

# **EXHIBIT J**



**U.S. Department of Justice**

Enron Task Force

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*1400 New York Avenue  
Washington, D.C. 20530*

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**BY FEDERAL EXPRESS**

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Re: United States v. Daniel Bayly, et al. Criminal Docket No. H-03-363 (Werlein, J.)

Dear Counsel:

This letter provides you with a copy of the government's exhibit list in the above-referenced case. A copy of the government's exhibits are being deposited on June 1, 2004 at Merrill Corp. You should contact the Merrill Corp. to arrange for copying and delivery of these

exhibits.

This letter also provides you Jencks Act material for some witnesses the government expects to call in this case, and with information pursuant to Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), United States v. Agurs, 427 U.S. 97 (1976) and United States v. Bagley, 473 U.S. 667 (1985).

Kira Toone-Meertens

Enclosed is an FBI 302 report memorializing the substance of statements made by Toone-Meertens, as recorded by an FBI special agent. It is marked 3500-KTM-1. We have redacted Toone-Meertens' date of birth, social security number and home address and telephone number. Also enclosed is a photocopy of Toone-Meertens grand jury testimony. It is marked 3500-KTM-2.

Also enclosed are photocopies of the exhibits which may be shown to Toone-Meertens at her deposition, and which the government will introduce, in the absence of a stipulation, by declaration of a custodian, pursuant to Fed. R. Evid. 902(11) or through Toone-Meertens. The exhibits are marked as follows: 203, 212, 215, 217 through 225, 227, 229, 232, 234, 237, 243 through 246. Please advise the government the day before the deposition if you have any objection to the authentication of these exhibits or their admission into evidence.

Michael Kopper

Based on our expectation that counsel will agree to a proposed protective order regarding the dissemination and use of Section 3500 material provided by the government in this case – we have received a response to our telephone messages from counsel for Mr. Furst only at this point – we are depositing this morning at Merrill Corp. the following for Michael Kopper, whom the government expects to call during its case in chief:

1. Photocopies of 20 redacted and unredacted FBI 302 reports memorializing the relevant portions of the substance of statements Kopper made, as recorded by an FBI special agent. They are identified by date of transcription in the upper right-hand corner of the document and by page number. They are as follows:

07/26/02	40 pages
08/16/02	15 pages
08/25/02	05 pages (no redactions)
09/24/02	01 pages
09/25/02	03 pages
10/21/02	15 pages
10/26/02	21 pages
11/06/02	03 pages

11/27/02	07 pages
12/02/02	03 pages
12/17/02	22 pages
01/17/03	01 pages
03/25/03	06 pages
05/20/03	08 pages
11/26/03	03 pages
11/28/03	05 pages
12/22/03	10 pages
02/10/04	02 pages
02/25/04	07 pages
04/05/04	06 pages

2. Photocopies of 3 unredacted memoranda of interviews memorializing the relevant portions of the substance of statements Kopper made, as recorded by an IRS special agent. They are identified by date of interview as follows:

11/06/02	04 pages
02/26/03	09 pages
04/14/03	04 pages

In addition, enclosed are copies of the following: an information charging Kopper with crimes, a cooperation agreement, the transcript of Kopper's guilty plea, an affidavit executed by Kopper and one email and three electronic appointments ostensibly relating to LJM2's purchase of Merrill's interest in the Nigerian Barge.

Andrew Fastow

Fastow was interviewed by special agents of the FBI and others. According to an FBI 302 report prepared by an agent and memorializing the substance of the interview, Fastow stated in relevant part:

The reason Merrill Lynch (hereinafter, "Merrill") invested in the Nigerian Barge deal was the extraordinarily high level of assurance Fastow provided to Merrill that Merrill would be taken out of the deal within six months with their stated rate of return.

In Fastow's discussion with Merrill, Fastow alluded to his position as general partner of LJM, and his ability to use LJM to take Merrill out of the Barge deal, if necessary. Fastow spoke with Rebecca McDonald, the head of APACHI, regarding LJM's buyout of Merrill. She said that APACHI had a buyer lined up to buy the Barges but the buyer was not yet ready. Fastow may have told McDonald that Enron had to get Merrill out of the Barge deal.

Merrill believed that Merrill would be taken out of the Barge deal because Fastow gave

Merrill verbal assurances that Merrill would be taken out in six months. Fastow does not recall using the word "promise" in his telephone call to Merrill, but he cannot say that with certainty. Fastow thought that he was being clever during the telephone call with Merrill by using euphemisms in order to convey to Merrill a promise to take Merrill out of the barges. Fastow stated to Merrill that Fastow had an extremely high level of confidence that Merrill would not lose money in the Barge deal. Fastow talked about how he was the General Partner of LJM, and that LJM was interested in buying an interest in the Barges, but not at the end of the last quarter of 1999.

The only purpose of selling an interest to Merrill was for the Enron business unit. Fastow knew that the barge deal was not huge, but Enron had to be close to making its numbers and needed the deal to do so.

Fastow must have discussed with Shulyer Tilney the Barges, including why LJM2 could not buy the Barges in 1999, so that Tilney would know what to tell his boss.

Either McMahon or Boyle asked Fastow to call Merrill to provide assurance that Merrill would not be stuck with the barges. Boyle was a Vice President in Fastow's unit and performed at an average to above-average level.

Fastow does not recall anyone effectively scripting-out what Fastow should say. But Fastow described his statements as consistent with the statement Merrill sought, as described in an email Furst sent to Boyle on December 23, 1999. Dan Boyle or Jeff McMahon would have asked for Fastow to make the Merrill call and would have briefed Fastow on what needed to be said. McMahon probably prepared Fastow for the call.

Fastow's primary audience on the call was Dan Bayly. Fastow does not recall what Bayly said during the call nor does Fastow recall Kathy Zrike being on the call. Fastow does not recall Jim Hughes, Barry Schnapper or Glisan on the call, but they could have been. On the call, Fastow told Merrill that it could have a high level of confidence that an entity was interested in the barges and that entity, LJM2, would buy the barges after six months. Fastow repeatedly mentioned that Merrill would be out by June 30, 2000.

As to words used on the call: Fastow could have used the phrase "I give you my word;" but that would have been in addition to saying "highly confident" or "extremely confident." Fastow viewed using these latter terms as making a commitment. Fastow referred to LJM2 and his position in LJM2 and made it clear that Merrill should have no doubt that Merrill will be taken out of the deal in six months. Merrill did not need to hear the word "guarantee," but the participants in the call knew what Fastow meant. Fastow deliberately avoided the word "guarantee" and knew that he could not give a verbal or written guarantee on the deal without jeopardizing the accounting treatment Enron needed. Fastow spoke as the CFO of Enron and never indicated otherwise on the call. Fastow cannot recall using the word "bridge" or the phrase "I can't say guarantee." However, Fastow generally uses the phrase "I can't say

guarantee,” and Fastow intends his use of the phrase to convey “guarantee.” Fastow did not say Enron would buy back the barges, but represented instead that a third party would. Fastow did say that Enron will take the necessary steps to make sure Merrill is out of the deal by June 30, 2000. It was reasonable for anyone listening to the call to think that it was Enron that was going to buy them out.

If the telephone call had been transcribed, it would have sounded like a guarantee and blown the accounting treatment of the deal. Anyone listening to the call would have believed that Fastow promised that Enron would make sure Merrill would be taken out by sale to another investor by June 2000. Fastow’s statement on the call was consistent with language Merrill memorialized in a draft engagement letter, to wit: “The SPE will receive a yield of approximately 15.00 percent per annum on \$7 million of its equity investment. The SPE or its equity interest in ENB will be subsequently sold to third party equity investors or purchased by Enron or an affiliate.”

Fastow believed that LJM2 would buyout Merrill and Enron’s obligation to re-purchase would never materialize because of LJM2. Fastow thought LJM2 was technically a third party and so their purchase would not cause accounting problems. LJM2 had contemplated warehousing deals, but Bayly did not mention any concern about LJM2 buying Merrill’s interest.

The Merrill call was a “bear hug” in which Fastow was trying to make Merrill warm and comfortable about the idea of owning the barges and that Merrill would not be stuck with them. Fastow’s role was to make Merrill comfortable with the deal.

Enron was the marketing agent, but could not make anyone buy at a specified time, price or return.

Fastow had not previously seen Glisan’s email dated May 11, 2000 which stated, in part, that Enron was obligated to get Merrill out of the deal on or before June 30, 2000. Fastow was not bothered by Glisan’s use of the word “obligated” to describe Fastow’s representation of Enron’s agreement to get Merrill out of the barge deal.

Glisan’s May 12, 2000 email to Hughes stating, in part, that Enron should be working on a “back-stop” should the barges be non-performing by June 30, 2000, was intended to ensure that the deal team was trying its best to find a buyer for Merrill’s position in the barges, before Enron had to resort to bringing in LJM2.

Fastow was asked during the interview to the Summary of the Transaction, Bates stamp E176542, point 3. It stated: “Andersen felt that if the structure of the loan to Ebarge changed in favor of LJM2, it would appear as though Enron induced LJM2 to come into the transaction and therefore creates the appearance that Enron, in December 99, planned on taking Merrill Lynch out after six months.” In Fastow’s view, this passage suggests that Enron discussed the barge deal with Andersen and Anderson told Enron not to change the transaction because there would

be a problem. Andersen was advising Enron how to pay for the deal and avoid creating the appearance of an accounting problem. Fastow does not know if Andersen always knew the plan because Enron could have misled Andersen. Fastow does not know what Enron told Andersen. Fastow stated that an email from Alan Quaintance to Sean Long dated June 1, 2000 (bates stamp EC04519A0121285) indicates that it is more likely that Andersen was deceived than complicit.

LJM2 was to hold the barges for seven months. This period was chosen because it was long enough to bring Enron over its 2000 year-end issues if LJM2's interest was not sold and Enron had to repurchase it. Fastow had a conversation with someone about a seven-month date being set to prevent a reversal of earnings in 2000. This conversation may have been with McMahan, Causey, Glisan, Kopper or someone else. Fastow believes Enron paid the fee to LJM2 to buyout Merrill, even though the barges were bought from Merrill and not Enron.

Rebecca McDonald said that the barges were good projects and that Enron would get buyers for them. Fastow told McDonald that LJM2 did not want them. The barges were different than many other assets and when they were finally sold to AES they showed a profit and were not that bad an asset.

