

# Business Day

The New York Times

SATURDAY, JANUARY 21, 2006

JOSEPH NOCERA

## The Cufflinks That Went To China

LAST June, my brother-in-law, Frank E. Williams, took his first trip to Asia. Along with a sales executive who worked for him at Visa Jewelry, Frank traveled to Hong Kong, which is where all the mainland Chinese costume jewelry manufacturers have their showrooms. Frank wanted to see if there was any way he could save his small costume jewelry business in Rhode Island.

Frank recently turned 70, but he's one of those people who is happiest when he's busy; as his wife, my sister Rosemary, wrote in an e-mail message to our family, "forced retirement is probably the only way Frank would consider it." He's been in the costume jewelry business since 1957, starting as an apprentice on the shop floor and rising over time to become a salesman, merchandiser and designer. He bought his own company in 1978, and named it Visa.

Although Visa never got bigger than 50 employees and \$2.5 million in revenue, it has been profitable for most of the time Frank has owned it. The last five or six years, though, have been rough. "If we broke even," my sister recalled recently, "we considered ourselves lucky." By 2005, the business was steadily losing money. Frank and Rosemary drew down the company's line of credit, and then began using their own credit to keep it going. "Customers weren't buying, and if they were buying, they were pushing us hard to lower our price," my sister said. And there wasn't much doubt about why this was happening. Globalization was taking its toll, as Chinese manufacturers have pretty much taken over the costume jewelry industry.

What Frank saw in Hong Kong only drove home the obvious. "Ten years ago," he said, "Chinese imports were terrible. But in every showroom we visited, we saw a quality product." Frank has long specialized in men's jewelry, particularly studs and cufflinks for tuxedos. "My

average pair of cufflinks, taking into account overhead and a 10 percent profit, costs \$6.50," he said. "I could get the same pair of cufflinks from China for \$2 and change." Peter Jernquist, the Visa executive who made the trip with Frank, said, "There was nothing we could make in the U.S. that couldn't be made far less expensively in China."

After returning to Rhode Island, Frank thought he might try to become a distributor of Chinese costume jewelry. But that required additional capital, and he and Rosemary were worried they might be throwing good money after bad. Besides, becoming an importer would still mean letting go most of the company's employees, and a large part of the reason Frank wanted to stay in business was to preserve their jobs.

In August, after a long weekend of soul-searching, Frank and Rosemary succumbed to the inevitable, and decided to shut Visa. And Rhode Island lost one of its last remaining costume jewelry manufacturers.

WHEN I was growing up in Providence, the city was known as the Costume Jewelry Capital of the nation. There were literally hundreds of jewelry factories, not just in Providence, but across the state. Many were tiny, but some had as many as 500 or 600 employees; at its peak, costume jewelry provided jobs for 40,000 to 50,000 people, and many more in satellite industries. In high school, having a summer job in a jewelry factory was practically a rite of passage.

"We thought it would be there forever," recalled Jack Reed, Rhode Island's Democratic senator. But the industry peaked sometime around 1978, and today, according to Rich Youmans of the Manufacturing Jewelers and Suppliers of America, there probably aren't more than 500 costume jewelry jobs left in the state. What jewelry-making still exists in Rhode Island resides in the higher-margin precious metals.

High-end jewelry is different from the costume business, though, not least because it is not as cost-sensitive. Costume is fundamentally about two things: design and price. Which is to say, it is exactly the kind of American industry globalization destroys. Over the years, Frank

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worked hard to control costs, but there was no way he could even come close to Chinese labor costs. As everyone knows, cheap labor is one of China's competitive advantages in the global marketplace.

As for his design skills, which Frank always thought of as *his* competitive advantage, globalization rendered them less and less useful. Customers would buy some of his new pieces, and then send them to China to have the designs reproduced. "Three or four months later," Mr. Jernquist said, "you'd see the same design on a Chinese Web site." Senator Reed told me that he tried to help with intellectual property issues, but conceded that it was hard to rouse much interest. "The loss to the industry is huge, but to the federal government, this is pretty small stuff," he said.

Indeed, the main reason Frank's company lasted as long as it did was that he made the shrewd decision to stick with men's jewelry, which is a niche business compared with women's jewelry. China wiped out the much larger women's cos-

tume jewelry industry first, before turning its attention to the men's side of the business. "Frank did everything right," said Peter M. DiCristofaro, who runs the Providence Jewelry Museum. "The times were against him."

The American economy will not rise or fall on the fate of the costume jewelry business, of course, but it does make you think about the real-world consequences of globalization. There is no question that when Americans can buy cufflinks for \$2 instead of \$6.50, it's a net plus for consumers. Nor is there any question that globalization is profoundly good for the people of China and India and other emerging economies.

But does it matter that, in the process, as Senator Reed put it, "a great source of wages and employment" is being lost? Frank and Rosemary certainly think so; my sister told me that she worried about whether there would be any manufacturing left in this country if the government didn't step in. "There have to be some industries in this country that use non-skilled labor," said Frank.

Clyde V. Prestowitz Jr., the president of the Economic Strategy Institute and a

leading critic of globalization, worries that the government lacks "a sense of urgency" as not only manufacturing jobs but service jobs move overseas.

"The theory has long been that we are going to make up in service jobs what we lose in manufacturing," he told me. "If you look at our own trade figures, you'll see a small and declining surplus in services."

Most mainstream economists, though, believe that globalization is not something we should fear, even if it does eliminate low-wage industries like costume jewelry. "People panicked when consumer electronics moved elsewhere," said Diana Farrell, the director of the McKinsey Global Institute. But, she said, that move not only gave consumers lower-priced goods, it also spurred innovation here and led, eventually, to better-paying, higher-value jobs. "The process of globalization," she added, "is wealth-creating for the economy."

But she conceded that there were people, and industries, that were inevitably going to be left behind. The trick was not to protect the jobs, but to protect the people — by stressing education and retraining, “delinking health care from employers,” and, in general, helping people make the transition from a declining industry to a growing one. No matter how you feel about globalization, you’d have to have a heart of stone to disagree with this sentiment. Which is also, I think, the most discouraging part of this story.

In the months since Visa went out of business, Frank and Rosemary have worked hard to find new jobs for their workers. They’ve scoured the help-wanted ads and talked to anybody they could think of who might have a job to offer. They haven’t had much luck. My sister told me of one woman who found a job; the wages were lower “but at least she has health care now.” Most of the other employees, however, remain out of work.

For a while, she thought she had found a great way to help them: the Department of Labor’s Trade Adjustment Assistance program. In a meeting with the program’s Rhode Island representative,

she got more and more excited as she heard about the benefits. They included not only job search workshops, but cash to pay for faraway job interviews, tax credits to help cover health insurance premiums, money for school, up to two and a half years of unemployment benefits to someone who was in the process of learning a new skill, and more.

Then she came to the line on the application that asked which country’s imports were responsible for failure of the business. The Labor Department’s agent tried to steer her answer. “If you mark down China,” he told her, “it disqualifies you.”

She couldn’t believe it. Neither could I. But I looked it up on the Labor Department’s Web site, and sure enough, it was true. The assistance was available only to workers who could show that they’d been laid off “as a result of a shift in production to a country that is party to a free trade agreement with the United States” — like Nafta. In other words, if you’ve lost your job because of imports from, say, Canada, you can get the benefits. But if Chinese imports are the culprit, you’re out of luck.

Thanks for nothing.

# Business Day

The New York Times

SATURDAY, FEBRUARY 4, 2006

JOE NOCERA

## Good Luck With That Broken iPod

**M**Y iPod died. It happened right after Christmas — a Christmas, I hasten to add, in which I gave my wife the new video iPod, making it the latest of the half-dozen iPods my family has bought since Apple began selling them in October 2001. We also own five Apple computers, and have become pathetically loyal because of our reliance on the iPod. To the extent that Apple



The iPod Nano

is using the iPod to drive sales of other Apple products, the Nocera family is proof that the strategy works; we've probably spent more than \$10,000 on Apple hardware since the iPod first came out. Alas, at least three of the iPods were replacements for ones that broke.

This time, though, I decided to get my iPod fixed. After all, it wasn't even two years old and had cost around \$300. Like all iPods, it came with a one-year warranty. Although Apple sells an additional year of protection for \$59, I declined the extended warranty because the cost struck me as awfully high — a fifth of the purchase price of the device itself.

Anecdotal evidence — like chat boards filled with outraged howls from owners of dead iPods — strongly suggests that you can write the rest of this story yourself. You start by thinking: "I'll just call Apple!" But it's so hard to find the customer support number on Apple's Web site that you suspect the company has purposely hidden it.

Eventually, you find the number and make the call. Although the tech support guy quickly diagnoses your problem — a hard drive gone bad — he really has only one suggestion: buy a new iPod. "Since it is out of

warranty," he says, "there's nothing we can do." You're a little stunned. But you're not ready to give up. On the Apple site, there's a form you can fill out to send the iPod back to Apple and get it fixed. But you do a double-take when you see the price. Apple is going to charge you \$250, plus tax, to fix your iPod. There is no mistaking the message: Apple has zero interest in fixing a machine it was quite happy to sell you not so long ago.

