

EXHIBIT M

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/28/2003

ANDREW S. FASTOW was interviewed pursuant to a signed Proffer Agreement over a period of time (12/18/2003, 12/19/2003, 12/22/2003, 12/23/2003, 01/04/2004, and 01/05/2004) in Brooklyn, New York and Dallas, Texas.

Investigation on 12/18/2003 at New York, New York and Dallas, Texas

File # 318C-HO-59147-302 Date dictated N/A
SA Omer J Meisel

by _____

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Continuation of FD-302 of Andrew S. Fastow, On 12/18/2003, Page 23

FASTOW was shown the Benefits to Enron Summary for the Bargeco deal, Bates number MK009302. ML believed that they would be taken out of the deal because FASTOW gave ML verbal assurances that they would be taken out in six (6) months. FASTOW read the Description of the Transaction "Enron sold barges to Merrill Lynch (ML) in December of 1999, promising that Merrill would be taken out by sale to another investor by June, 2000. The project could not be sold by June, so without LJM2's purchase Enron would have had to strain the ML/Enron relationship or repurchase the assets and reverse earnings and funds flow on the original transaction." FASTOW advised that this description of the deal is the reason why LJM2 got involved. FASTOW thinks that there was every intention that Enron would find a buyer for ML.

FASTOW does not recall using the word "promise" in his telephone call to ML but he cannot say that for sure. FASTOW thought that he was being clever in his telephone conversation with ML by using euphemisms in order to convey to ML that he was promising to take ML out of the Barges. FASTOW stated to ML that he (FASTOW) had an extremely high level of confidence that ML would not lose money in the Barge deal. FASTOW talked about how he (FASTOW) was the GP at LJM and that LJM was interested in purchasing an interest in the Barges, but not at the end of the quarter 1999.

In general, it was not uncommon for an Enron business unit to ask FASTOW to call a bank to help them close a deal.

EXHIBIT N

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 01/06/2005

Andrew S. Fastow,

;

pursuant to a plea agreement

was interviewed,

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Paragraph 2 of the letter to McMahon reads:

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,

Those sentences were omitted from the letter to Fastow because it discloses an accounting problem. There can be repurchase guarantees but they have to be at market price and not at a stated yield. However, this statement was what Fastow conveyed to ML on the call.

Fastow believed LJM2 would be the buyer and it would never get to the point where Enron would have to re-purchase from ML. Fastow did not consider whether AA would learn what Fastow said in the call. Fastow wasn't thinking that he could make an oral guarantee. Fastow thought LJM2 was technically a third party and so their purchase would not cause accounting problems. AA would have wanted to know about the call and that it would have affected the true sale treatment.

Fastow does not recall whether LJM2 had closed on the ML partnership group's investment before the call nor does he recall who from ML participated in their investment group. Bayly did not mention any concern about LJM2 buying BargeCo. LJM2's presentation contemplated participating in warehousing deals.

Fastow was shown the benefits to Enron summary for BargeCo bearing bates stamp DP036766 and MK9302. The summary describes BargeCo as follows:

"Enron sold barges to Merrill Lynch (ML) in December 1999, promising that Merrill would be taken out by sale to another investor by June 2000. The project could not be sold by June, so without LJM 2's purchase, Enron would have had to strain the ML/Enron relationship or repurchase the assets and reverse earnings and funds flow on the original transaction."

The Benefits to Enron Summary bearing Bates stamp DB44150 contains a similar statement in subparagraph F as follows:

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Merrill Lynch purchased BargeCo from Enron with the understanding that they will be taken out within six months. LJM II purchased Merrill's interest preserving the relationship and as an alternative to Enron buying it back and reversing \$12 million in earnings and \$28 million of funds flow taken as the original sale to Merrill Lynch in 1999. Direct earnings of \$2 million were interest earned on seller financings.

Fastow agreed that these written descriptions are a fair description of the BargeCo deal. It is consistent for the people listening on the telephone to believe that Enron had made that promise. Fastow does not disagree with the word promise used in the summary.

Yaeger was responsible for creating these Benefits to Enron summaries for LJM2 and any presentation Fastow would have to make to Skilling. The summary sheets and the benefit sheets were created from LJM2 dash sheets.

In the call, Fastow spoke as the Enron CFO and referred to LJM2 as a third person when saying that he was "highly confident that ML would be out by June 30."

Fastow cannot recall the phrase "bridge" being used, but suspects it probably was because everyone knew they were talking about a six-month period.