The importance of the June 30 buyout date was well-known in Enron. It was discussed at weekly senior management meetings. Fastow cannot recall if Hughes or Schnapper knew of the June 30 date, but believes that they did.

Fastow did not recall that Boyle was on the barge deal and had always associated the barges with McMahan.

#### Ramon Rodriguez

When interviewed by special agents of the FBI in September 2003, Ramon Rodriguez indicated that he did not remember an argument between Colpean and Kahanek. Rodriguez did not know if Kahanek or others were trying to keep information from Arthur Andersen. Rodriguez never heard of Kahanek asking anyone to delete documents. Rodriguez did not hear of an oral guarantee from Enron to get Merrill out of the barge deal.

#### Ben Glisan

When testifying before the Grand Jury in March 2004, Glisan stated that he misled banks about the volume of prepay transactions in which Enron was engaging. Glisan acknowledged that he violated Enron's code of conduct by his involvement in Southampton, that the Nahanni transaction was improper, and that he knew that the accounting rules were violated in connection with Hawaii 125-0.

When interviewed by special agents of the FBI and representatives of other government agencies in December 2001, Glisan stated that he was not involved in the Merrill Lynch energy

swap transaction, known as "Project Moose." Glisan stated that it was Enron's policy to have open disclosure with Arthur Andersen. Glisan stated that he did not recall ever making a misrepresentation to a financial institution, nor did he recall being part of a meeting in which someone lied. Glisan said that he did not believe that he was involved in making a false statement, lied, or involved in a crime while employed at Enron.

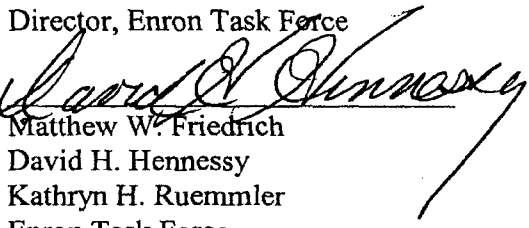
When interviewed by special agents of the FBI in August 2002, Glisan stated that he assumed the solution of giving CIBC additional business to fulfill an oral side agreement was appropriate for accounting purposes. Glisan stated that many of the transactions at Enron were inappropriate only in hindsight. Glisan further stated that he was unaware of any side agreements involving LJM.

In May 2004, Glisan, through his counsel, requested that the government support his request to be transferred to a minimum security camp in Beaumont, Texas. The government responded to Glisan's attorney as follows: the government will not weigh in on BOP's decision to designate Glisan to a particular facility; that is a matter for BOP. However, if BOP inquired, the government would advise BOP of the government's assessment of Glisan's truthfulness in this matter.

Very truly yours,

ANDREW WEISSMANN  
Director, Enron Task Force

By:

  
Matthew W. Friedrich  
David H. Hennessy  
Kathryn H. Ruemmler  
Enron Task Force

Enclosures



# **EXHIBIT K**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In Re: ENRON CORPORATION	* MDL Docket No. 1446
SECURITIES LITIGATION	*
	* Civil Action No.
	* H-01-3624
MARK NEWBY, ET AL.,	* (Consolidated)
INDIVIDUALLY AND ON BEHALF	*
OF ALL OTHERS SIMILARLY	* CLASS ACTION
SITUATED,	*
	*
PLAINTIFFS,	*
	*
VS.	*
	*
ENRON CORP., ET AL	*
	*
DEFENDANTS.	*
	*
THE REGENTS OF THE	*
UNIVERSITY OF CALIFORNIA,	*
ET AL., INDIVIDUALLY AND	*
ON BEHALF OF ALL OTHERS	*
SIMILARLY SITUATED,	*
	*
PLAINTIFFS,	*
	*
VS.	*
	*
KENNETH L. LAY, ET AL.,	*
	*
DEFENDANTS.	*

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 VIDEOTAPED ORAL DEPOSITION  
 OF ANDREW STUART FASTOW  
 VOLUME 1  
 OCTOBER 23, 2006  
 -----

12:19 1 Q. Who was that?

12:19 2 A. Well, I told people at LJM, and I told  
12:19 3 Mr. Tilney.

12:19 4 Q. Why did you tell Mr. Tilney?

12:19 5 A. Well, Mr. Tilney had called me sometime  
12:19 6 after Mr. McMahon contacted Merrill Lynch to ask me  
12:19 7 why we just couldn't have LJM2 buy the asset. And I  
12:19 8 explained to him the same reason I explained to  
12:19 9 McMahon and to Mr. Skilling, that I thought it wasn't  
12:19 10 in anyone's interest to do it at that point in time.

12:19 11 Then Mr. Tilney expressed some  
12:19 12 concern about LJM2 buying -- and I told Mr. --  
12:19 13 Mr. Tilney that, oh, but don't worry about it. Six  
12:19 14 months down the road, LJM2 will buy it, so we'll take  
12:19 15 out Merrill. Don't worry about it.

12:19 16 And then he expressed some concern  
12:19 17 about LJM2 buying it, I think because he was an  
12:19 18 investor or intended to be an investor and  
12:19 19 Merrill Lynch was an investor. And in an effort to  
12:19 20 allay his concerns, I told him, you know, not to worry  
12:19 21 about it, Skilling had -- had told me we'd be  
12:19 22 all right.

12:19 23 Q. Did you mention in your conversation  
12:19 24 with Mr. Bayly on the 23rd of December, 1999, your  
12:19 25 understanding of whether Merrill was in the barges

12:19 1 business?

12:19 2 A. Yes.

12:19 3 Q. What was your understanding?

12:19 4 A. I -- I think I --

12:19 5 MR. WASHER: Objection. Form.

12:19 6 A. If I recall correctly, I proactively  
12:19 7 said to Mr. Bayly, you know, look, I know you're not  
12:19 8 in the business of buying barges.

12:19 9 Q. (BY MR. HOWES) Did he have a response?

12:19 10 A. He agreed.

12:19 11 Q. What else did Dan Bayly tell you?

12:19 12 A. My recollection of the conversation  
12:19 13 was, you know, he wanted to let us know he was doing a  
12:19 14 favor. He wanted to get confirmation that Merrill  
12:19 15 Lynch would be out of the deal in six months and would  
12:19 16 get its money back, that they were doing this just to  
12:19 17 warehouse the asset for Enron.

12:19 18 Q. Did he tell you for whom he thought he  
12:19 19 was doing a favor?

12:19 20 A. He thought he was doing it for Enron.

12:19 21 Q. And did you have a response to those  
12:19 22 comments from Mr. Bayly?

12:19 23 A. Yeah. I was very appreciative of it.  
12:19 24 I told him that, as CFO of Enron, I would -- that I  
12:19 25 would use my best efforts to get him out of the deal,

12:19 1 in six months get him his rate of return and -- his  
12:19 2 return on investment, his -- his return of capital and  
12:19 3 on capital and that I had an extremely high level of  
12:19 4 confidence that that would, in fact, be the case  
12:19 5 because I already knew a buyer for the asset since I  
12:19 6 was general partner of the buy -- the potential buyer.

12:19 7 Q. And you were general partner of the  
12:19 8 potential buyer, that being who, sir?

12:19 9 A. LJM2.

12:19 10 Q. Did you ever say to Mr. Bayly, I  
12:19 11 guarantee you we'll take you out in six months?

12:19 12 A. No, I didn't.

12:19 13 Q. Why didn't you use the word  
12:19 14 "guarantee"?

12:19 15 A. Well, I thought that would be  
12:19 16 problematic from an accounting standpoint.

12:19 17 Q. Why would it be problematic from an  
12:19 18 accounting standpoint?

12:19 19 A. My understanding is that if a company  
12:19 20 were to guarantee a return on investment, a return --  
12:19 21 a return of investment, on investment and -- and  
12:19 22 within a specific amount of time, that a company would  
12:19 23 not be able to treat the sale of that asset as a true  
12:19 24 sale for accounting purposes.

12:19 25 Q. Did you have any conversations with

12:19 1 anybody at Merrill Lynch about that understanding?

12:19 2 A. I don't recall having a -- a specific  
12:19 3 discussion about -- about that, no.

12:19 4 Q. Have you seen documents reflecting that  
12:19 5 Enron paid a \$250,000 advisory fee as compensation for  
12:19 6 Merrill assisting in structuring of the barges?

12:19 7 MR. WASHER: Objection. Form.

12:19 8 A. Yes.

12:19 9 Q. (BY MR. HOWES) Have you seen documents  
12:19 10 reflecting that Enron promised the bank a 15 percent  
12:19 11 return on top of that advisory fee?

12:19 12 MR. WASHER: Objection. Form.

12:19 13 A. That's my recollection. I -- I believe  
12:19 14 that the all-in rate of return in this six-month  
12:19 15 period was meant to be around 22 percent.

12:19 16 Q. (BY MR. HOWES) From your view of this  
12:19 17 transaction, Mr. Fastow, was Merrill taking a risk  
12:19 18 commensurate with that rate of return?

12:19 19 MR. WASHER: Objection. Form.

12:19 20 A. My opinion is, no, that there was less  
12:19 21 than equity risk associated with this transaction  
12:19 22 because I had given Mr. Bayly the assurance that  
12:19 23 Merrill would get taken out with their rate of return  
12:19 24 in six months.

12:19 25 Q. (BY MR. HOWES) What do you mean by

1 Is that fair?

2 SPEAKER: Objection; form.

3 A. I cannot say what Arthur Andersen would have  
4 done.

5 Q. Okay. Did you have a belief at the time  
6 that if the assurances you gave to Mr. Bayly were put  
7 in writing, that Enron could not have recorded the  
8 barge transaction as a true sale?

9 A. Well, yes and no. I knew what I was doing  
10 when I gave the assurance, which was to have the  
11 effect of a guarantee. And I understood that a  
12 guarantee would likely change the accounting. So if  
13 I had put a guarantee down on paper and supplied that  
14 to auditors, I think there is some chance that the  
15 accounting would have been different.

16 The reason I say yes or no was because, at  
17 the time, though I understood I was giving a  
18 guarantee or that was my intent, I also thought I was  
19 being very clever in the way I worded it, and I  
20 didn't use the word "guarantee."

21 Q. Did you have an impression of how the barge  
22 transaction would have been accounted for if you had  
23 given a guarantee in writing? Would it then have  
24 been recorded as a financing of some sort, for  
25 example?