Now you're reeling. You're furious. But what choice do you have? You can't turn to a competitor's product, not if you want to keep using Apple's proprietary iTunes software, where you've stored all the music you love, including songs purchased directly from the iTunes Music Store, which you'll lose if you leave the iTunes environment. So you grit your teeth and buy a new iPod. Of course since it's a newer machine, it has that cool video capability. But you're still angry.

You've read recently that Apple has sold 42 million iPods in less than four and a half years. Thanks to the iPod, Apple just reported its most profitable quarter ever. But you wonder how many of those 42 million units have gone to people who feel, as you do, that you've just been taken to the cleaners by Apple? You also wonder why do iPods seem to break so

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frequently? And why is Apple so willing to tick off people who spend thousands of dollars on Apple products by refusing to deal with broken iPods?

Or at least that's what I wondered as I went through the five stages of iPod grief.

**C**USTOMER support is the ugly stepchild of the consumer electronics business. Companies like Dell and Palm and Apple have customer support centers not because they want to but because they have to. Computers, personal digital assistants and other digital devices are complicated machines. They break down much more frequently than, say, old analog televisions. And consumers expect the companies to deal with problems when they arise.

But customer support is expensive for gadget makers. "A phone call costs a company 75 cents a minute," said the writer and technology investor Andrew Kessler. "An hour call is \$45." As prices have dropped sharply for computers and other digital devices, keeping those phone calls to a minimum has become supremely important to consumer electronics companies that want to maintain their margins

and profitability.

That's why all the big tech companies try to force customers to use their Web sites to figure out problems themselves. It's why so many of them bury the customer support phone number. And it's also why, when you do call, companies like Dell teach its support staff to diagnose computer problems over the phone, and then talk you through some fairly complicated repairs. With its machines so inexpensive, Dell simply can't afford to allow too many customers to ship the computer back to the company to be fixed.

Consumers, though, don't really understand this. As much as they like being able to buy computers for less than \$1,000, they don't realize that one of the trade-offs is minimal tech support. Nor do the companies spell this out; instead, they pretend that their service is terrific. Thus, there is a gap between what customers expect from companies that sell them complicated digital machines, and what companies feel they need to do to ensure that those machines make money.

With the iPod, Apple has turned this gap into a chasm. On the one hand, because the price of an iPod is far lower than the price of a computer, Apple has even more incentive to keep people from calling; one long phone call turns a profitable iPod into an unprofitable one. Nor does it make eco-

nomie sense to repair even the iPods under warranty. Instead, Apple simply ships you a new one.

On the other hand, an iPod is a very fragile device. The basic iPods are built around a hard drive, a device so sensitive that "if it takes one shot, that will pretty much kill it," according to Rob Enderle of the Enderle Group, a technology consulting firm. Its screen cracks easily. Its battery can't be easily replaced because an iPod can't be opened up by mere mortals. All of these were conscious design choices Apple made, some of them having to do with keeping the cost down, while others were done largely for aesthetic reasons. But given how much wear and tear an iPod takes — the core market is teenagers, for crying out loud — is it any wonder that they break? "If you get two or three years out of a portable device," Mr. Enderle said, "you're probably doing pretty well."

Which Apple doesn't tell you. Indeed, it doesn't say anything about how long you should expect your iPod to last. And so consumers buy it with the expectation that they'll put all their music on it and they'll carry it around for a good long time. And

when that doesn't happen, they feel betrayed.

Steven Williams, a lawyer who brought a class-action suit against Apple a few years ago over the failed battery problem, told me that he was amazed to discover, as the litigation began, that Apple seemed to feel, as he put it, "that everyone knew iPods were only good for a year or two." Thanks in part to the lawsuit, the battery issue is one of the few Apple will now deal with: if your iPod dies because of the battery you can send it back and get a new one for a mere \$65.95, plus tax. Of course, you then lose all your music.

"Apple has been willing to alienate a certain percentage of its customer base forever," said Chip Gliedman, a vice president with Forrester Research, the technology research firm. Why? Because Apple is an extraordinarily arrogant company. "Apple thinks it is special," is how Mr. Gliedman put it.

At this particular moment, of course, Apple is special, and it can get away with being arrogant. It has a product that everyone wants, and for which there is no serious competition.

But it seems to me that Apple is on a dangerous course. Yes, it has strong incentives to minimize tech support, but to say "Not Our Problem" whenever an iPod dies is to run the serious risk of losing its cus-

tomers' loyalty. "I believe that the iPod is one of the most brilliant platforms ever devised," said Larry Keeley, who runs Doblin Inc., an innovation strategy firm. But, he added, he has long predicted that the "maintenance issue," as he called it, would be the product's Achilles' heel. "Consumers are just not conditioned to believe that a \$300 or \$400 device is disposable." Mr. Keeley, whose daughters all have iPods, has come to believe that their natural life "is just a hair longer than the warranty," and that Apple's level of service is "somewhere between sullen and insulting."

And, he warns, the day will come when the iPod has a major competitor. "There will be competing platforms, and they'll get robust, and other companies will figure out how to crack iTunes," he said. At which point, Apple will reap what it is now sowing.

A final note: You may have noticed there is no Apple spokesman defending the iPod or Apple's customer support in this column. When I called Apple, wanting to know, among other things, how long Apple believes an iPod should last, I got a nice young woman from the P.R. department. She said she'd try to find someone at the company to talk to me. That was on Wednesday.

I'm still waiting.

# Business Day

The New York Times

SATURDAY, FEBRUARY 18, 2006

JOE NOCERA

## Enough Shame To Go Around On China

**I** have a few simple questions," the congressman said, scowling at the four witnesses before him. "Can you say, in plain English, that you are ashamed of what you and the other companies have done?"

The witnesses — sacrificial lambs, really — were representing four of the glory names in high technology: Cisco Systems, Microsoft, Yahoo and Google. They were appearing last Wednesday before a House subcommittee investigating their role in helping the Chinese government suppress free speech on the Internet, censor political content and even turn over data about suspected dissidents. The congressman, Tom Lantos, the ranking Democrat on the House International Relations Com-



Representative Tom Lantos

mittee and the only Holocaust survivor in Congress, had earlier been comparing the companies' activities in China to the odious work certain companies once did to aid the Nazis.

"Are you ashamed?" he thundered again in his thick Hungarian accent. Was Cisco ashamed of selling networking equipment to the Chinese police? Was Microsoft ashamed of taking down a blog because the government disapproved of its content? Was Yahoo ashamed of turning over data that led to the arrest and imprisonment of Shi Tao, a journalist who had used an anonymous Yahoo e-mail account to leak a government memo to the foreign media? Was Google — yes, "don't be evil" Google

— ashamed of setting up a Chinese search engine that filtered out Web sites that the government wanted blocked, sites that used such forbidden words as "democracy?"

Every time the companies tried to mouth the party line — that the Chinese people were better off for them being there than not; that under the terms of their license, they had no choice but to comply with Chinese law; that banned information had a way of leaking through the filters — Mr. Lantos cut them off. "Yes or no. Are you proud of it or ashamed of it?" he asked. There was, of course, no good answer to the question, so the four witnesses were left stumbling and stuttering their way through the humiliation.

Then, his time elapsed, Representative Lantos ceded the floor. I was watching the hearing on a Webcast, and as the cameras pulled back, I saw Mr. Lantos get up from his seat and leave the room. And why not? Mission accomplished.

**W**HAT, though, was the mission? If the point of the hearing was simply to get the attention of the companies involved, it worked. They know they are on the hot seat, and that these issues — how to protect the privacy of users and the free flow of information in the face of a powerful government that has no patience for either — aren't going away. They also know they won't be able to spin their way out of trouble. Mr. Lantos's insistent, repeated question reminded me of the famous question Representative Henry A. Waxman asked a decade ago of the nation's tobacco executives, one by one: Did they believe cigarettes were addictive? The tobacco industry never lived down the denials.

But if the purpose of the hearing was to shine some light on a potential solution, it was next to useless. The companies' chief lament — that they lacked the leverage to stand up to the Chinese government, and needed the United States to stand with them — fell largely on deaf ears. (The State Department did announce it was setting up a task force, but the history of government task forces does not elicit high expectations.)

There were calls for the establishment of "best practices" covering privacy and free speech, but few suggestions as to what such practices

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might entail. Several legislators implied that the only moral course for the companies was to leave China, which is hardly a solution. Christopher Smith, the New Jersey Republican who presided over the hearing, introduced a bill on Thursday that would prevent companies from, among other things, cooperating with censorship. But its chances of passage are slim to none.

Indeed, even companies that should be receiving credit for taking a few steps in the right direction instead got a slap in the face. In entering the Chinese market, for instance, Google decided not to set up either a blogging or an e-mail service, because it didn't want to be in the position Yahoo found itself in: forced to turn over data identifying a dissident. And its new Chinese search engine tells a user whenever a search result yields censored information — a step most free speech advocates have been calling for. Yet James A. Leach, Republican of Iowa, accused Google of serving as “a functionary of the Chinese government.” He added, “If we want to learn how to censor, we'll go to you.”

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(Just as an aside, don't you think they're starting to regret their self-righteous motto over there at Google? At the hearing, the words “Don't be evil” were hurled back at the company at least a half-dozen times. Get used to it, fellas.)