Fastow does use the phrase, "I can't say guarantee." Its purpose is to convey the guarantee without using that word. He has used that phrase and has never had to explain what it meant. He cannot recall whether he used the phrase, "I can't say guarantee," in the ML call.

In the telephone call, Fastow didn't say Enron would buy the barges back and instead represented that a third party would. Fastow did say that "Enron will take necessary steps to make sure you are out of this by June 30, 2000." Therefore, it was reasonable for anyone listening to the call to think that it was Enron that was going to buy them out. Furthermore, Fastow was speaking as Enron's CFO when he made the statement.

The ML call was a "bear hug" conversation in which Fastow was trying to make ML warm and comfortable about the idea of owning the barges and that they would not be stuck with them.

318C-HO-59147

Continuation of FD-302 of Andrew Fastow, On 1/20/04-1/6/05 Page 42Taking Merrill Lynch out of BargeCo

Fastow was shown emails dated May 10, 2000, between Dan Boyle and Sean Long, with copies to Hughes, Glisan, and Schnapper. The email has the quote:

As we have discussed, should a strategic buyer not materialize by June 30, 2000, APACHI will have to take out ML and the investment in the barges will be placed on balance sheet. This will not only have income implications, but require a level of damage control with AA. As you know, ML's decision to purchase the equity was based solely on personal assurances by Enron's senior management to ML's vice chairman that the transaction would not go beyond June 30, 2000.

Fastow does not recall Hughes, Schnapper, or Glisan on the call, but they could have been. He does not recall people speaking about AA, but if they could not find a buyer, it would have to have been reversed.

Fastow was shown the Glisan email dated May 11, 2000, to Sean Long and others. The email states:

To be clear, ENE is obligated to get Merrill out of the deal on or before June 30. We have no ability to roll the structure.

Fastow had never seen the Email before but was not bothered that Glisan said Enron was obligated.

LJM2 did nothing to determine BargeCo's fair market value. LJM2 determined the purchase price by paying ML the price that ML paid plus an IRR. Nobody analyzed the market or did due diligence or even verified the barges existed.

Enron was the marketing agent, but could not make anyone buy at a specified time, price, or return. When Glisan stated, "We have no ability to roll the structure," he was saying that the structure that held the barges could not be extended.

Fastow was shown the Jim Hughes email to Glisan dated May 11, 2000, which states:

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Continuation of FD-302 of Andrew Fastow, On 1/20/04-1/6/05 Page 46

Fastow approved LJM2's warehousing of the deal and either he or Kopper could have negotiated the \$350,000 fee. Fastow knew this was not a huge deal but Enron had to be close to making its numbers and needed the deal to do so. Enron also wanted to improve its credibility with ML.

Fastow was shown the LJM2 Barge LLC Summary, Bates stamp LJM029375. The summary indicated that LJM2 had to hold the barges for seven months. The period was chosen, because then it got Enron over its year-end issues if the barges were not sold. An economic put was put into the deal between LJM2 and Enron, so it was structured to be painful to Enron if not sold within the requisite period.

Fastow was comfortable with Skilling's assurance that he would not be stuck with the Nigerian barges. He wanted the assurance from Skilling, because he could rely on it. Very few people at Enron trusted assurances from other units. The international asset unit had a reputation for not fulfilling promises after they received their bonuses. Skilling's group, ECT, and Rebecca Marks' international group always distrusted each other. Fastow was even more concerned that the international assets unit had no incentive to sell after LJM2 took the barges. When LJM2 agreed to take the barges, Jeff McMahon told Fastow he was certain the Barges would be sold. In fact, when the barges were finally sold, it was for a profit.

Causey understood the importance of the June 30 buy-out date, because his accountants worked on the deal. Everyone involved knew about the June 30 date and it was discussed at the weekly senior management group staff meetings. Ken Lay, Jeff Skilling, Causey, Rick Buy, Steve Kean, Jim Derrick, and all the business unit heads attended that meeting. Fastow cannot recall anyone ever asking why Enron was handling the sale of an asset that was owned by ML and later by LJM2. Part of this may have been because the sale from Enron to ML had a marketing agreement concerning the vehicle.

Kopper, Fastow, and Lynn on the Enron Global Finance Unit, worked on the deal and all knew about the June 30 date. Fastow can't recall if Jim Hughes or Barry Schnapper knew about the June 30 date, but believes that they did.