1 didn't have sole authority to make investment  
2 decisions, that -- that what I wanted to invest in  
3 would likely be approved or not objected to by the  
4 limited partners.

5 Q. At the time you spoke to Mr. Bayly in  
6 December of 1999, did you believe that if Enron  
7 itself bought back the barge interest from Merrill  
8 Lynch in six months, that Enron would have had to  
9 reverse earnings recorded in connection with that  
10 transaction?

11 A. I recall that being my understanding.

12 Q. I take it it's fair to say that you never  
13 told Dan Bayly that Enron itself would buy back the  
14 barges; is that right?

15 A. I never used those words.

16 Q. Okay.

17 THE VIDEOGRAPHER: Excuse me, counsel.  
18 Does someone have a cell phone or a Blackberry on at  
19 the table?

20 Q. Mr. Fastow, did you understand that the  
21 barges themselves that were the subject of Merrill  
22 Lynch's purchase in December of 1999 were real  
23 barges; they actually existed?

24 A. That was my understanding, yes.

25 Q. And these were real assets that the -- that



1 Enron's international division was trying to sell?

2 A. Yes.

3 Q. Okay. Do you know whether Merrill Lynch  
4 actually transferred money to Enron in connection  
5 with its December 1999 purchase of the barge  
6 interest?

7 A. I don't know. I don't recall.

8 Q. So far as you're aware, did Merrill Lynch  
9 actually receive an interest in barges in connection  
10 with this December 1999 purchase?

11 A. Well, when you say "barges," I think it was  
12 they received an interest in an entity that became  
13 owners of -- either whole or in part, of the barges.

14 Q. Fair enough. Absolutely right.

15 And your understanding was that that is what  
16 Merrill Lynch actually acquired in December of 1999?

17 A. That was my understanding.

18 Q. When Merrill Lynch sold its interest in the  
19 barges to LJM2, do you know whether LJM2 actually  
20 paid money to Merrill Lynch in connection with that  
21 transaction?

22 A. I do not recall. I'd have to look at  
23 documents to answer that question.

24 Q. Do you recall whether or not LJM2 actually  
25 received the same interest in the barges that you

1 connection with the energy trades?

2 A. That was -- yes, that was my understanding.

3 Q. I would guess the answer is no, but have  
4 you, by chance, read the report of one of Merrill  
5 Lynch's experts, Dr. Gary Dorris?

6 A. I don't think so. Not that I can recall.

7 Q. Okay. Let's talk about LJM2 for a little  
8 while. Same line of questions. I'm sorry to drag  
9 you through these.

10 Would it be fair to say that with respect to  
11 LJM2, that -- that Enron had an obligation to provide  
12 Arthur Andersen with the information necessary to  
13 properly record transactions between Enron and LJM2  
14 on Enron's books and records?

15 A. My understanding was that Enron did have  
16 that obligation to -- to Arthur Andersen.

17 Q. And so far as you're aware, did Merrill  
18 Lynch transmit any information to Arthur Andersen  
19 regarding any transaction between Enron and LJM2?

20 A. Not that I can recall.

21 Q. And I take it that so far as you're aware,  
22 Enron never asked Merrill Lynch to transmit any  
23 information to Arthur Andersen in connection with any  
24 transaction between Enron and LJM2?

25 A. Not that I can recall.

1 Q. And I take it that you're not aware of  
2 anyone at Merrill Lynch telling anyone at Enron to  
3 withhold information from Arthur Andersen in  
4 connection with any transaction between Enron and  
5 LJM2?

6 A. Not that I can recall.

7 Q. And is it fair to say that Merrill Lynch  
8 never prevented Enron from disclosing to Arthur  
9 Andersen any information concerning any transaction  
10 between Enron and LJM2?

11 A. No, not that I can recall.

12 Q. To the best of your knowledge, again,  
13 understanding that it's not your area of  
14 responsibility, did Merrill Lynch play any role in  
15 preparing the accounting entries regarding any  
16 transaction between Enron and LJM2 that flowed into  
17 Enron's 1999 or 2000 financial statements?

18 A. I cannot recall any role that Merrill Lynch  
19 had in preparing Enron's accounting.

20 Q. Mr. Fastow, who within Enron was involved in  
21 the decision to form LJM2?

22 A. There were many people involved within Enron  
23 in that decision.

24 Q. Can you just give us a sense of who those  
25 people would have been?

1 Q. As you sit here today, almost seven years  
2 later, do you recall any specific word that you  
3 recall using in either of those conversations?

4 A. I feel very confident about some of the  
5 words that I used in the conversation with Mr. Bayly,  
6 and I remain very confident about certain words I did  
7 not use in my conversation with Mr. Bayly.

8 Q. And is that because you actually remember  
9 the words or because, if you had followed your normal  
10 practice of communicating what you wanted to  
11 communicate, you probably would have used certain  
12 words?

13 A. My recollection is that I recall certain  
14 words about that conversation -- in that conversation  
15 because that conversation, for a certain reason,  
16 stood out in my mind.

17 Q. If I understand correctly, at the time of  
18 the Bayly conversation, whatever words you did use,  
19 you do recall that there are certain words you did  
20 not use; is that correct?

21 A. That's correct.

22 Q. And one of those words was "guarantee" or  
23 words of guarantee; is that correct?

24 A. That's correct. My -- my recollection is  
25 that I did not use the word "guarantee" in the Dan

1 Bayly phone call.

2 Q. Now, a couple of months before this call,  
3 you had been named CFO of the Year by a national  
4 business magazine; is that correct?

5 A. I recall being named a recipient of one of  
6 the CFO awards. I'm not sure of the timing, but I'll  
7 accept that it was a few months before.

8 Q. And do you recall that it was before?

9 A. No.

10 Q. Okay. Would it be correct that you were  
11 proud to have won this award?

12 A. I was proud.

13 Q. And in this particular magazine article, you  
14 received praise for your creativity in structured  
15 finance; is that correct?

16 A. More specifically, I was praised for what  
17 would euphemistically be called balance sheet  
18 management.

19 Q. Okay. You thought it enhanced your personal  
20 reputation, as well as the reputation of Enron, I  
21 take it?

22 A. I thought it certainly enhanced my personal  
23 reputation. I don't know if it enhanced -- enhanced  
24 Enron's.

25 Q. Did you believe it was important for the

1 company to project an image as a "can do"  
2 organization?

3 A. I believe that Enron consistently tried to  
4 portray itself that way.

5 Q. And you would agree there's nothing wrong  
6 with that, correct?

7 A. That's correct.

8 Q. And you, yourself, having recently earned  
9 this award, thought it was important to direct  
10 yourself as a "can do" CFO; isn't that correct?

11 A. That's correct.

12 Q. And, again, there's nothing wrong with that?

13 A. That's correct.

14 Q. All right. Now, when you got on the phone  
15 with Mr. Bayly in December of 1999, you thought it  
16 was important to convey a sense of confidence of what  
17 you could do, correct?

18 A. I'm sorry. Convey?

19 Q. A sense of confidence of what you could do.

20 A. Yes.

21 Q. And the message that you wanted to convey  
22 was that Enron would undertake to remarket the  
23 interest to a third party so that Merrill would not  
24 hold it for the long term?

25 A. I meant to convey something slightly

1 different than that, which was that Enron would make  
2 sure that Merrill Lynch would be out of the  
3 investment with its return of a noncapital within six  
4 months and that I was extremely confident that that  
5 would be the case because I already knew a potential  
6 buyer for the investment.

7 I went on to further explain that I know who  
8 that is because I'm the GP of that buyer.

9 Q. Do you recall actually referring to LJM2 in  
10 that conversation with Mr. Bayly?

11 A. I recall not using the word "LJM2," but  
12 referring to it in a way that I don't think anyone  
13 could have missed what I was referring to.

14 Q. Now, would it be correct that before you got  
15 on the call, it was your intent to have a  
16 conversation that would not blow the accounting, for  
17 lack of a better expression?

18 A. I think that's a very fair description of my  
19 intent.

20 Q. And during the course of the call, you  
21 sought to essentially deliver on your intent before  
22 the call, correct?

23 A. I don't understand that question.

24 Q. All right. So during the course of the  
25 call, you were careful to try to use language which,

1 in your mind, did not blow the accounting?

2 A. I think I've testified before here and, I  
3 think, in the Lay/Skilling criminal trial that I  
4 thought I was being clever, meaning that I thought I  
5 had come up with a way to not use the words that  
6 would blow the accounting, if you will, but that  
7 conveyed the same meaning.

8 Q. Now, you know, recalling your testimony --  
9 your testimony in response to Mr. Howes' questions --  
10 and I can show you the testimony, but I think you  
11 mentioned that when you were having conversations  
12 like this with bankers, you would have said something  
13 like, I can't give you a guarantee, but let me tell  
14 you why you should be comfortable with this  
15 transaction. Is that correct?

16 SPEAKER: Objection; form.

17 A. That's -- that's a fair representation of  
18 what I've said, yes.

19 Q. And that's the gist of what you were saying  
20 to Mr. Bayly, is it not?

21 A. Well, no. I think the message was a little  
22 different with Mr. Bayly. I think with Mr. Bayly, I  
23 indicated to him not only that there would be an exit  
24 for Merrill Lynch in six months with his return, but  
25 I indicated to him who the buyer would be in six



1 that you actually wanted to do this deal, have LJM2  
2 buy the barge interest in December 1999. You wanted  
3 to be a hero to Jeff Skilling. And Mr. Kopper  
4 actually is the one who said it was too risky.

5 Do you recall this?

6 A. I do not recall -- I do not recall it being  
7 that way.

8 Q. In fact, you previously testified that  
9 Mr. Kopper's version is largely contrary to your  
10 version; isn't that correct?

11 A. I'd have to review how I testified about it,  
12 but reviewing these two pages, I would say there are  
13 some things in here that are not consistent with my  
14 recollection.

15 Q. Well, why don't you -- I think that one of  
16 the trial exhibits or the trial -- trial transcript  
17 is Exhibit 30466, if you can find Volume 23, and look  
18 at page 7189. See if that refreshes your  
19 recollection about how you characterized this.

20 A. I'm sorry. Which page?

21 Q. 7189.

22 A. Okay.

23 Q. Do you recall, in other words, that you  
24 believe that Michael Kopper's testimony, his sworn  
25 testimony regarding this, is largely contrary to your

1 recollection?

