberts criticized the law as "fuzzy."

The chief question arising from the hearing appears to

be not whether the court will rule in Skilling's favor, but how sweeping its ruling will be. As the *Los Angeles Times* wrote on Tuesday, "The Supreme Court justices … strongly hinted Monday that they were likely to overturn [Skilling's] conviction, at least in part, because it rested on the notion that he cheated shareholders of his 'honest services.'"

The contrast between the court's solicitousness toward Skilling and its attitude to ordinary people caught up in the criminal justice system could not be starker. For working class and poor people accused of crimes, the system is a nightmare of indifference and arbitrariness, where genuine due process is a chimera.

The very fact that the Supreme Court agreed to hear Skilling's appeal, after it had been denied by a lower appeals court, and rehash claims about jury selection and the "honest services" law that had been tossed out, is attributable entirely to Skilling's former corporate standing and wealth. The justices, liberal and conservative alike, responded to him as "one of their own."

The court declined to hear some 2,000 cases filed for this term, including several that involve fundamental questions of democratic rights. It routinely refuses to hear the appeals of death-row inmates, overwhelmingly from the ranks of the working class, consigning them to a gruesome end.

Those so condemned have included people with impaired mental abilities and others whose guilt was seriously in question. In October of 2008, for example, the court refused to hear the appeal of Georgia death row inmate Troy Davis, despite the fact that seven of the nine witnesses who testified against him had recanted their previous incriminating testimony. In April of the same year, the court denied 11 death penalty appeals on the same day.

On the day of Skilling's hearing, the court issued rulings watering down the "Miranda" rights of arrested people against self-incrimination, rejecting the release of 13 Chinese Muslim Uighurs found innocent but still languishing in Guantánamo Bay, and upholding executions by lethal injection.

As for the Justice Department's effort to keep Skilling in prison, it has been half-hearted, at best. While the Bush administration felt it necessary to make a show of cracking down on corporate crime at the time of the dot.com implosion in 2000-2001, especially in light of the intimate political ties between Bush and Kenneth Lay, in the course of the Skilling trial the government made the absurd concession that the fraud carried out by the former CEO was not intended for private gain. Skilling's lawyers have seized on this admission in their attack on the "honest services" law, arguing that the Supreme Court should rule that it is unconstitutional to prosecute employees at private companies for fraud where no private gain is proven.

Monday's hearing suggested that the Obama administration is intent on throwing the case. Deputy Solicitor General Michael R. Dreeben at one point gratuitously conceded that in his instructions to the jury about what "honest services" meant, the trial judge "did take a somewhat broader view of the honest services crime than the government has taken in this Court."

When Scalia said of the judge's instructions, "It's circular, isn't it?" Dreeben replied, "It does seem a little circular to me."

In its report on the hearing, the *New York Times* concluded that "Mr. Dreeben may have been signaling the government would prefer to lose the Skilling case on narrow grounds than to have the court strike down the [honest services] law in its entirety as too vague."

The Skilling case exemplifies the increasingly naked exposure of the class divisions in American society. Under conditions of the domination of society by a financial oligarchy and ever widening social polarization, the aristocratic principle of separate justice for the rich, recalling the days of the French Ancien Régime, is being revived.