Putting aside all the money to be made in China — which of course is their prime motive for being there — the companies make two fundamental arguments. First, they say, no matter how hard China tries to block information, it can't block everything; clever hackers will find ways around government filters and censors. Thus American technology, even with the restrictions, is helping make China a freer place. And second, they say, they have to abide by the laws of the countries they operate in, even if those laws sometimes violate Western standards.

These are not particularly strong arguments, however. Yes, there is a school of thought that says the Internet is, by its very nature, a tool for freedom. But Jack Goldsmith, a Harvard Law School professor who has just co-authored a book entitled “Who Controls the Internet?”, says he believes that this is wildly overstated. “China is subsidizing bandwidth, and making it very easy for people to use the Internet,” he said. But, he added, “the government is using the Internet as a tool for nationalistic propaganda. China is not perfect at keeping stuff out, but they don't have to be. The vast majority of people aren't going to try

to avoid the censorship.”

China, said Orville Schell, the dean of the journalism school at the University of California, Berkeley, and a recognized China expert, “is the great petri dish experiment as to whether the Internet can be brought to heel.”

As for the second argument, listen to Jeffrey A. Sonnenfeld, the

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## *Lots of hard questions for Internet firms but no real solutions.*

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senior associate dean at the Yale School of Management. “‘When in Rome’ is not a justifiable term for doing business,” he said. There are core Western values that American companies need to uphold no matter what local law dictates. The best parallel, he suggested, was the eventual refusal of many American companies to work with the apartheid regime in South Africa.

Starting in the mid-1970's, a number of American companies doing business in South Africa began adhering to voluntary antidiscrimination guidelines called the Sullivan Principles, named after their creator, Leon Sullivan, a minister and a member of the General Motors board. Then, a decade later, many

of them pulled out of the country altogether, after Congress imposed economic sanctions on South Africa. The principle became more important than the money.

Mr. Schell argues that technology companies should have seen these problems coming in China. Activist groups tried to talk to them, he told me, but in their race to dive into the huge Chinese market, the companies weren't much interested in listening. "There was this overweening pride," he said. "They couldn't imagine themselves getting bogged down in China. They should have listened to the people telling them that they needed to have some minimal standards of practices." Now, he added, people in China are calling Google "the eunuch. It is a neutered search engine."

Belatedly, the companies have begun talking to the activist community, and to each other as well, as they try to figure out whether — and how — they can put together standards along the lines of the Sullivan Principles for free speech and privacy. Mr. Schell says he believes that the companies have more leverage than they think with China, especially if they act in concert. "If they all said, 'We don't turn over data,' China would have a bit of a dilemma," he said. For all their tough talk, China's leaders don't want to be in the position of throwing such high-profile companies as Microsoft and Google out of the country.

Still, the technology industry can't do it without help. When I asked Representative Smith whether he thought the Sullivan Principles offered a good road map for technology companies doing business in China, he demurred. The Sullivan Principles were helpful, he said, "but what changed South Africa more than anything were the sanctions."

And thus the great irony of Wednesday's hearing. Congress could certainly pass a law forbidding technology companies from doing business in China just as it once prohibited trade with South Africa, and still bans commerce with countries like Cuba and Burma. But it won't. China is too important. Ever since the Nixon administration, the government has consistently believed that engaging with China was better than not, precisely the argument now being made by the technology industry. Even Mr. Lantos talked about the importance of working with China on a variety of issues.

After which he excoriated the four witnesses for, well, engaging with China. Caught between a rock and a hard place, American companies need Congress to help them push back in the name of free speech and privacy, just as they once needed Congress to help them push back against apartheid. If all they are going to get instead is angry rhetoric, then you have to wonder: who really should be ashamed?

# Business Day

The New York Times

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JOE NOCERA

## Overstock's Campaign Of Menace

"I am just sitting here with a glass of wine in my hands, reflecting on what a really bad week you and your friends have had," read the e-mail message to Herb Greenberg, a well-known columnist for MarketWatch.com.

It was Friday, Feb. 10, just after 7 p.m. Three days earlier, Mr. Greenberg had received a subpoena from the Securities and Exchange Commission, demanding that he turn



Patrick M. Byrne

over all communications between him and a handful of his sources concerning five companies he had written about. One of the companies was **Overstock.com**, an unprofitable retail liquidation Web site based in Utah. Patrick M. Byrne, Overstock's chief executive, was the author of the message.

For some time now, Mr. Byrne has been saying that his company is the victim of a Wall Street conspiracy intended to drive down its stock, which has fallen to the mid-20's from the mid-70's since the fall of 2004. Last August, Overstock sued Rucker Partners, a short-selling hedge fund that has been openly negative on the company, and Gradient Analytics, an independent research firm that has written consistently bearish reports on Overstock's mounting business problems. The lawsuit asserted that the two firms were acting in concert to hurt the company and manipulate its stock price. Both Donn W. Vickrey, who runs Gradient Analytics, and David A. Rucker, the managing partner of Rucker Partners, have been sources for Mr. Greenberg over the years. And Mr. Greenberg has written about Overstock and Mr. Byrne from time to time, in his typically tough-minded fashion.

Which of course makes Mr. Greenberg a charter member of the Overstock conspiracy. To hear Mr. Byrne tell it, Mr. Greenberg's role is to do the bidding of Rucker Partners and Gradient Analytics; when asked last year by Ron Insana of CNBC whether he was accusing Mr. Greenberg of "helping others front-run or trade illegally in the shares of your company's stock," Mr. Byrne replied, "That's correct, that's what I am doing." He described Mr. Greenberg to me as a "lapdog."

Although Mr. Byrne says he did not know about the subpoena, he clearly knew *something* was afoot. (He later told me that he had "just come from an interview with certain law enforcement people" who had been asking about Mr. Greenberg.) "As I take a sip," he taunted in his e-mail, "I find myself curious: do you guys know? Are you sitting somewhere, blithely oblivious, still chuckling about Whacky Patty, and all that? Or do you understand now that this is going to end badly for you?"

If you know anything about Patrick Byrne, it's probably his famous "Sith Lord" conference call. Held last summer, it was an hourlong monologue during which Mr. Byrne laid out a vast, overarching conspiracy, made up of dozens of Wall Street players — including the New York attorney general, Eliot Spitzer! — all under the thumb of an mysterious puppet master, whom Mr. Byrne labeled the Sith Lord. He titled the conspiracy "The Miscreants' Ball," an obvious reference to Michael Milken's old Predators' Ball.

Although Mr. Byrne told me that his Sith Lord speech ranked among "the 10 proudest moments of my life," most people, including me, thought it was loony beyond belief. Roddy Boyd of The New York Post recalled hearing about it from someone on Wall Street. "When he described it, I thought he was embellishing," Mr. Boyd said. But when he listened to the replay, "my jaw dropped — you cannot make up what occurred on that phone call."

In addition to his conspiracy-mongering, Mr. Byrne talked about Stinger missiles, Wayne and Garth, a mysterious Spanish phone message, stuttering and cocaine. ("I'm not a coke head," he said, unprompted.)

But I'm not laughing anymore.

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I've gone from viewing Mr. Byrne as an amusing diversion to a menace, at least for anyone who cares about the First Amendment. What has become increasingly clear in the months since the Sith Lord speech is that Mr. Byrne is using the courts, the Internet, his taunting e-mails — and even his conspiracy theory — as part of a thinly disguised effort to squelch any and all criticism of Overstock, a company with \$804 million in sales last year.

Mr. Boyd, for instance, decided to look into Mr. Byrne's allegations about collusion between Rocker Partners and Gradient. After concluding there was nothing to it, he called Mr. Byrne and told him, as he put it to me, "everything you've said not only doesn't stand up, it is false." From that point on, Mr. Boyd became one of Mr. Byrne's targets on the Motley Fool message board, where he often posts messages. "He would say, 'I work for The Post and I'm dumb as a post,'" Mr. Boyd recalled.

Fast-forward to January. Mr. Boyd sent an e-mail message to Mr. Byrne asking about Overstock's dwindling cash position. In a typically coy, sneering response, Mr. Byrne implied that Mr. Boyd was clearly doing the bidding of the miscreants, who were ordering up articles about Overstock's cash situation. He then posted the exchange with Mr. Boyd on the Web site of an ally, a mysterious character who uses the pseudonym Bob O'Brien.

Mr. Boyd soon discovered that Mr. Byrne had dissembled in his answer about Overstock's cash, failing to subtract money owed to the company's vendors, which lowered its available cash from \$112 million to \$10 million. Furious, Mr. Boyd left a message on Mr. Byrne's voice mail, accusing him of lying. Again, Mr. Byrne saw to it that the voice mail message was posted on Mr. O'Brien's Web site.

"I lost my judgment," Mr. Boyd told me. "And the fact that I made that phone call constrains me. I am going to take at least three to six months before I write about him again."

This is what Mr. Byrne does: along with Mr. O'Brien, he bullies and taunts and goads the small handful of reporters who dare to write about Overstock, making it clear that

there will be a price to be paid for tackling the company or its chief executive. And as a result, financial reporters have become very chary of taking him on.

A lawsuit, of course, is far more onerous than being bullied on the Internet. But the purpose is the same. As Mr. Rocker put it in an affidavit, "It is my opinion that this lawsuit represents an attempt by Plaintiff Overstock.com Inc. ("Overstock") and its chief executive Patrick Byrne to use his family's wealth and influence to silence Overstock's critics and doubters through the burden and expense of a lawsuit." (Mr. Byrne's father, who is the chairman of Overstock, is the former chief executive of Geico.)