2 A. If -- if I'm correct in understanding, these  
3 are the same pages that I was presented with at  
4 trial.

5 Well, first of all, let me -- let me address  
6 my testimony here. Everything I testified to in the  
7 Lay/Skilling trial, I testified truthfully, to the  
8 best of my ability at that time, as I'm doing here  
9 today and throughout this deposition.

10 If those are the same pages I'm reviewing  
11 here, then I would say, yes, again, I disagree  
12 with -- my -- I would say at least my recollection is  
13 different than Mr. Kopper's in many respects.

14 Q. You're not suggesting that Mr. Kopper is  
15 lying in his recollection, are you?

16 A. No, I'm not.

17 Q. Now, Mr. -- Mr. Fastow, I'm not suggesting  
18 you had such conversations with your attorneys, but I  
19 want you to understand, I'm not asking you about any  
20 conversations with your attorney.

21 My question is: Prior to the time that you  
22 first met with plaintiffs' attorneys in August of  
23 2006, did you ever tell anyone that you had had a  
24 conversation with Schuyler Tilney in December 1999  
25 where you told Mr. Tilney of the Skilling bear hug?

1 Mr. Tilney approached you at all about the power  
2 trades?

3 SPEAKER: Objection; form.

4 A. My belief at the time is that he wanted to  
5 get further assurance that his company -- that Enron  
6 would live up to what Baxter was saying.

7 Q. And did you give him that assurance?

8 A. I believe I did by what I said.

9 SPEAKER: Objection; form.

10 Q. In your December 23, 1999, conversation with  
11 Mr. Bayly, Dan Bayly, I believe you testified that  
12 you told him that certain words in that conversation  
13 stood out in your mind.

14 Do you remember that testimony?

15 A. Yes.

16 Q. What words stood out in your mind, sir?

17 A. I recall using the phrase "extraordinary  
18 best efforts," a phrase like "extraordinarily high  
19 level of confidence" with regard to there being a  
20 purchaser for Merrill Lynch's interest within six  
21 months. Those are the ones that come to mind right  
22 now.

23 Q. To what did you relate "extraordinary best  
24 efforts"?

25 SPEAKER: Objection to the form.

# **EXHIBIT L**

United States District Court  
Southern District of Texas  
FILED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MAR 10 2006

Michael N. Milby, Clerk

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UNITED STATES OF AMERICA	*	H-CR-04-025SS
	*	Houston, Texas
VS.	*	
	*	March 9, 2006
JEFFREY K. SKILLING AND KENNETH L. LAY	*	8:30 a.m.

JURY TRIAL

VOLUME 23

BEFORE THE HONORABLE SIM LAKE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 Q. Could you read that one aloud.

2 A. "There were no pending transactions between the LJM  
10:50:48 3 entities and the company for which terms were negotiated  
4 and agreed to prior to the effective date of the sale."

5 Q. And why is that false?

6 A. Because virtually all of the terms had been  
7 negotiated and agreed to prior to the effective date of  
10:51:08 8 the sale, and there was a verbal agreement that, except  
9 for adjusting the price for extended amount of time, that  
10 all the terms would stay materially the same.

11 Q. All right. And to your knowledge, was Cuiaba sold  
12 back to Enron pursuant to that no-loss guaranty after  
10:51:26 13 this?

14 A. Yes.

15 MR. HUESTON: Go to Government Demonstrative 3,  
16 please.

17 And just following this from the plant on  
10:51:38 18 the left, please.

19 BY MR. HUESTON:

20 Q. The sale, what you have acknowledged as something  
21 that was not a true sale to LJM; is that right?

22 A. That's right.

10:51:51 23 Q. Did investors on the outside know that this was a  
24 sham sale?

25 A. No, I don't think so.

1 Q. And then the next part, please.

2 Is that the side deal that you struck with  
10:52:04 3 Mr. Skilling?

4 A. Yes. LJM will not lose money and that LJM will be  
5 taken out of the power plant. That Enron would find a new  
6 buyer for it or buy it back.

7 MR. HUESTON: All right. Take that down.  
10:52:18 8 Thank you.

9 BY MR. HUESTON:

10 Q. Mr. Fastow, I'd like to move to another deal.

11 Were you familiar with a deal involving  
12 Nigerian power barges?

10:52:32 13 A. Yes.

14 Q. Can you describe -- first of all, what are these  
15 Nigerian power barges? What did that deal relate to?

16 A. One of Enron's businesses was to construct power  
17 facilities. In some cases, they took an actual barge, a  
10:52:55 18 ship, if you will, type of flat ship you see going down a  
19 river with containers on it or garbage on it sometimes,  
20 things like that. But they construct a power plant on top  
21 of it and moor it just offshore of a country and, you  
22 know, connect the power lines from the barge into the  
10:53:15 23 mainland.

24 Q. And did Enron own some power barges at the time?

25 A. Yes.

1 A. That I'd make sure, as CFO of Enron, that they would  
2 be out of this deal and they'd get their rate of return.

11:00:44 3 Q. Did you use the actual word "guaranty"?

4 A. No.

5 Q. Why not?

6 A. I didn't have to use the word "guaranty." It was so  
7 clear what I was doing, and using the word "guaranty"  
11:01:03 8 would have been a little too -- just a little too blatant.

9 Q. All right. Once you provided that guaranty, did  
10 Merrill Lynch go forward with the deal?

11 A. Yes.

12 Q. And did Merrill Lynch keep the barges?

11:01:14 13 A. No.

14 Q. How long did they hold on to them for?

15 A. For six months, as we had agreed.

16 Q. And did you have conversations with Ben Glisan during  
17 this time period about this?

11:01:26 18 A. Yes.

19 Q. And what was the nature of those conversations, in  
20 summary?

21 A. That the international group hadn't found a buyer for  
22 the barges as they were supposed to. They were supposed  
11:01:42 23 to find a third party to buy the barges, but it appeared  
24 that they, for whatever reason, hadn't worked on it or  
25 just hadn't gotten it done; and that we had a problem



1 Q. And, Mr. Fastow, based on that guaranty or bear hug  
2 from Mr. Skilling, did you then take those barges off  
11:05:49 3 Merrill Lynch's hands?

4 A. Yes.

5 MR. HUESTON: Let's turn to Government Demo  
6 Exhibit 4, please.

7 BY MR. HUESTON:

11:06:08 8 Q. "Enron first sells the barges to Merrill Lynch";  
9 correct?

10 A. Yes.

11 Q. Do you recall any negotiation between LJM and Merrill  
12 Lynch over the price that was going to be set?

11:06:24 13 A. Well, there's negotiation over -- I don't know if  
14 there was negotiation over the price. I think there was  
15 negotiation over the rate of return they were going to  
16 get.

17 Q. All right.

11:06:33 18 A. So price really didn't matter if they knew they were  
19 getting out with their -- what they had paid.

20 Q. And then from Merrill Lynch, it goes to LJM; correct?

21 A. Yes.

11:06:43 22 Q. That's what people saw on the outside, is that right,  
23 investors?

24 A. Yes.

25 Q. Go underneath that.

02:21 1 Raptor that it would just highlight, you know, what was -- what  
2 was going on here.

3 And just -- just as an aside, remember, the banks  
4 were invest -- many of the banks were investors in LJM and so  
02:22 5 they had access to this information. So, they'd be seeing, on  
6 the one hand, "Hey, we know the value of Mariner." Then they'd  
7 get a report that potentially showed that LJM was saying the  
8 value was much higher and was willing to enter into hedges to  
9 protect that value.

02:22 10 Q. Okay. And do you recall being called near the end of one  
11 given year, to see if you would be opposed to putting in one of  
12 the proposed assets?

13 A. Yes. I got a call I think --

14 Q. What do you remember about that?

02:22 15 A. Well, I don't remember who it was or even what the asset  
16 was; but I remember getting a frantic call on what I think was  
17 the last business day of the year, right around the end of the  
18 day, and from someone who I didn't -- I didn't recognize the  
19 name.

02:23 20 Q. Did you care at the time?

21 A. Only out of politeness perhaps but not out of -- not out  
22 of -- for a business reason, no.

23 I got a call frantic, "Hey, we need to hedge an  
24 asset in Raptor. We need to have it done, you know, by the end  
02:23 25 of the quarter. I can't find anyone from LJM, you know, to

03:10 1 Q. But did your oral agreement that you had, that quid pro  
2 quo, call for you to get that extra 30 million on the back end?

3 A. No. That was -- it did not. That was an accounting  
4 contrivance just so the accountants could say there was still  
03:11 5 some equity at risk in the vehicles and deem them independent.

6 Q. But at this time did you try to get that money at the back  
7 end, anyway?

8 A. Yes.

9 Q. And how did that come up? Do you remember a discussion  
03:11 10 about this?

11 A. Yes.

12 Q. With whom?

13 A. Mr. Causey --

14 Q. And describe that.

03:11 15 A. -- and some of his accountants.

16 Q. Describe that discussion for the jury.

17 A. Well, Mr. Causey proposed a cross collateralization. I  
18 told -- I took the position that that didn't make sense for LJM  
19 because we'd just be giving away value for II and IV. And his  
03:11 20 response was, "Hey, that's not yours, to begin with. That was  
21 never the deal. You weren't supposed to get the back ends."

22 I was opportunistic. I knew that legally the  
23 documents said I was entitled to those back ends, even though  
24 our oral agreement was otherwise. And I made the argument,  
03:12 25 "Hey, what am I going to tell the limited partners of LJM2?"

03:12 1 That I just gave away the money? So, you've got to give me  
2 something to compensate me for the possible back ends on II and  
3 IV."

4 Q. And did Mr. Causey agree to that at that time?

03:12 5 A. No, not at that time.

6 Q. Okay. Subsequent to this time, after -- first of all, this  
7 cross collateralization idea, was this a temporary fix?

8 A. It became a temporary fix at year end 2000.

9 Q. For how long? Do you remember?

03:12 10 A. Forty-five days.

11 Q. Did that solve the problem?

12 A. No. It just allowed us to get beyond the financial  
13 reporting of year end, basically just forestalled having to  
14 deal with it at year end 2000 and push the issue into 2001.

03:12 15 Q. Okay.

16 MR. HUESTON: And, then, just briefly, if you can put  
17 1371 back up, please, at page 728. There it is.

18 BY MR. HUESTON:

19 Q. And there's an entry there, Number 3, on "45 day merger."

03:13 20 It states, "Protection from impairment at year end."

21 A. Yes.

22 Q. Is that what you were just referring to?

23 A. Yes. We agreed to -- LJM agreed to go ahead and do that  
24 just to help Enron get by year end without having to take this  
03:13 25 loss.

1 already ripped them off on RADR, that you had already ripped  
2 them off on Chewco, and that you could rip them off if they  
3 approved LJM they wouldn't have approved it? Do you think  
02:26 4 that's kind of a fair assumption?

5 A. I think that's fair.

6 Q. And the way you did rip them off on this deal is from this  
7 transaction called Southampton, right?

8 A. Yes, sir.

02:26 9 Q. Okay.

10 MR. PETROCELLI: Let's go to our Southampton build,  
11 please, Slide 24.

12 A. Are we in the same section or a different binder now?  
13 Tab 24?

02:27 14 BY MR. PETROCELLI:

15 Q. Yes. Before -- I'm sorry, Mr. Fastow. Let me -- just bear  
16 with me. We're going to use the demonstrative.

17 A. Okay.

02:27 18 Q. Before I forget, this Rhythm Net transaction that was the  
19 incarnation of L -- of LJM1, Price Waterhouse issued an -- an  
20 opinion saying the transaction was fair, correct?

21 A. The original LJ1 -- LJM1 transaction?

22 Q. Yes.

23 A. That's my understanding.

02:27 24 Q. Okay.

25 THE COURT: We'll take a 15 minute break now.

1 MR. PETROCELLI: Yes, Judge.

2 A MARSHAL: All rise.

3 (Recess)

02:43 4 THE COURT: Be seated, please.

5 Mr. Petrocelli, you may continue.

6 MR. PETROCELLI: Thank you, your Honor.

7 BY MR. PETROCELLI:

02:44 8 Q. Please turn to Exhibit 21074 -- that's defense exhibit --  
9 in Tab 39.

10 This is a copy of your new employment agreement,  
11 correct?

12 A. As of August 1, 1998, yes.

02:44 13 Q. All right. Shortly before you made your LJM presentation,  
14 in the prior year you had just signed a new three year contract  
15 with Enron, right?

16 A. Yes. There was a -- there was an agreement predating this.  
17 I don't know the date.

02:44 18 Q. But then you signed a new contract on that date on August  
19 of 1998, right?

20 A. Or as effective of that date, yes.

21 MR. PETROCELLI: Judge, can I move this into evidence,  
22 please?

23 THE COURT: All right. It's admitted.

02:44 24 (Defendant's Exhibit Number 21074 was admitted.)

25 MR. PETROCELLI: Thank you.

1    Februaries -- or February 28th's left in the term, there's  
2    four. And that takes you to four times 2.3. That's over  
3    \$9 million.

04:15

4                    You said a company that you believed to be in a  
5    death spiral, that you had fraudulently induced to sign this  
6    contract, should pay you almost \$10 million, right?

7    A. Yes, sir.

04:15

8    Q. Were you remorseful? Were you remorseful when you asked  
9    for almost \$10 million with the company in the middle of a  
10   death spiral? Did you have remorse then?

11   A. May I -- may I answer the question?

04:16

12                    I have a lot of remorse now. At this point in  
13   time when I wrote the letter, I had not come to grips with what  
14   I had done; and, no, I was not remorseful when I wrote this  
15   letter.

16   Q. Now, you've said -- you said yesterday that LJM, both 1 and  
17   2 -- LJM wasn't an illegal company, right? You said certain  
18   things it did were -- were wrong; but LJM1 and LJM2, you agree,  
19   were valid structures, right?

04:16

20   A. As I've thought about them, I believe that to be the case,  
21   yes.

22   Q. And would you agree that you -- that they qualified as  
23   independent third parties in the eyes of accounting law?

04:17

24   A. Well, I'm not qualified to make that, but I believe that to  
25   be the case.

1 A. Bear hug.

09:03:04

2 Q. Well, you mean -- in fairness, being mainly a civil  
3 lawyer, I've handled a lot of breach of guaranty cases,  
4 but I have never heard of a breach of a bear hug case.

5 Are you saying that a bear hug is an  
6 actual binding, obligatory, extant guaranty? Is that what  
7 you're saying?

09:03:25

8 A. As far as a legal document? No. We had two ways of  
9 doing business: We had the big stack of nice legal  
10 documents that you referred to earlier that were prepared  
11 by all the attorneys and reviewed by attorneys and  
12 accountants, et cetera.

09:03:36

13 And then in some cases, not in every case,  
14 we had oral side agreements --

15 Q. Let's stick with barges.

16 A. -- to make the deals work. And that's what -- the  
17 oral side agreements are what I'm referring to is about a  
18 bear hug, and they're not part of the binding legal  
19 documents that are prepared by attorneys.

09:03:48

20 Q. And you would agree that you can't go into court and  
21 sue on a bear hug; right?

22 A. I did not think that I would ever go to court and sue  
23 on a bear hug.

09:04:01

24 Q. And you would agree that you had no legal ability to  
25 enforce a bear hug; right?



1 testimony, how the jury may perceive it. Fair statement?

2 A. Yes. But I'm here to tell the truth regardless --

3 Q. Okay. We've heard that. We've heard that,

10:41:32 4 Mr. Fastow. Let's move on, okay?

5 By the way, when you were interviewed by  
6 lawyers at Enron in connection with matters that took place

7 in the fall of 2001, when Enron began to encounter

8 difficulties, you were specifically questioned about

10:41:57 9 whether there were any arrangements, or understandings, or

10 conversations, about some of these projects, including

11 Cuiaba; right?

12 A. Do you mean the Vinson & Elkins --

13 Q. Yes.

10:42:05 14 A. -- interview?

15 Q. Yes. You were interviewed by the head of the  
16 litigation department there?

17 A. Mr. Dilg and Mr. Hendricks.

18 Q. Was Mr. Dilg was the chairman or managing partner of  
10:42:15 19 the firm, and Mr. Hendricks was in charge of litigation  
20 for a very, very prominent law firm; right?

21 A. I didn't know what their titles were; but, yes, they  
22 are the senior executives, I believe.

23 Q. And you told them, sir, that there were no such  
10:42:29 24 understandings and there were no such agreements of any  
25 kind.

1 Do you recall that?

10:42:38 2 **A.** I don't recall specifically saying that. I could  
3 look at the letter, but I will say that I lied in that  
4 interview and I misled them.

5 **Q.** Pursuant to its contractual remarketing agreement  
6 that Enron undertook, it did, in fact, after the interest  
7 was acquired -- or sold to LJMI, it did, in fact, attempt  
8 to identify buyers of the interest; right?

10:43:04 9 **A.** I believe so, but I'm not sure.

10 **Q.** Okay. Well, let's take a look at Defense  
11 Exhibit 7669, Tab 516.

12 **A.** I'm sorry. Tab --

13 **Q.** -- 7669.

10:43:20 14 Excuse me. Defense Exhibit 7669, Tab 516,  
15 May 10th, 2000, LJM investment summary, signed by  
16 yourself.

17 **A.** Okay.

18 **Q.** Do you see that, Mr. Fastow?

10:43:30 19 **A.** Yes.

20 MR. PETROCELLI: May I move it into evidence,  
21 Your Honor?

22 THE COURT: All right. It's admitted.  
23 (Defendants' Exhibit Number 7669 was admitted)

10:43:37 24 MR. PETROCELLI: Thank you.

25 Can you please project that.

1 citation. Can I just have the pages, please?

2 MR. PETROCELLI: Oh, sure.

3 MR. HUESTON: Thank you.

01:40

4 (Sotto voce discussion at counsel table)

5 BY MR. PETROCELLI:

01:40

6 Q. Now, after having read through those pages, does that  
7 refresh your recollection at all about the events that  
8 transpired in December of '99 concerning LJM having been  
9 approached and what it did in response to that approach about  
10 these barges?

11 A. No, sir. They're largely contradictory to my recollection  
12 of events.

01:40

13 Q. Isn't it true, sir, that, like all these deals, whenever  
14 there's a proposal, you actually had people study it, evaluate  
15 the risks and, if it was too risky and it wasn't financially  
16 worth it, you passed on it, correct?

17 A. I can't say that -- that in every event; but, yes, that was  
18 the regular course of business, to have people evaluate it.

01:41

19 MR. PETROCELLI: Can we take a look at Defense  
20 Exhibit 18576 in Tab 741A?

21 BY MR. PETROCELLI:

22 Q. I guess you're out of binders, but let me find it for you.

23 Here you go. Tab 741A.

01:41

24 Now, after these barges -- or the interest in  
25 these three barges were sold to Merrill Lynch, then you came

Petrocelli cross of Fastow

7196

1 going to make decisions about whether or not to invest in LJM2.

2 "And I told Mr. Skilling that, you know, it's in  
3 everyone's interest, LJM's interest and Enron's interest, if  
01:49 4 LJM has more money, has more equity, because it could then do  
5 more of these deals.

6 "I said, 'But if any investors who haven't made  
7 up their mind yet see that LJM2 is buying Nigerian power  
8 barges, you know, they're going to say, 'Hold on, no way, I'm  
01:50 9 not investing in this.' So, you know, that would just -- I  
10 told him it would scare them away. And I said, 'That's in  
11 neither of our interest.'

12 "And then what was discussed next, after you made  
13 that point?

01:50 14 "He understood that; and, you know, we discussed,  
15 you know, what to do. And I said we would try to work with a  
16 couple of banks to see if we could get a bank to stand in and  
17 warehouse the deal.

18 "I told him -- I said, 'Hey, look, in six months  
01:50 19 LJM will, you know, buy these assets, because I'll be done  
20 raising my money at LJM2.' And --

21 "And why --

22 "'And -- but, you know, I can't do it now. It  
23 would be crazy to do it now.'

01:50 24 "Why did you express to him that LJM2 would be  
25 willing in six months to do that deal?

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Petrocelli cross of Fastow

7197

1 "Well, because he had just given me the bear hug,  
2 the guarantee. So, I knew I wasn't worried about the risk of  
3 loss on the deal. I was worried about the optics, how it would  
01:51 4 appear to the investors. That was my concern and the reason I  
5 wouldn't do it in December of 1999.

6 "Question: Because you were trying to get some  
7 additional investors at that time?

8 "Answer: That's right. And this just would  
01:51 9 have -- you know, Nigerian power barges. This would have --  
10 they would have walked away, I thought.