## *More ammunition for a spinner of Wall Street conspiracy theories.*

Rocker Partners has long had a reputation as one of the more aggressive short sellers around. But it also has a reputation for being right a lot of the time. The firm was early on Boston Chicken, on AremisSoft, on Conesco, on Lernout & Hauspie Speech Products, and any number of other companies that subsequently "blew up."

What's more, as Mr. Greenberg pointed out to me, Mr. Rocker is one of the few short sellers who will sometimes be quoted by name. "You want people to go on the record," Mr. Greenberg said. "You want your readers to know when your sources are short a stock." Now, however, the firm has instituted a policy of not talking to the news media. The lawsuit has effectively silenced Mr. Rocker.

The Gradient situation is similar. The small 10-year-old firm specializes in forensic accounting and what's called "quality of earnings"; its Wall Street clientele count on it to send early warnings about companies that might be playing games with their financials. It is thus not surprising that Gradient makes enemies among the corporations it writes about, including Overstock, which it has been dogging since 2003. In one recent report, Gradient dissected Overstock's "Negative Cash

From Operating Activities" and "Difficulties Generating Repeat Customer Buying," among other things, and gave it an "Earnings Quality Grade" of F. No wonder Patrick Byrne is ticked off. But precisely because Gradient is small and independent, there is a limit to how many lawsuits — even frivolous ones — it can absorb and remain focused on its primary task.

And then there's Mr. Greenberg, who has been an acquaintance of mine for more than a decade, and is one of the straightest shooters I know. As you can surely tell by now, he isn't backing down an inch. "This is the McCarthyism of business journalism," he said the other day. Dow Jones, which owns MarketWatch, has objected to the subpoena, and indeed, the S.E.C. appears to have backed away from it, at least for now. Yesterday, Mr. Greenberg broke the news of his own subpoena in a strongly worded column. If his communications with sources "aren't safe from government eyes," he wrote, "then the tools of every business reporter in this country become fair game for any company that doesn't like scrutiny and chooses to play the 'conspiracy card.'" Mr. Greenberg told me that the lawsuit was simply an effort to tarnish "watchdogs of public companies who are doing their jobs." I agree with him.

The most ridiculous part of this whole story is that the S.E.C. has taken the bait, using the allegations in Mr. Byrne's lawsuit to open an investigation into Rocker Partners and Gradient — and has also ensnared Mr. Greenberg as a witness of some sort. But the agency is looking in the wrong direction. Last fall, the S.E.C. chairman, Christopher Cox, sent a letter to Senator Ron Wyden, Democrat of Oregon, saying that he was concerned about "issuer retaliation against research analysts." Surely, he ought to be able to see that what is going on here is a form of retaliation.

Oh, and one other thing. You may have noticed that a few days ago, a small pharmaceutical company called Biovail sued a handful of hedge funds — and Gradient Analytics — contending a stock market manipulation scheme. The next day on his Web site, Bob O'Brien wrote that he had spoken to Mr. Byrne, who told him that "he did have a hand in the Biovail lawsuit" by "sharing his wealth of information that his affiants have made available."

Which leaves only one question: Who's really running a conspiracy here?

# Business Day

The New York Times

SATURDAY, APRIL 15, 2006

JOE NOCERA

## Gritted Teeth On the Stand In Houston

HOUSTON

**I**N 1995, Jeffrey K. Skilling was feeling blue. Since joining Enron from McKinsey & Company five years earlier, he had worked nonstop to build Enron Capital and Trade Resources from the ground up. In that time, the division had become Enron's crown jewel, and the once stodgy pipeline company had been transformed into a sleek and modern trading machine. The division's success had made Mr. Skilling a wealthy man.

But that success had come at a price, he testified at his trial this week. His marriage was in serious trouble. "And I wanted to spend time with my kids," he said. To get some



Jeffrey Skilling

balance back into his life, he decided to share the leadership of the trading unit with Ron Burns, an Enron pipeline executive. Mr. Skilling would work two weeks out of every month, focusing solely on strategy, and leave the operational decisions to Mr. Burns.

"It was a screwball idea," Mr. Skilling conceded on the witness stand, responding to the gentle, skillful questioning of his lawyer, Daniel Petrocelli. He's right about that, of course. Although he said in court that Mr. Burns was "a great guy," in truth, Mr. Skilling had contempt for his new partner. As soon as Mr. Burns began making decisions, Mr. Skilling started complaining to his inner circle that "Ron doesn't get it." It wasn't long before Mr. Burns had resigned and Mr. Skilling reclaimed his position as the sole chief executive of Enron Capital and Trade Resources. So much for the blues. So much for the wife and kids. So much for balance.

Two years later, Mr. Skilling's co-

defendant, the Enron chairman Kenneth L. Lay, would name Mr. Skilling president of the entire company. The rest, as they say, is history.

**M**R. SKILLING, of course, stands accused of playing a leading role in the unraveling of Enron, and faces 28 counts of fraud, conspiracy, insider trading and making false statements. (Mr. Lay has been charged with six counts.) To the surprise of absolutely no one, he spent the week flatly denying that he had ever done or said anything wrong, and even claimed that Enron was a healthy, growing company that didn't need to commit fraud to generate its glittering earnings.

Those partnerships run by Enron's chief financial officer, Andrew S. Fastow, that existed solely to do deals with Enron? Completely on the up and up. Vetted by the accountants! Not used to gin up phony earnings but to lock in legitimate gains! The attempt to hide huge losses from one failing division by folding it into the highly profitable trading business? It was just a plain vanilla corporate reorganization! The accusation by the former Enron treasurer Ben F. Glisan Jr. — currently serving a five-year prison term — that Mr. Skilling applauded one partnership in particular because it "allowed him to circumvent the accounting rules?" "That's absur . . ." Mr. Skilling responded angrily, and then caught himself. "That's not true," he said through gritted teeth. Again and again, Mr. Petrocelli would ask Mr. Skilling if he had schemed or deceived or committed fraud. The answer was always the same: "Absolutely not."

In the world according to Jeffrey Skilling, Enron was brought down by two things: the revelation that Mr. Fastow was using his partnerships to make millions while also skimming from the company — actions Mr. Skilling contends he knew nothing about. (The government has asserted that he signed off on a secret side agreement with Mr. Fastow, guaranteeing his profit.) And secondly, he says, Enron was done in by a handful of short sellers, who organized a conspiracy to attack the stock. (Gee, where have we heard *that* before?)

Well, what did you expect him to say? Yet in between the cracks of his

Continued on Page 7

denials — and embedded in his explanation of how Enron ran its business under his leadership — another question emerged. How in the world could anyone have thought that Mr. Skilling had the skills and the emotional makeup to run a publicly traded corporation? If character is destiny, Enron was doomed the moment he became its president.

Consider: Would you trust your company to someone who says in one breath that he needs to step back and save his marriage — and then in the next that he can't let someone else make business decisions? But Mr. Skilling was never a particularly even-keeled executive. He could be filled with euphoria one minute, and wear “dark-colored glasses,” to use his own expression, the next. When he quit Enron in August 2001, after only six months as chief executive — one of the events that led to Enron's collapse — he was emotionally distraught in no small part because Enron's stock was falling. But what kind of captain abandons a sinking ship? After-

wards, he fell into a deep depression and took to the bottle for solace, something he admitted early in his testimony. On Thursday, during the last half-hour on the stand, he sounded overwrought — and even a little unhinged — as he recounted one last time his final days at the company.

For most of the time on the witness stand, Mr. Skilling seemed smaller than life. He often wore a timid, tentative facial expression, a little like a third grader hoping not to be reprimanded by the teacher. But at least once a day he would have momentary meltdowns, and all the bitterness, sarcasm and self-pity would creep to the surface — only to be damped back down by Mr. Petrocelli. In the course of answering a question about Mr. Fastow's crimes, for instance, Mr. Skilling took an unprompted swipe at the F.B.I. — an incredibly foolhardy thing to do in front of a jury. When you're on the witness stand, fighting for your life, there is nothing more important than being disciplined in what you say and how you act. Mr. Skilling was no more up to that task than he was to running Enron.

And that was the other thing about lis-

tening to Mr. Skilling this week. Again and again, I found myself astounded listening to him describe Enron's business practices. He wants to bring in an outside C.E.O. to run Enron's new (and ill-fated) broadband business, but as soon as his buddy Ken Rice says he'll quit if that happens, Mr. Skilling folds like a cheap suit. Instead, he gives the job to the utterly unqualified Mr. Rice, who doesn't have a clue how to build a broadband business. The traders from one division throw the traders from another division right off the trading floor, and Mr. Skilling does nothing. Mr. Fastow approaches him about setting up a partnership to do business with Enron. He blithely tells Mr. Fastow to work something up and bring it to him — as if this extraordinary concept, so filled with conflicts and so easily abused — is no big deal.

He has a budget meeting with Lou L.

Pai, the head of a poorly performing division called Enron Energy Services. The previous year, the division lost \$69 million. Mr. Pai is projecting \$50 million in profits for the next year, but Mr. Skilling thinks he's being "sandbagged," and tells Mr. Pai he wants \$100 million. Why? Not because he knows anything about how the business is actually performing.