11 "Okay. And were you, then, after that meeting,  
12 asked to contact the bank to see if a bank would take these  
13 barges off Enron's hands?

01:51 14 "Well, at that point, I -- I don't know if anyone  
15 asked me. I told Mr. Skilling that I would talk to a couple of  
16 banks. And I talked to Mr. McMahon about it again, and we  
17 discussed the strategy of who to call."

18 Okay. That's the end.

01:51 19 Now, what you're saying there is that you told  
20 Mr. Skilling you did not want to do the barge transaction  
21 because you thought it would scare away your investors if you  
22 put it in an investment for -- for the -- for these Nigerian  
23 barges, right?

01:52 24 A. For the new potential investors that hadn't closed yet.

25 Q. Okay.

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1 conversation that weeks later you would end up with a  
2 transaction with Merrill Lynch that happened to be exactly for  
3 six months, correct?

01:53

4 **A.** I would not -- I did not know that we would be able to  
5 accomplish that by year end.

6 **Q.** Well, I saw from your testimony that you said under oath  
7 that you told Mr. Skilling you would buy -- you might be  
8 interested in buying the barges in six months. Did you see  
9 that up there?

01:54

10 **A.** Yes.

11 **Q.** So, that must have been a coincidence, that you happened to  
12 pick in your testimony six months and it turns out the Merrill  
13 Lynch deal is for six months. Is that a coincidence, another  
14 coincidence?

01:54

15 **A.** No, sir. That was -- that was intentionally done that way.

16 **Q.** And it's fair to say that you did not report back to  
17 Mr. Skilling that, "Hey, I got a deal done with Merrill Lynch.  
18 It happens to be for six months. I'll take that bear hug back  
19 at the end of the six months." You didn't have that  
20 conversation, correct?

01:54

21 **A.** No. I think it was reported that we completed the  
22 transaction, probably in one of our management committee  
23 meetings.

01:54

24 **Q.** But you certainly didn't have the conversation I just  
25 described, right?

1 this, are doing a good job of evaluating the risks involved  
2 with this project so that LJM does not get hurt, correct?

3 **A.** Their job was to evaluate the risks, yes.

01:57

4 **Q.** Okay. Turn to Defense Exhibit 18576.

5 **MR. MARROSO:** You just did that.

6 **BY MR. PETROCELLI:**

7 **Q.** Oh, I just did that, I'm told. Okay.

8 Let me show you a copy of the contract that was  
9 entered into. That's Government Exhibit 1184, and I believe  
10 this is in evidence.

01:57

11 **MR. PETROCELLI:** What tab is that, David?

12 **MR. MARROSO:** 715A.

13 **MR. PETROCELLI:** Seven what?

01:57

14 **MR. MARROSO:** 715A.

15 **MR. PETROCELLI:** 715?

16 **MR. MARROSO:** Different binder.

17 **MR. PETROCELLI:** I do agree, Judge, we have too many  
18 binders, way too many binders.

01:58

19 **BY MR. PETROCELLI:**

20 **Q.** Okay. Do you have that in front of you, 715?

21 **A.** Just a moment.

22 **Q.** There it is.

23 **A.** Yes, sir.

01:58

24 **Q.** Okay. Now, this is the contract pursuant to which you  
25 acquired the interest in the barges, correct?

1 A. Without reviewing it, I'll say, yes.

2 Q. Okay. Now, is it your testimony to the jury that the only  
3 reason you acquired these barges in June of 1999 was because of  
01:59 4 a conversation you had six months earlier with Jeff Skilling in  
5 which he gave you a bear hug that you declined to accept at  
6 that time? Is that the only reason that you acquired the  
7 interest in these three barges in June of 1999?

8 A. No. But I -- I believe that I would not have acquired the  
01:59 9 barges without believing I had that bear hug.

10 Q. Now, isn't it true that the reason that you acquired these  
11 barges from Merrill Lynch is because you saw an opportunity to  
12 make some fast cash, correct?

13 A. That was one of the other reasons. There was -- yes, I  
01:59 14 believe that was the case.

15 Q. And the reason that you believed that you would be able to  
16 buy these and make some fast money is because you knew that  
17 there was a very strong possibility that there was a buyer  
18 waiting in the wings to purchase these barges, correct?

02:00 19 A. I had been told by senior management that they had buyers  
20 that were very interested, yes.

21 Q. And, so, you saw an opportunity to step in the middle and  
22 make a quick buck; buy it from Merrill, sell it to a third  
23 party that you had heard within Enron was standing in the  
02:00 24 wings, and you could cash in in the middle, just like you  
25 always do, correct?



1 A. There was an opportunity for me to earn money here, and I  
2 did.

02:00

3 Q. And, so, that was the reason, the opportunity to earn a  
4 fast buck over a short period of time, that you did this deal,  
5 not because of some rejected bear hug back in December,  
6 correct?

02:01

7 A. Sir, I said there was more than one reason; and that, in  
8 fact, is one of the reasons, the opportunity to make money with  
9 very little risk.

10 Q. Now, let's talk about what -- what was the source of your  
11 information in this period of time that enabled you to exploit  
12 an opportunity.

02:01

13 You said you were opportunistic. Do you remember  
14 that?

15 A. Yes, sir.

16 Q. Okay. So, first of all, you knew about Project Summer and  
17 the fact that -- that Project Summer was attempting to scoop up  
18 the barges to be sold to the shiek. You knew about that,  
19 correct?

02:01

20 A. I knew Project Summer existed. I do not recall knowing  
21 that the barges were included.

22 Q. But you had several meetings on Project Summer, right?

02:01

23 You said this morning in your testimony you  
24 couldn't recall much about Project Summer; but, in fact, you  
25 had a number of discussions and meetings on Project Summer.

1 the company at that time or not.

2 Q. And Asia-Pacific --

3 MR. PETROCELLI: Thank you.

02:04 4 BY MR. PETROCELLI:

5 Q. Asia-Pacific/Africa/China is one of the divisions within  
6 international, known by the acronym APACHI, correct?

7 A. Yes.

02:05 8 Q. And here's a report on the fact that the international  
9 department has finally concluded very lengthy discussions to  
10 finalize the power purchase agreement and the letter of credit,  
11 which are two critical documents when you're entering into a  
12 transaction like this, true?

13 A. I believe so, yes.

02:05 14 Q. And you knew that and you knew that all the pieces were in  
15 place and you knew that with those pieces in place -- the  
16 letter of credit, the power purchase agreement -- that it  
17 wouldn't be that difficult and would not take too much time to  
18 get these barges sold if you acquired them, right? You knew  
02:05 19 that from listening to that discussion, correct?

20 A. I don't recall this discussion. I do recall thinking  
21 that -- or knowing that Enron was in active discussions with  
22 potential buyers for these barges.

23 Q. Can we take a look at --

02:06 24 MR. PETROCELLI: David, where's -- what page is this  
25 right here?

1 What page is the --

2 MR. MARROSO: 5191.

3 MR. PETROCELLI: 51 -- Bates Number 5191.

02:07 4 Keep going.

5 5191. That's 5194. And what's the page --  
6 excuse me, 5195. I'm sorry.

7 There you go.

8 BY MR. PETROCELLI:

02:07 9 Q. The -- you heard this presentation and heard that there was  
10 strategic players who had approached Enron about buying into  
11 Enron's position in this project, including Shell, Texaco,  
12 Chevron, Marubeni, and including a company called AES. Do you  
13 see that?

02:07 14 A. Yes.

15 Q. And as it turned out, within two or three months of this  
16 meeting, all nine barges were purchased by AES, correct?

17 A. That's my understanding, yes.

18 Q. And, so, you bought them and you were able to immediately  
02:08 19 flip them to AES, correct?

20 A. I'm sorry. Bought them and --

21 Q. And were able to immediately sell them back -- sell them to  
22 AES --

23 A. Yes.

02:08 24 Q. -- right?

25 A. Enron arranged that -- arranged that sale; but, yes, LJM

1 then sold them on to -- its three barges on to AES.

2 Q. Now, let's look at your calendar. It's Government  
3 Exhibit 1700.

02:08

4 MR. PETROCELLI: Do we have the binder number for  
5 that?

6 MR. MARROSO: It may be at the bottom.

02:08

7 MR. PETROCELLI: Maybe you can find it. I think it's  
8 already in evidence. So, maybe we can just put it up on the  
9 screen.

10 Can I have page Number 000141?

11 BY MR. PETROCELLI:

02:09

12 Q. Now, this is June 21. This is the day before the board  
13 meeting. This is about eight days before you made the contract  
14 with Merrill Lynch.

15 MR. PETROCELLI: Can you -- can I see those entries?

16 BY MR. PETROCELLI:

17 Q. Now, you attended a meeting with Cliff Baxter, Rick Causey,  
18 Mark Frevert -- who is Joe H.? Do you know?

02:09

19 A. Well, I could only guess. That may be Joe Hirko. I don't  
20 know.

21 Q. Mark --

22 A. Joe --

23 Q. Metz is it, "Mark M."?

02:09

24 A. Mark Metz would be my guess. And Tom White.

25 Q. And Tom White. So, there you are, meeting on Project

02:15 1 a fraud by virtue of your decision to make a quick million  
2 bucks, or thereabouts, buy these barges on June 29 so that you  
3 could sell them shortly thereafter? Are you accusing  
4 Mr. Skilling of being involved in some kind of fraud with  
5 respect to that?

6 MR. HUESTON: Your Honor, I'm going to object. He can  
7 ask for what his testimony is without characterizations of  
8 crimes and accusations against the --

02:15 9 MR. PETROCELLI: He's had no problem talking about  
10 crimes for two days.

11 THE COURT: Let's rephrase the question.

12 MR. PETROCELLI: Okay.

13 BY MR. PETROCELLI:

02:15 14 Q. Are you saying that Mr. Skilling was involved in some  
15 criminal conduct with respect to your decision to cash in on  
16 this opportunity?

17 A. I'm certainly guilty of criminal conduct with respect to  
18 this transaction in December of 1999. I gave Merrill Lynch a  
02:15 19 guarantee that -- as CFO of Enron, that they would be taken out  
20 in six months with a predetermined rate of return.

21 I did that largely based upon my understanding  
22 that LJM2 would have a similar guarantee from Mr. Skilling,  
23 that it would be taken out in the future, if necessary, without  
02:16 24 a loss and its rate of return. So, I think that my -- my  
25 purchase by LJM of the barges in June of 2000, that I did

1 something inappropriate and fraudulent.

02:17

2 Q. Did you ever tell anybody in June of 2000 -- 2000 that you  
3 were relying on some kind of conversation with Mr. Skilling in  
4 your decision to buy these barges from Merrill lunch?

5 MR. HUESTON: Objection, this is all asked and  
6 answered, your Honor.

7 MR. PETROCELLI: I don't think I asked this question.

8 THE COURT: Overruled.

02:17

9 BY MR. PETROCELLI:

10 Q. Did you tell anybody that you were relying on a  
11 conversation six, seven months earlier? Did you tell that to  
12 anybody?

13 A. In June?

02:17

14 Q. Yeah.

15 A. I don't recall having subsequent conversation --  
16 specific -- I don't have specific recollections of subsequent  
17 conversations after the initial assurances from Mr. Skilling.

02:17

18 Q. Well, did you -- I'm not asking about subsequent  
19 conversations with Mr. Skilling, because I already asked you.

20 A. Oh.

21 Q. I'm saying did you tell anybody, anybody?

22 A. Did I tell anyone?

02:17

23 Q. Yeah, "The reason I'm buying this is because back in  
24 December Jeff Skilling said something to me"?

25 A. I don't know. I don't recall.

1 Q. I forgot to cover one small area with you. I'm finished  
2 with barges now. Okay? And we're going to move on to a  
3 different topic.

02:18

4 Before I do that, on this -- back to Cuiaba for a  
5 second. On the issue of disclosure regarding the -- just to  
6 remind the jury, LJM2 sold back its interest in the Cuiaba  
7 project sometime in early 2001, correct? Or negotiated such a  
8 transaction, right?

02:18

9 A. LJM and Enron initially negotiated a repurchase of Cuiaba,  
10 Enron repurchasing from LJM in early 2001. The transaction  
11 didn't actually take place until later in 2001, I believe  
12 August.

02:18

13 Q. Thank you. And you gave some testimony about one of the  
14 concerns in doing the transaction sooner than later was related  
15 to disclosure, right?

16 A. Yes, sir.

02:19

17 Q. And if the transaction occurred after you sold your  
18 interest in LJM1 and 2 to Mr. Kopper, then the disclosure issue  
19 would go away, right?

20 A. I -- my understanding was that would -- that would help, at  
21 least part of the disclosure issue would go away. I'm not sure  
22 if it made all of the disclosure issue go away.

02:19

23 Q. Now, Mr. Fastow, just to be clear on this, this issue of  
24 the disclosure, this was vetted by lawyers at Enron and others,  
25 including a lawyer named Jordan Mintz, right?

1 Tab 3?

2 A. Tab 3?

3 Q. Yeah. We got a --

02:21

4 A. I think I need a new book.

5 Q. I'm going to have David handle the tabs. I can't see well.  
6 The numbers are too small.

7 MR. MARROSO: Which one?

8 MR. PETROCELLI: Tab 3, Defense Exhibit 7322.

02:21

9 BY MR. PETROCELLI:

10 Q. I think that's my highlighted version --

11 A. Yes.

12 Q. -- but that's okay.

13 And you met with these -- these accountants to  
14 discuss this issue, correct?

02:22

15 A. I primarily met with Enron accountants.

16 Q. Okay.

17 MR. PETROCELLI: And, your Honor, I'd like to move  
18 into evidence this exhibit, please, Defense Exhibit 7322.

02:22

19 THE COURT: It's admitted.

20 (Defendant's Exhibit Number 7322 was admitted.)

21 MR. PETROCELLI: Thank you.

22 Can we put it up?

23 MR. HUESTON: Your Honor, we would object. This is an  
24 Arthur Andersen document. There's no foundation for this.

02:22

25 It's not pursuant to any stipulation.



1 MR. PETROCELLI: Well, I think we have a stipulation  
2 on authenticity with respect to Arthur Andersen documents.

02:22

3 MR. HUESTON: Well, we have not stipulated to these  
4 coming in without the proper --

02:22

5 MR. PETROCELLI: Well, these are our business records.  
6 But beyond business records, your Honor, these come in for the  
7 non hearsay purpose of showing the information provided, the  
8 work performed, and the advice given by the accountants to  
9 Enron with respect to LJM1 and 2, which he was the general  
10 partner of.

11 MR. HUESTON: To which he's not a recipient. There's  
12 no foundation.

02:23

13 MR. PETROCELLI: Well, he met with the accountants  
14 and --

15 MR. HUESTON: Your Honor --

16 MR. PETROCELLI: It's not hearsay.

17 MR. MARROSO: -- he said he didn't meet --

18 MR. PETROCELLI: -- is the short answer.

02:23

19 THE COURT: What's it intended to show?

20 MR. PETROCELLI: It's intended to show the work that  
21 Enron did to ensure the propriety of the partnership and the  
22 fund with which it was doing business.

02:23

23 THE COURT: So, you're not offering it for the truth  
24 of the matter stated --

25 MR. PETROCELLI: Exactly.

1 THE COURT: -- just that it was available to Enron to  
2 evaluate?

3 MR. PETROCELLI: Exactly.

02:23

4 THE COURT: All right. It's --

5 MR. HUESTON: Your Honor, may I have a brief response?

6 THE COURT: Sure.

7 MR. HUESTON: Mr. Fastow has no connection with this  
8 document or process by his last answer. And, so --

02:23

9 THE COURT: Well, then I might sustain objections to  
10 questions.

11 MR. HUESTON: All right.

12 THE COURT: We're dealing now with the document.

13 MR. PETROCELLI: Okay.

02:23

14 BY MR. PETROCELLI:

15 Q. Can you --

16 MR. HUESTON: Your Honor, one more thing before he  
17 proceeds. I'd like some foundation that this even went to  
18 Enron. It says, "To the files of Arthur Andersen." I think  
19 this is highly -- potentially highly misleading to proceed into  
20 this document without further foundation.

02:23

21 MR. PETROCELLI: He testified that Arthur -- he was  
22 aware that Arthur Andersen made such a determination.

23 THE COURT: But he didn't testify that was it.

02:24

24 MR. PETROCELLI: Huh? Well, I'm going to -- the  
25 document -- if he has no information to contribute, then we can

1 move on.

2 THE COURT: All right.

3 MR. PETROCELLI: But the document has -- can I turn to  
02:24 4 the conclusion?

5 THE COURT: No. You need to establish some predicate  
6 that this is the document that it purports to be, that you say  
7 it is.

8 MR. PETROCELLI: No. We have a stipulation on that,  
02:24 9 your Honor.

10 MR. HUESTON: We do not have --

11 MR. PETROCELLI: We have a stipulation --

12 MR. HUESTON: -- a stipulation on that.

13 MR. PETROCELLI: -- on authenticity --

02:24 14 THE COURT: The issue is is this the document that  
15 Enron received from Arthur Andersen. Mr. Hueston's concern is  
16 that there's no address -- there's no indication that Arthur  
17 Andersen sent it to Enron so that someone could rely upon it,  
18 which you argue is the ostensible basis for admitting it.

02:24 19 MR. PETROCELLI: All right.

20 BY MR. PETROCELLI:

21 Q. Let me ask you a series of questions to address the judge's  
22 statements to me, Mr. Fastow.

23 As part of your being given permission to go  
02:25 24 forward with LJM1 and LJM2, you knew that Enron's accountants  
25 had to get involved and take a look at the structures and make

1 determinations as to whether they satisfied the accounting  
2 rules, correct?

3 **A.** Yes.

02:25

4 **Q.** And you knew that that was being done not only by Enron's  
5 internal accountants but also by its external accountants,  
6 Arthur Andersen & Company, correct?

7 **A.** For LJM1 I knew it because -- only because Enron  
8 accountants told me so. I don't recall meeting with Arthur

02:25

9 Andersen accountants regarding LJM1.

10 **Q.** And there were times when you learned that Arthur Andersen  
11 was demanding more rigorous control procedures and governance  
12 procedures; and that was brought to your attention, correct?

13 **A.** I'm not sure -- I'm not sure if that's the case with LJM1.

02:26

14 I have a better recollection with respect to LJM2 on that  
15 matter.

16 **Q.** Okay. And with respect to LJM2, you recall that they were  
17 very intently involved, Arthur Andersen that was, in making  
18 recommendations about how the fund was controlled, how it was  
19 governed, and issues of that sort, right?

02:26

20 **A.** Yes. I can't -- I can't opine on your characterization of  
21 intent --

22 **Q.** Right.

23 **A.** -- but I know they were involved because I had at least one  
24 or two meetings with a partner of Arthur Andersen, regarding  
25 LJM2.

02:26

1 Q. And one of the issues concerned, for example, their wanting  
2 to make sure that the -- the independence of LJM2 satisfied  
3 accounting requirements, correct?

02:26

4 A. Yes.

5 Q. And one of the issues, for example, that arose was whether  
6 or not the limited partners of LJM2 could remove you as general  
7 partner without any cause at all?

02:27

8 A. With respect to LJM2, I have a recollection on that. I  
9 cannot, without reviewing documents, recall if that were the  
10 case in LJM1.

11 Q. Okay. And you also knew that Arthur Andersen, at the  
12 request of Enron, was asked to take a look at the related party  
13 transactions that were conducted between Enron and LJM

02:27

14 and in -- and perform an audit and provide an opinion with  
15 respect to their audit of those related party transactions,  
16 correct?

17 A. No, I don't know that. I -- I assume that, but I don't  
18 recall anyone ever telling me that was specifically happening.

02:27

19 Q. Now, this document in front of you is about LJM1, correct?

20 THE COURT: What's the number --

21 A. The subject line is LJM1.

22 Q. I was going to take you --

23 MR. PETROCELLI: Judge, the defense exhibit number is  
24 7322.

02:28

25 THE COURT: All right.

1 MR. PETROCELLI: And I was going to show him --

2 MR. HUESTON: At this time, your Honor --

02:28

3 MR. PETROCELLI: -- three such documents based on the  
4 testimony that he just gave, your Honor.

5 MR. HUESTON: All right. At this time I think the  
6 testimony has established that Mr. Fastow has no familiarity  
7 whatsoever with consultations with Andersen on LJM1; and that's  
8 just what this document concerns, LJM1.