Rather, his rationale is based on the fact "we had made a significant investment" and hired hundreds of people and he's decided that he now has to have a return on that investment. It is as if the actual operational details — the blocking and tackling, the execution, the things that make businesses *work* — are meaningless. He seems to expect profits to magically appear simply because he says they should. I came away from his testimony thinking that, in fact, is how he believes business is conducted.

In the many detailed discussions about all the deals Enron did with Mr. Fastow's partnerships this last week, one thing usually was left out. Rarely did Mr. Skilling try to explain their underlying economic

rationale. He acted instead as if Enron's dealings with those partnerships were as common as a thing could be, so ordinary they barely needed explaining. But of course that wasn't remotely true. What was extraordinary about those deals was they had no underlying economic purpose. They only had an accounting purpose. They existed to disguise the truth. If Mr. Skilling understands that fact, then he's a crook. If he doesn't, he's a fool. Either way, he should never have been in charge of Enron.

Being on the witness stand, of course, is a test of character, every bit as much as running a company is a test of character. Next week, Mr. Skilling's character will be tested anew when Mr. Petrocelli cedes the questioning to the federal prosecutor Sean M. Berkowitz for cross-examination. I couldn't help notice that on most breaks, Mr. Berkowitz strode the courthouse hallway with a big grin on his face. I'm not surprised. Given Mr. Skilling's performance this week under the tender gaze of Mr. Petrocelli, I'm taking odds that he cracks next week.

# Business Day

The New York Times

ATURDAY, JANUARY 21, 2006

JOE NOCERA

## The Board Wore Chicken Suits

**A** SHOWDOWN could occur at the annual meeting tomorrow as firms that advise large shareholders and activist groups are urging shareholders to withhold votes from several directors." So wrote Julie Creswell on Wednesday, in her detailed front-page article in The New York Times about the compensation package of Robert L. Nardelli, the chief executive of Home Depot.

This was a showdown I didn't want to miss. Mr. Nardelli, you see, has become this year's version of Mr. Overpaid C.E.O. He's earned this status, in part, by the sheer sum of money his board has awarded him in the five years since he was recruited from General Electric to take over Home Depot: \$245 million, including \$37.1 million just this last year. At the same time, Home Depot's stock has fallen 12 percent, while shares of its chief competitor, Lowe's, have



Robert Nardelli

risen 173 percent. You've heard of pay for performance? This is the classic definition of pay for pulse. But as Ms. Creswell's article made clear, these facts barely begin to get at the richer story that is the Home Depot scandale. There's the lead director, Kenneth G. Langone, who's never met a chief executive he doesn't want to overpay. The cozy board. The other overpaid chief executives who sit on the Home Depot compensation committee, who have every incentive to keep lining Mr. Nardelli's pockets because his good fortune will rebound to them as well. Mr. Nardelli's compensation illustrates precisely what is so offensive about C.E.O. pay: it's a rigged game. Heads I win, tails you lose.

So I hopped on a train Wednesday night, and headed to Wilmington, Del., where the Home Depot meeting

was being held. In all honesty, I cannot characterize what I saw the next day as a showdown. But it certainly was a show.

**9:15 A.M.:** I see a man in a chicken suit holding a sign. He's part a small group protesting Mr. Nardelli's pay package on behalf of the American Federation of State, County and Municipal Workers. Unions like the A.F.L.-C.I.O., the United Brotherhood of Carpenters and government workers union have taken aim at executive pay in recent years, and have gotten shareholder proposals on the proxies at many companies. This year, the government workers' union has put forward a proposal calling for the Home Depot board to allow shareholders to hold an advisory vote on the compensation committee's report. The union is also among those urging shareholder to withhold votes from the directors as a way of protesting Mr. Nardelli's pay.

"Home Depot is a classic case of a board being nonresponsive to shareholders," says Richard Ferlauto, who is the union's director of pension investment policy. As I walk into the hotel where the meeting is taking place, I can hear the protesters chanting, "Hey Bob, why are you chicken/while the stock price takes a lickin'?"

**9:45 A.M.:** The ballroom doors finally open and a few shareholders and reporters trickle in. But where are all the Home Depot people? The corporate officers? The middle managers? Maybe a few local store managers who might be asked to stand up and take a bow? Nowhere to be seen. There are a few public relations people here and there, helpfully explaining why Mr. Nardelli really, really, really deserves all that money, but otherwise what I mainly see are big, strong men, some wearing Home Depot aprons, who look as if they could be bouncers at a rowdy club. Here's something else strange. In the front of the room, facing the audience, I see two large digital timers. It also seems odd that there is only one seat on each side of the podium. Where are the board members going to sit?

**10 A.M.:** Mr. Nardelli takes the podium, and the meeting is under way. He is accompanied by two people who sit in the seats next to him — and no one else. Suddenly, we all under-

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stand what's going on: the board isn't coming to the annual meeting! In all my years as a business reporter, I have never seen that before. As Charles Elson, the corporate governance expert at the University of Delaware, will tell me the next morning: "Your one obligation as a director is to show up at the annual meeting. The fact that the directors didn't show up is disgusting."

The first item on the agenda, Mr. Nardelli says, is the election of directors. He invites comments from shareholders. "Questions are limited to one minute and one person," he adds. Sure enough, when the first person gets up to speak, the timer starts counting down. The timer is another new one for me.

"I have a question about board independence and conflicts," says the first questioner — and then proceeds to rattle off a few of the conflicts that afflict the Home Depot board. "What steps will the board take to address these conflicts?" he asks.

"This is not the forum in which to address these comments," Mr. Nardelli replies.

Mr. Ferlauto steps to the microphone. Again, the timer starts counting down. "If the candidates are up for election, can we be introduced to them?" he asks.

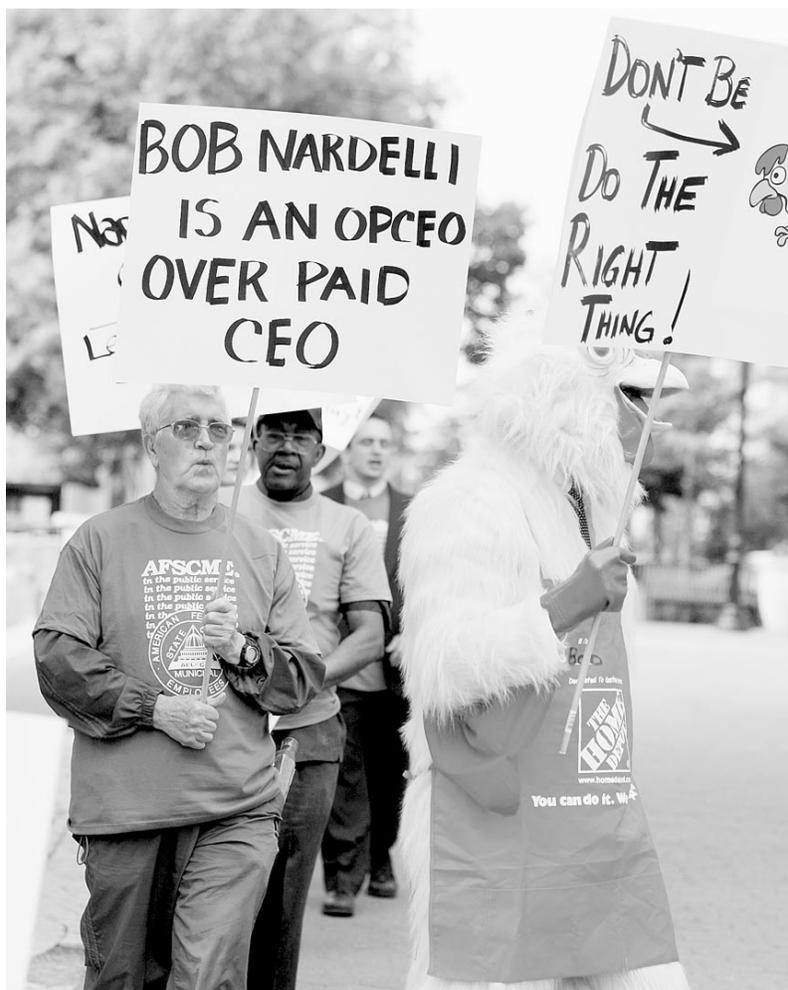
"They are not in attendance today," Mr. Nardelli says.

"I think it is absolutely outrageous that the board is not here," Mr. Ferlauto retorts. "The board is too chicken to face the shareholders." As he speaks, the timer hits zero — and the microphone is shut down. Mr. Ferlauto continues speaking. Two of those big burly men take a step toward him. He sits down.

**10:10 A.M. :** The meeting moves to its next phase — the pleadings on behalf of the shareholder proposals. There are eight in all. This time, the speakers are allowed all of three minutes to make their case.

Mr. Ferlauto jumps up to discuss his union's proposal that shareholders be allowed an advisory vote on executive pay. He goes through the litany of Mr. Nardelli's compensation abuses: the guaranteed bonuses, the \$10 million loan that costs the shareholders \$21 million because the company pays the tax on it, and so on. When he has finished, Mr. Nardelli replies matter-of-factly, "The board recommends you reject this proposal."