02:28

9 MR. PETROCELLI: I didn't -- I didn't hear it that  
10 way, Judge.

11 THE COURT: I did. I sustain the objection.

12 BY MR. PETROCELLI:

13 Q. Okay. Turn to Defense Exhibit 79 -- 7590, please.

02:28

14 A. Tab, please?

15 MR. PETROCELLI: He certainly was a bit stronger on  
16 LJM2 than he was on LJM1.

17 THE COURT: I agree.

18 MR. PETROCELLI: Okay.

02:28

19 THE COURT: But the objection went to 1.

20 MR. PETROCELLI: It did. Okay.

21 BY MR. PETROCELLI:

22 Q. Can you turn to Defense Exhibit 7590, which is an e-mail  
23 thread that involves you, sir?

02:29

24 Do you have that in front of you? It's Tab 5.

25 A. Yes, I do.

1 Q. Okay.

2 MR. PETROCELLI: I'd move this into evidence, your  
3 Honor.

02:29 4 THE COURT: It's admitted.

5 (Defendant's Exhibit Number 7590 was admitted.)

6 MR. PETROCELLI: Thank you.

7 Can we see this, please? Come back down to the  
8 earlier part of the e-mail.

02:29 9 Can we blow it up a little bit, Pam? We can't  
10 really see it back here.

11 BY MR. PETROCELLI:

12 Q. Now, this is an e-mail chain that ends up with you  
13 receiving and responding to, that involves this issue of Arthur  
02:29 14 Andersen taking a look with respect to LJM2 on these governance  
15 procedures, to make sure that it is following the rules,  
16 correct?

17 A. Oh, I'm sorry. I was on the first page when you asked that  
18 question, Mr. Petrocelli.

02:30 19 Q. Okay. I'm just trying to set --

20 A. I'm sorry. I was reading this --

21 Q. Fair enough.

22 A. -- while you spoke. I apologize for not listening.

23 Q. This is an -- this is an e-mail chain about Arthur  
02:30 24 Andersen's advice concerning the governance issues regarding  
25 LJM2. Is that right?

1 A. That appears to be the case, yes.

2 Q. Okay. And you -- and your -- just to educate the jury on  
3 this a bit, your fund, LJM2, given how -- how much money was  
02:30 4 involved and how sophisticated the investors were, had an  
5 advisory committee, right?

6 A. It had an advisory committee -- it did have an advisory  
7 committee, but it was -- that was driven for a different reason  
8 than I think I just heard you articulate.

02:30 9 Q. The -- one of the procedures for removing you would be that  
10 if the advisory -- advisory committee met and decided that you  
11 were not looking out for the investors' interests, then they  
12 could put a vote to the limited partners. If the limited  
13 partners voted by a super majority, you could be removed,  
02:30 14 right?

15 A. I -- the answer is "right." I -- yes. I think more simply  
16 stated is -- the way I viewed it is they were allowed to remove  
17 me as GP, without cause.

18 Q. Right. And what Arthur Andersen said, to improve the  
02:31 19 propriety of the -- of the governance to make it more  
20 independent, we -- they wanted to make it easier -- they wanted  
21 to make it easier for the limited partners of LJM2 to remove  
22 you, right?

23 A. I believe that was the case, yes.

02:31 24 Q. And that was communicated to you; and you objected,  
25 correct?



1 A. I believe that was the case.

2 Q. Okay. Now, let's take a look at what you said. And that's  
3 the part at the very top.

02:31

4 That's an e-mail from you to Rick Causey and  
5 others, dated March 26, 2000.

6 "Rick, I was surprised to receive the following  
7 e-mail and consider a discussion of this nature to be a  
8 complete retrade by Arthur Andersen. It is totally

02:32

9 unacceptable and is not a proposal that I endorse. When we  
10 structured LJM2, we had this discussion with Arthur Andersen.  
11 As a result of those discussions, I gave all limited partners  
12 access to information regarding transactions prior to execution  
13 and the right to remove the GP without cause."

02:32

14 That's you, right?

15 A. Yes.

16 Q. "I am stunned that after Arthur Andersen caused me to give  
17 these things away, they come back and ask for more. It is  
18 incorrect accounting treatment to view LJM as an SPV; but even  
19 if Arthur Andersen wants to do so incorrectly, why is it  
20 subject to a much higher standard than any other SPV? I  
21 believe this approach by Arthur Andersen is unprofessional at  
22 best. I will not agree to the terms outlined in the proposal  
23 and look forward to discussing this with you further.

02:32

24 "Given the circumstances, I wonder if it would be  
25 appropriate for me to attend the meeting in Chicago. Quite

1 frankly, I don't believe it is possible to have a productive  
2 conversation with an accounting firm that ignores accounting  
3 rules and literature in favor of their litigation attorneys'  
4 judgment."

02:33

5 Okay. Now, you were -- Arthur Andersen, on  
6 behalf of Enron, was saying that, "We want to improve the  
7 independence of this structure, of this partnership."

8 And you were saying, "No, it's not fair. I don't  
9 want you to do so." Isn't that true?

02:33

10 A. I think I said that in pretty strong language there, yes.

11 Q. And you ended up -- and you expressed accounting opinions  
12 where you thought your accounting views were superior to Arthur  
13 Andersen's accounting views, right?

02:33

14 A. Yes. I have no basis for having an accounting view -- an  
15 accounting view, especially with respect to Arthur Andersen  
16 experts.

17 Q. Excuse me?

18 A. I don't think -- yes, I did. And I don't think I had -- I  
19 should have had any basis to express views like that. I'm not  
20 an accountant, and they were the experts.

02:34

21 Q. And -- and when you said you'll attend a meeting in  
22 Chicago, if necessary, Arthur Andersen had a -- sort of a high  
23 level think -- think tank group in Chicago called a

02:34

24 Professional Standards Group and -- is that what you're  
25 referring to?

02:34 1 A. I'm not exactly sure what this is referring to. I think  
2 they had invited -- Mr. Causey had invited me to come along to  
3 a dinner in Chicago with a number of people from their sort of  
4 high-level structured-finance new-issues Task Force. I'm not  
5 sure what it was called.

02:34 6 Q. You ultimately lost this battle; and they -- and you agreed  
7 to -- you agreed to change the governance documents in order to  
8 make it easier for the limited partners of LJM2 to remove you,  
9 right?

10 A. I believe that was the case.

11 Q. Okay.

02:35 12 A. In any event, it would have had to have been amended to  
13 meet Arthur Andersen's standards, whatever they deemed those to  
14 be, in order to be approved.

15 Q. Okay.

16 MR. PETROCELLI: I would like to offer Government  
17 Exhibit 2655, which is the Arthur Andersen opinion on  
18 independence of LJM2 and --

02:35 19 THE COURT: Just a minute.

20 MR. MARROSO: Tab 7.

21 MR. PETROCELLI: That's Tab 7.

22 THE COURT: What's the number again? 2655?

23 MR. PETROCELLI: Yeah --

02:35 24 MR. HUESTON: Your Honor --

25 MR. PETROCELLI: -- 2655.

1 BY MR. PETROCELLI:

2 Q. And here is a -- and you would agree that they're one of  
3 the most prominent accounting firms in the country, right?

02:40

4 A. They're in the big four or big five, yes.

5 Q. And you see that they indicated that your financial  
6 statements were appropriate, right?

7 A. Yes, sir.

8 Q. Okay.

02:40

9 MR. PETROCELLI: You can put that down.

10 BY MR. PETROCELLI:

11 Q. Let's take a look at one of the communications that you  
12 made to your investors. But before we do that, let's take a  
13 look at who some of your investors were in LJM2.

02:40

14 MR. PETROCELLI: Could I see slides --

15 THE COURT: Before we do that, let's take our  
16 afternoon break.

17 MR. PETROCELLI: Better idea, Judge. Thank you.

18 A MARSHAL: All rise.

02:40

19 THE COURT: Stand in recess till 3:00 o'clock.

20 (Recess)

21 (Jury present)

22 THE COURT: Please be seated. Mr. Petrocelli, you may  
23 conclude.

02:58

24 MR. PETROCELLI: Yes, sir. I owe you seven minutes,  
25 also.

1 BY MR. PETROCELLI:

02:59

2 Q. Let's see if we can conclude, Mr. Fastow. I want to couple  
3 of -- cover a couple of final areas with you. And if you're  
4 not the right person to ask some of these questions, you let me  
5 know; and we'll ask somebody else.

6 On the issue of the disclosures that Enron made  
7 with respect to all LJM1 and 2 transactions, did you get  
8 involved in that process?

02:59

9 A. I was involved to some extent, yes.

10 Q. Okay. And is it fair to say that Enron did make  
11 disclosures every single quarter and every single period in  
12 which there was an LJM1 and 2 related transaction?

13 A. I believe so, yes.

02:59

14 Q. Related party transaction. Excuse me.

15 A. That's what I thought you meant, yes.

16 Q. Okay. And in -- and, in fact, some of these disclosures  
17 were quite extensive, correct?

03:00

18 A. I -- yes, they were long. I don't know from a securities  
19 law standpoint how to judge that; but, yes, I thought they were  
20 extensive.

03:00

21 Q. And your name was specifically identified as -- as a person  
22 who was not only the CFO of Enron but a member of the related  
23 party. Your name appeared in some of the public filings,  
24 disclosing to the public and to the Securities & Exchange  
25 Commission your dual role, correct?

1 A. Yes. My recollection is that my name was put in the proxy  
2 in that regard.

03:00

3 Q. Okay. The proxy for the year 1999, which came out in the  
4 spring of 2000, right?

5 A. I'd have to look at it, but I think that's right.

6 Q. And the proxy for the year 2000, which came out in 2001,  
7 right?

03:00

8 A. That would be consistent. I'd have to look just to confirm  
9 that, yes.

10 Q. Because Enron didn't make it throughout the entire year of  
11 2001 prior to bankruptcy, we don't have one for the year 2001,  
12 right?

13 A. I don't know.

03:01

14 Q. Well, let me -- I have a board here. I guess I need an  
15 easel. But let me see if I can at least show this. Then I'll  
16 put it down.

03:01

17 Now, you see that these are all of the -- the  
18 filings, public filings, that were made from 1999, the second  
19 quarter, which is when the first LJM related party transaction  
20 occurs. That's the Rhythms Net transaction, right?

21 Oh, we have it up on the screen. Great. I don't  
22 have to hold this board now.

03:02

23 These are -- these are the public filings that  
24 are required by law: second quarter, third quarter, and then  
25 you have the 10K for 1999 which also includes fourth quarter