Two speakers later, a shareholder named Sam Yake stands up to talk about his proposal to have Home Depot separate the job of chief executive and chairman of the board, a practice that many companies have instituted over the last few years. But Mr. Yake is so mad he doesn't



Tim Shaffer/Reuters

Protesters at Home Depot's annual meeting. Shareholder groups have objected to the pay package of Robert L. Nardelli, the chief executive.

**TimesSelect:** Meet **Joe Nocera** at [nytimes.com/nocera](http://nytimes.com/nocera)

really want to talk about his proposal. "I love Home Depot," he says. "I came here wanting to buy more stock. But I am totally offended by the way you are conducting this meeting. Are we even going to have an opportunity to ask questions?"

Mr. Nardelli refuses to answer the question about asking questions. "If this is the way you are conducting this meeting, I can see why G.E. didn't pick you." He storms off.

"The board recommends you reject this proposal," Mr. Nardelli says.

Next up: A woman from the United Brotherhood of Carpenters, which has offered a nonbinding proposal calling for Home Depot to require its directors to get a majority of the shareholder votes to remain on the board. Currently, directors who run unopposed — as they invariably do — could have 99 percent of the votes withheld and still be re-elected as a director. This change to majority vote is also something many companies have begun to adopt.

"Thank you, Catherine," Mr. Nar-

delli says when she finishes. "The board recommends that you reject this proposal."

And so it goes. "This is really disturbing," says one man, referring to the way Mr. Nardelli is conducting the meeting. "It really reflects what

*This annual meeting came with bouncers, a one-minute time clock and contempt.*

we have been reading in the press about the style of this board." The room bursts into applause.

"Thank you," Mr. Nardelli says. "The board recommends that you reject this proposal."

Then, the proposals finished, Mr. Nardelli asks the bouncers to hand out voting cards to anyone who wants to vote. But of course the overwhelming majority of shareholders have already voted — and Mr. Nardelli can't even be bothered to wait

for those in the room to hand in their votes.

“It appears that each of the directors has been selected for a one-year term,” he says. “A majority of shareholders have supported management recommendations”— except, he quickly adds, No. 6, the one concerning majority vote. “Ladies and gentlemen, that concludes our meeting.” And just like that, he’s gone.

**10:37 A.M.** I look down at my watch and I suddenly realize, Mr. Nardelli did not even tell his shareholders what the vote totals were, nor did he divulge how well the shareholder proposals did. It’s mind-boggling. As for the proposal about majority vote — the one the company actually lost — it seems pretty unlikely that Mr. Nardelli and the rest of the board will abide by the wishes of the company’s shareholders. If there is one thing the meeting proved, it is that they don’t much care what their shareholders think.

Afterward, the words on people’s mouths are “appalling,” “disgraceful” and “arrogant.” I would add one more: contemptuous. I’m sure there are plenty of boards and chief executives who have contempt for their shareholders, but most of them are at least smart enough to keep it to themselves. On Thursday morning, in Wilmington, Del., Mr. Nardelli and the Home Depot board let the world know exactly how it feels about the people for whom they are supposed to work.

One other thing: late yesterday, Home Depot issued a statement that said in part, “While we understand that the approach we took to the annual meeting was a departure from past practice, it should in no way be construed as either a lack of respect for our shareholders or a lessening of our commitment to high standards of corporate governance and transparency.”

Apparently, Mr. Nardelli and the Home Depot board think their shareholders are stupid, too.

# Business Day

The New York Times

SATURDAY, AUGUST 12, 2006

JOE NOCERA

## Green Logo, But BP Is Old Oil

**W**ALKING through an airport earlier this week, I happened to spot a BP advertisement. You know the kind I'm talking about: the letters BP in lower-case type — making them somehow warmer and fuzzier — above a yellow and green sun, and the words “beyond petroleum.” Like most BP ads, indeed, like virtually all BP marketing, it spoke to the company's commitment to the environment.

And here's what I thought when I saw it: “Yeah, right.”

Just a few days before, BP, the world's second-largest oil company, had revealed that it had discovered a dangerous amount of corrosion on a 16-mile feeder line to the Trans-Alaska Pipeline in Prudhoe Bay. The news put an immediate crimp in the nation's energy needs — BP said it might have to shut down as much as 400,000 barrels a day, amounting to 8 percent of domestic production,



A BP gas station in Ohio.

while repairs were undertaken. (As of yesterday, the company was still producing about 155,000 barrels a day.) The price of oil immediately jumped. And of course, had the corrosion continued to go undetected, it could have caused an environmental disaster.

And why was the corrosion detected? Not, alas, because of BP's routine maintenance. Five months earlier, in another part of the pipeline also maintained by BP, a spill of 200,000 to 300,000 gallons of oil had been found, making it the largest oil spill ever on the North Slope. It was only when the federal government then demanded that the company conduct a thorough inspection of the rest of

the pipeline that the corrosion was discovered.

That's not all. Six months before the discovery of the oil spill, a devastating accident at a BP refinery in Texas City killed 15 workers and injured hundreds more. In June, the government accused some BP traders of trying to manipulate the propane market in 2004, while a new \$1 billion BP platform in the Gulf of Mexico tipped dangerously during Hurricane Dennis.

With each successive accident, BP officials quickly apologized. But they were equally insistent that there was nothing systemically wrong with the way the company ran its operations. “We believe in our hearts that these events are unrelated,” a BP spokesman, Scott Dean, said.

Still, it was hard not to wonder: *this* is the environmentally friendly oil company? Exxon Mobil, which environmentalists love to hate, hasn't had problems of this magnitude in years, not since the Exxon Valdez spill in 1989. It sure looked as though the hundreds of millions of dollars BP has poured into its public relations efforts were nothing more than, well, public relations.

**T**HE key moment in the modern history of BP — at least as regards its transition to The Oil Company That Cares About the Environment — came almost 10 years ago. In May 1997, Lord Browne, BP's urbane chief executive, gave a speech at Stanford University in which he said that global warming was a real problem and that oil companies needed to both acknowledge that reality and begin dealing with it. He was the first oil company executive to take such a stand.

In 1998, BP bought Amoco for \$57 billion, and Lord Browne decided that was the perfect moment to reposition the company. “When the merger happened, they said, ‘Let's try to be different and relevant,’” recalled Allen Adamson, a corporate image consultant with Landor & Associates, who counts BP among his clients.

Thus was the name changed from British Petroleum to BP. And thus did its ad agency, Ogilvy & Mather, begin using the felicitous tagline “beyond petroleum,” which the agency describes on its British Web site as allowing BP “to reinvent itself as an energy company people can have

Continued on Page 4

faith in and inspire a campaign that gives voice to people's concerns, while providing evidence of BP's commitment, if not all the answers."

"They chose a valiant mission that is a potential higher reward, but also a higher risk," said Mr. Adamson, who added that Lord Browne's commitment to the environment is "the real deal." Peter L. Harris, a public relations and communications consultant (who does not have BP as a client), told me that the BP repositioning was widely viewed in corporate America as a triumph. "There probably isn't a P.R. guy around who didn't wish he'd come up with that."

When you talk to BP officials about that commitment, they trot out a host of examples to prove that it's not just public relations. BP owns a big solar energy company. It has significantly lowered its greenhouse-gas emissions. It has a thriving biofuels program. And it is investing \$8 billion over 10 years in alternative energy, like solar and wind power (though it includes natural gas as an alternative energy, which strikes me as a stretch).

Yet at its core, BP remains an oil com-

pany, and no matter how much it says it wants to create more environmentally sensitive sources of energy, its basic task is still to stick holes in the ground in search of hydrocarbons. The company recently spent nearly \$4 billion building a huge pipeline stretching from the Caspian Sea to the Mediterranean. But it also asked a leading environmental group, the World Wildlife Federation, to act as an environmental consultant on the project; Mr. Dean, the BP spokesman, told me I should talk to someone at the W.W.F. if I wanted confirmation that BP was one of the environmental good guys.

So I did. But James Leaton, a senior policy adviser at the federation, didn't exactly sound thrilled about how the collaboration had turned out. "In our view," he said, "there are some sensitive places where you just shouldn't go. BP went there anyway. They were open to some small changes, but we were fairly disappointed. Whenever you spoke to them, their view was about deadlines and budgets. Ours was about protecting the environment." In other words, BP acted like the oil company it is.

Environmental groups, in fact, can be fairly scathing in their appraisal of BP. In 2002, Greenpeace awarded Lord Browne

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 **TimesSelect:** Listen to **Joe Nocera's** podcast about BP's troubles at [nytimes.com/nocera](http://nytimes.com/nocera).

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an Earth Day "Oscar" for Best Impression of an Environmentalist. "They are just not clean," Melanie Duchin of Greenpeace told me. "And no amount of rebranding can make them clean." She made the obvious point that when you make upwards of \$20 billion in profit, as BP did in 2005, an \$8 billion alternative fuels program — over 10 years! — isn't exactly a bet-the-company move.

In the wake of the recent accidents, there is now a more pressing — and potentially devastating — question: Does BP's own internal culture contradict its marketing message? Nicole L. Decker, an analyst at Bear Stearns, said that BP "is one of the best-run companies in the world" and does not act irresponsibly. "The timing has been unfortunate," she said. "But this happens to every oil company."

But I found plenty of people, with long experience in the oil patch, who are convinced that BP has long had a culture of corner-cutting that has led to its current problems. "It has to be systemic," said

Matthew R. Simmons, who runs an investment banking and consulting firm specializing in the oil industry. Mr. Simmons pointed out that whistle-blowers had been complaining for years about BP in Alaska.

And, he added, BP's failure to inspect the pipeline by using a "pig"—a device that crawls through the pipeline taking X-ray-like pictures—was nothing short of negligence. "They found wall thicknesses that were down to four-tenths of an inch," he said. "That is the thickness of a beer can."

When I spoke to Mr. Dean of BP, he asserted that the company hadn't used the pig because it thought that a newer technology, allowing the company to monitor the pipeline externally, was adequate. "We were shocked and dismayed," he said. "We really felt we had a good inspection and monitoring program. We realize that we need to do better, and we will spare no expense to get it right."

Mr. Dean, I have to say, came across as genuinely contrite; he must have said "We're sorry" a half-dozen times in a 45-minute phone call. "This cuts to our core values," he told me with considerable anguish. I got the strong impression, not just from him but from watching other BP of-

ficials on television this week, that the company really is determined to do whatever it can to fix the problems—and prevent them from happening again.

Which is great, so far as it goes. And I give BP credit for acknowledging so forthrightly that it made mistakes. But in the meantime, BP is going to pass through a painful gantlet. It will undoubtedly be raked over the coals by Congress (hearings are set for early September); it will have its worst documents exposed in lawsuits; it will find itself under fierce regulatory scrutiny; and it will be accused, I'm sure, of the worst sort of corporate greed and hypocrisy. It'll be a long time before anyone believes anything BP has to say about its environmental sensitivity.

I can't say that my heart bleeds. If BP hadn't been so holier than thou in its marketing these past years, I doubt that it would be getting hammered right now—at least to this extent. If there is one iron-clad rule about marketing, it is that you had better be practicing internally what you are preaching to the world.

Let me put it another way: You can't just talk the talk, you have to walk the walk.

# Business Day

The New York Times

SATURDAY, SEPTEMBER 2, 2006

JOE NOCERA

## Would Ruth Have Left New Orleans?

**“W**HEN I took this job in 2004,” said Craig S. Miller, “the first thing I did was get a little plaque to put on my desk that said, ‘What Would Ruth Do?’”

Mr. Miller, 57, the chief executive of Ruth’s Chris Steak House, was referring to the company’s founder and guiding spirit, Ruth Fertel, who had died two years earlier. In New Orleans, where she lived most of her life, Ms. Fertel was a legendary restaurateur. In 1965, then a divorced mother raising two sons, she mortgaged her home to buy a New Orleans steakhouse and turned it into one of the city’s enduring institutions.

“My mother knew that taking care of people in a warm, comfortable way was going to sell steaks,” her son, Randy Fertel, told me.

She was also no slouch as a businesswoman. With no formal training, but plenty of smarts and ambition, she transformed her steakhouse into an upscale restaurant chain. Ruth’s Chris was a rare example of a vibrant, growing national company in a city that never had much of a business culture. In



Ruth Fertel

1999, when she was 72, Ms. Fertel sold Ruth’s Chris to a private equity firm for \$160 million. Mr. Miller arrived five years later, at a time when the company was struggling, with a mandate to right the ship so that Ruth’s Chris could be taken public. This he did so successfully that the company completed its I.P.O. less than 18 months later, giving the company a market capitalization of \$400 million. That happy event took place on Aug. 9, 2005. Three weeks later, Hurricane Katrina hit.

Everyone in New Orleans knows the rest of this story. Mr. Miller and his management team evacuated to Orlando, Fla. Other New Orleans business owners also had to leave town, of course — setting up temporary quarters in Dallas or Houston or Atlanta.

But within days of the levees bursting, Mr. Miller announced that Ruth’s Chris wasn’t coming back, making his the first company to abandon the wounded city. Ever since, people have been asking a variation of Mr. Miller’s question: “What would Ruth have done?”

**F**ORTY years before Katrina, barely three months after Ms. Fertel bought what was then known as Chris’s Steak House, Hurricane Betsy ripped through New Orleans. With no electricity, and thousands of pounds of meat in warming refrigerators, Ms. Fertel cooked steaks on gas grills and handed them out to victims and relief workers.

When embittered New Orleanians think about what Ruth would have done, that is what they have in mind. She would have stayed, they’re convinced, and helped rebuild the city she loved. “Loyalty would have been at the top of her list of paramount virtues,” James Ryder, a former accountant at Ruth’s Chris, told New Orleans City Business. Describing the timing of Mr. Miller’s announcement as “pretty callous,” he added, “I don’t think the executives appreciate how strongly Ruth felt about keeping the company here.”

Tom Fitzmorris, who has a local radio call-in show devoted to food, told me that even now, he still gets calls from listeners who vilify Ruth’s Chris for moving its headquarters. There are locals who won’t eat at the suburban Ruth’s Chris that has since reopened. (The flagship steakhouse, in Mid-City, was so badly damaged that it is unlikely to ever reopen.) “There are a group of people who are furious at Ruth’s Chris,” said Douglas Brinkley, the Tulane University historian and author of “The Great Deluge (William Morrow, 2006).”

Yet Mr. Miller makes no apologies for what he did. “I’ve never second-guessed the decision,” he told me this week, speaking between bites of short ribs at a Ruth’s Chris in Midtown Manhattan, where we were

having lunch.

He laid out what amounted to three parallel arguments. The first was purely practical. The company's headquarters in Metairie, a New Orleans suburb, suffered extensive damage when a large section of its roof ripped off. But only about 60 people worked there. Meanwhile, the company had 1,800 employees around the country who needed to be paid. It had logistics to manage, and new restaurants to open. From a corporate point of view, it really didn't matter where those 60 people worked; all that mattered is whether they could do their jobs efficiently. Clearly, they could work a lot more efficiently in Orlando than in New Orleans.

He also made it clear, though, that he did not view what he had done as an example of heartless corporate behavior. Quite the contrary. The company had paid out \$1,000 in cash to every New Orleans employee it could find. It invited virtually everyone who worked in the old headquarters to come to Orlando and take their old jobs. Displaced restaurant workers were encouraged to relocate to a city that had a Ruth's Chris, where they were guaranteed a job. And so on.

"When you go through something like this, there is a pecking order of priorities," Mr. Miller said. "Yourself, your family, your employees and your company." Though he owned a home in the northern suburbs, Mr. Miller's community wasn't New Orleans — or any other city. Like many executives, he has lived in a dozen places during his career, and had roots in none of them. Rather, his community was Ruth's Chris. As he saw it, he hadn't betrayed New Orleans so much as he'd been loyal to the Ruth's Chris community.

Mr. Miller's third rationale spoke to yet another condition of modern business life: the primacy of the stock price. Ruth's Chris Steak House was a spanking new public company. Right after Katrina, its stock took a hit. It was his job — indeed, it was his fiduciary duty — to get the stock price back up. He had to play by the rules of the market. Why, for instance, did he announce so quickly that the company would be staying in Orlando permanently — callous timing or not? "In this day and age, you don't have much choice," he replied. "If you have news you have to release it."

What did the market care about? "Eliminating the uncertainty about the future of the company." Moving to Orlando took care of that. Andrew Barish, an analyst who covers the company for Banc of America Securities, said the hurricane "forced the company to prove itself" — and from Wall Street's point of view, the move showed that management was up to the task. Indeed, most analysts openly cheered when they learned the company was staying in Orlando. Soon enough the stock started climbing again. (More recently, it has been bumpy, along with most other restaurant stocks.)

However you feel about "shareholder value" — and I've got plenty of my own reservations — this modern-day focus on shareholders is why Mr. Miller believes that the founder of Ruth's Chris would have probably made the same decision he made. And there are plenty of people who agree with him, including, it seems, her son.

Last November, Mr. Fertel, a literature teacher who also runs a foundation his mother set up, said at a conference that his mother would never have left New Orleans. But when I spoke to him this week, his tone had softened. "She was a smart,

tough businesswoman," he said, "and she might have made the same decision. The treadmill they run on in the world of public companies is tough. They have to answer to their stockholders."

Once companies like Dayton Hudson in Minneapolis or DuPont in Wilmington, Del., viewed their responsibilities to their host city in broad, even paternalistic terms. They helped finance city projects, underwrote the arts and rolled up their sleeves in times of trouble. But those days are long gone. When I asked Mr. Miller if he felt bad about Ruth's Chris not being involved in the rebuilding effort, he began listing all the things the company was doing to help the city. But he also said, "That's not my job." Given the narrow way we define corporate responsibility in America today, he's right.

There's one other thing. As you've undoubtedly been reading this anniversary week, New Orleans is still a mess. For all the positive steps that have been taken, the serious business of rebuilding is really just getting started. When I called businessmen in the city for this column, I got a litany of problems: crime, housing shortages, labor shortages, a brain drain, skyrocketing rents and other costs, sporadic water pressure, occasional brown-outs and phone failures, a subpar airport.

And perhaps most troubling of all, far too much uncertainty still. "It is a real uneasy time," said Jean-Paul Layrisson, a local lawyer who specializes in corporate work. Companies still don't know

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## *A landmark steakhouse moves to Florida and sentiment clashes with business instinct.*

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what the "footprint" of the city is going to be, how much housing stock will be rebuilt, and whether the political structure and city services will be better than they were before the hurricane.

Mr. Layrisson told me that many of his corporate clients that left "temporarily" haven't come back. In all likelihood, they won't. Before the storm, New Orleans was home to 23 public companies, a pretty paltry number to begin with. Now it's down to 17. New Orleans has more pressing needs right now than getting companies to return, but without a healthy, growing business sector it will never truly come back.

Indeed, companies are still faced with the same decisions Mr. Miller faced a year ago. Some of them, even now, are coming to the same conclusion he did. In February, Chevron, one of city's biggest employers, moved back into a downtown office building, giving the city a nice morale boost. Two months later, however, Chevron made another announcement: it was going to construct a new building in the northern parish of St. Tammany, some 20 miles away, and relocate there as soon as its offices were completed. When I asked a Chevron public relations hand what was driving the decision to leave the city proper, he was pretty blunt. "Safety, security and reliability," he said.

Tell me again what Ruth would have done?

# Business Day

The New York Times

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JOE NOCERA

## After 5 Years, His Voice Can Still Crack

**T**IME passes. Time heals.  
A few days before the fifth anniversary of the 9/11 attacks, I went to see James J.

Dunne III, the managing partner of the small investment banking firm Sandler O'Neill & Partners. Sandler O'Neill, you may recall, was one of the hardest hit firms that day. Its primary offices were on the 104th floor of the south tower of the World Trade Center; of the 83 employees (out of a total of 171) who were in the office that awful morning, only 17 made it out alive. Among the 66 who died were two of the three men who ran the firm: Herman Sandler, the co-founder, and Christopher Quackenbush, who headed investment banking.

Jimmy Dunne was the junior member of the ruling troika. He had been spared because he was on a golf course in Westchester County that morning, trying to qualify for an amateur tournament. Truth to tell, before 9/11, he was more focused on



James J. Dunne III

golf than on work. At 45, he had one foot out the door.

But I learned that only later, and it came as a surprise. The Jimmy Dunne I met shortly after 9/11 was more committed to his work than anyone I'd ever known. Thrust into a role he had never expected and had never prepared for — not just to lead Sandler O'Neill, but to save it — he

embraced his task with an unnerving intensity.

Back then, he was everywhere, doing everything: comforting grieving families, hiring equity traders (the equity desk lost 20 of its 24 traders), asking for help from competitors to get into deals, writing eulogies for dead partners, going on CNBC to refute a report that the firm was going out of business, figuring out how to rebuild the computer systems, and on and on.

There was something so raw about him then, so fierce, as if his life truly depended on rebuilding Sandler O'Neill. I remember especially how openly emotional he could be. He would start talking about Mr. Sandler, who had been his mentor, or Mr. Quackenbush, his best friend forever, a man who helped him quit drinking in his 20's — and his eyes would well up while his voice would start to crack. He always seemed on the verge of losing it. But he never did.

Five years later, Jimmy Dunne met me in his paneled office on Third Avenue and shook my hand. His hair was whiter than it used to be, and he'd gained a little weight. What was most apparent, though, was that the overpowering intensity that had characterized him after 9/11 had lifted.

Once we sat down, he immediately launched into a recitation about how much stronger the firm has become in recent years, with 255 employees, vastly improved research and a better mergers and acquisitions department. Though, he quickly added,

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things were more difficult this year because the “flat yield curve” was making trading profits tougher to come by.

I had to smile. So did he.

No one will ever accuse Jimmy Dunne of being the perfect boss. “He’s not always the most patient listener, and he can be brutally blunt,” said the firm’s co-chief operating officer, Michael Lacovara, who joined a few years ago. “And I think he believes he can do anybody’s job as well as they can do it themselves.” But, added Mr. Lacovara, “if on Sept. 12, 2001, he hadn’t felt that way, we wouldn’t be here today.” Mr. Dunne turned out to be the exact right person to lead Sandler O’Neill out of the abyss.

“What he did was a little akin to Rudy Giuliani,” said Marc Maltz, the managing partner of the Triad Consulting Group, which worked with the firm, providing both organizational and psychological assistance for two years after 9/11. “He made decisions that gave people confidence. Once Jimmy worked it through in the first 48 hours and concluded that the firm would rebuild, he gave it the kind of leadership that was necessary.”

There were two instinctive decisions he made in particular that would prove enormously beneficial over the long haul. First, he and several other surviving partners — who were also thrust into new leadership roles — made the snap decision that despite its crippled state, the firm would do right by the families of its deceased employees. It extended full benefits for five years for all the families. It set up a foundation to pay for the education of the 71 children who lost a parent who had worked at Sandler O’Neill. It offered years of psychological counseling not just to surviving employees but to family members of the deceased.

And in 2001, it paid out salaries and bonuses as if the employees were still alive and working. It also paid out the deceased partners’ capital to their families, even though that depleted the firm’s own capital. Indeed, as it completed deals or did trades in the latter part of 2001, it shared the proceeds with the families of deceased partners who had been working on those deals before 9/11.

These acts of generosity created a tremendous amount of good will for the firm. It motivated employees and caused clients and competitors and just about everyone else to rally around it. But that’s not why Mr. Dunne took that path. Lots of small firms like to say they’re a family, but at Sandler O’Neill it was actually true. “It really was a firm founded by friends who hired friends,” Mr. Maltz said. More than anything else, the culture of the place drove Mr. Dunne’s decision.

Mr. Dunne’s second decision, equally instinctive and heart-felt, was to cast the rebuilding of Sandler O’Neill in moral terms. Partly, Mr. Dunne used the “they can’t do this to us” rhetoric, and partly he made the case that rebuilding the firm was something the deceased would want the survivors to do. But just as important, it gave the living a way to connect with one another, to do something after 9/11 that felt purposeful and important. “The organization had such a deep sense of moral purpose,” marveled Mr. Maltz, who has written several papers about the underpinnings of Sandler O’Neill’s revival.

Karen Fishman, one of the 17 employees who got out of the south tower before it collapsed, said: “Work was a way to deal with what happened. You needed to be with people who experienced what you experienced. You didn’t want the firm to go away, because you needed it.”

As with many Sandler O’Neill survivors, Ms. Fishman was suddenly handed new responsibilities. She buried herself in her work, sometimes thinking, after a 12-hour day, that she hadn’t worked hard enough. But as the firm got stronger, those feelings lifted, and she began to feel instead that she should spend more time with her children. So in 2003, she left the firm. Time was passing. Time was healing.

 **TimesSelect:** Listen to **Joe Nocera** talk about Sandler O’Neill in a podcast at [nytimes.com/nocera](http://nytimes.com/nocera).

Mr. Dunne believes that the decisions he and the other new leaders of the firm made back then gave them a confidence they hadn’t had before. And that also helped Sandler O’Neill become a bigger, stronger firm. “It was like we were in a cave, and we were making decisions without having any idea what other firms were doing,” he said. “And then we saw others doing the same things we did. Usually when you are a small firm, you wait to see what the big firms are going to do. But we didn’t wait for anyone’s lead. And I think that has given us the confidence to believe that there isn’t a piece of business in our niche that we shouldn’t compete for — and get.”

Today, of course, the number of employees hired since 9/11 vastly exceeds the number who were there that day. Still, I was astonished to discover that 74 of the 105 employees who worked for Sandler O’Neill on Sept. 12, 2001, are still there. But there’s not much of a gap anymore between the new people and the old ones, as there inevitably was for the first year or so. And for the most part, even the old-timers now view 9/11 as an event that has slowly receded into the past.

“I don’t need to go back there,” said William Hickey, who now helps run the firm’s M. & A. department. “I think about my friends all the time, but I don’t think about the event itself.”

Indeed, the person who probably dwells the most on 9/11 is Mr. Dunne himself. Over time, the firm took down from the walls the many letters of support and grief it had put up after 9/11; Mr. Dunne’s own collection came down last of all, and only at the urging of his sister, who told him that the time had come for him to do so.

But he hasn’t taken them all down. In his office,

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## *The head of Sandler O’Neill says, ‘I feel a large responsibility to the world for helping us survive.’*

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he has several framed letters, including one from Mr. Quackenbush’s brother, written shortly after the attack, urging him to rebuild the firm. Sandler O’Neill commissioned a sculpture with the names of the deceased employees, and placed it in the lobby of its office. But after a few years, some employees came to feel that it was too omnipresent a reminder of an event they were trying to move beyond. So Mr. Dunne had it moved to a small alcove just outside his own office, where he, at least, can see it every day.

Most of all, Mr. Dunne still feels a sense of moral purpose. It’s just a little different now. Whereas rebuilding was once a way of honoring his deceased partners, now he feels something else. “What are our responsibilities to all the people who helped us or took an interest in seeing us do well?” he said. “We got letters from a farmer in Iowa and a teacher in South Korea. They took the time to say that they respected what we were doing. I feel a large responsibility to the world for helping us survive.”

Not long ago, Mr. Dunne gathered his partners together and told them he wanted to extend the benefits to the families for another three years. Not a single one dissented.

Why did you do that? I asked him. “We did it because we feel fortunate,” he replied, “more fortunate than when we first did it five years ago. It just felt like the right thing to do.”

His voice suddenly cracked, just as it used to before the passage of time.