EXHIBIT O



U.S. Department of Justice

Enron Task Force

1400 New York Avenue
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April 5, 2004

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

Dear Counsel:

As referenced in the Government's Consolidated Response to Defendants' Pretrial Motions, and pursuant to the authority set forth at pages 84-85 of this Response, the Government hereby provides notice that the following witnesses may arguably possess exculpatory

04/05/04 MON 15:39 [TX/RX NO 8364]

information:

Kelly Boots	Attorney: Mitchell Lansden 1201 Louisiana, Suite 3300 Houston, Texas 77002
Eric Boyt	Attorney: Lawrence Rothenburg 1 Riverway, Suite 1920 Houston, TX 77056
Gary Carlin	(currently employed by Merrill Lynch) ¹
Kevin Cox	(currently employed by Merrill Lynch)
Mike DeBellis	(currently employed by Merrill Lynch)
Mark Devito	Attorney: Henry Putzle 565 Fifth Ave. NY, NY 10017
Bowen Diehl	Attorney: Fred Hafitz 500 Fifth Ave. 29th Floor New York NY 10110
Gary Dolan	(currently employed by Merrill Lynch)
Gerald Haugh	(currently employed by Merrill Lynch)
James A. Hughes	Attorney: David Krakoff Beveridge & Diamond 1350 I. St. NW, Suite 700 Washington DC 20530
Mark McAndrews	(currently employed by Merrill Lynch)
Jeff McMahan	Attorney: Bill Dolan Venable LLP 8010 Towers Crescent Dr. Suite 300

¹Counsel for Merril Lynch, Richard Weinberg (212/670-0313), may assist you with locating those witnesses identified as being employed by Merrill Lynch.

Vienna, VA 22182

Ace Roman Attorney: James Rolfe
2727 Routh St.
Dallas, TX 75201

Barry Schnapper Attorney: Don Lambright
440 Louisiana, Suite 800
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Scott Sefton Attorney: Christopher Robertson
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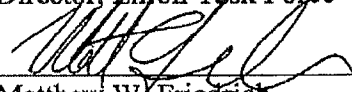
Kathy Zrike Attorney: Robert Romano
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101 Park Ave.
NY, NY10178

You are free to attempt to interview these witnesses, and/or call them to the stand during the trial. For the record, our position is that you are already aware of the identity, and potentially exculpatory nature of, all of these witnesses, but we provide them to you out of an abundance of caution. The fact that an individual's name appears on the foregoing list does not indicate that individual's status before the grand jury, nor does it indicate whether or not the individual is a co-conspirator with respect to the offenses charged in this indictment.

Very truly yours,

ANDREW WEISSMANN
Director, Enron Task Force

By:



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

EXHIBIT P



U.S. Department of Justice

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July 30, 2004

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

Dear Counsel:

The following summary is provided to you in compliance with the Court's Order of July 14th, 2004.

As you know, in April of 2004, the Enron Task Force provided you with the names of

certain witnesses who possessed exculpatory and even arguably exculpatory information, many of whom you have already interviewed or had access to their information, and all of whom you can subpoena to testify at trial.¹ As the Court noted, this summary may provide you with even more than is required to be disclosed pursuant to Brady.

The information that follows is not a substantially verbatim recitation of the witnesses' statements. While the information contained below may be similar to information contained within FBI form 302s, notes, and grand jury transcripts, it is intended only as a summary of information.

We note that many of the witness names provided to you in April 2004 were listed out of an abundance of caution. Indeed, some of the witnesses believed there was no agreement by Enron to take out Merrill Lynch ("Merrill") from the Nigerian barge deal (the "NBD") or a set rate of return simply because they were not present for inculpatory conversations. Other witnesses are unindicted conspirators who denied knowledge that could render them guilty.

Because this summary is not required to disclose inculpatory evidence, we have not set forth all of the information from these witnesses that inculpates any conspirator. The summary, for instance, does not include the instances in which the witnesses below later recanted exculpatory information or admitted lying to the government about their knowledge of the deal. Finally, we have not set forth all of the information that would impeach any statements below or statements by the witnesses themselves that are inconsistent with the information set forth below.

Kelly Boots

Boots made a telephone call to Furst at Merrill about the NBD. Boots told Furst that Enron needed a financial institution to put in some equity.

Boots participated in a call between Fastow and individuals at Merrill. On the call, Fastow gave his word that Merrill would be taken out by Enron, and he may have used the word promise but Boots does not recall for sure whether he did. Boots does not think that Fastow used the word guarantee. In Boots' mind, Merrill was still at risk in the NBD because it only had Fastow's word on the deal, which was not in writing. Boots' opinion is that if something is not in writing,

¹ Brady requires no more. See United States v. Pearson, 340 F.3d 459, 470 (7th Cir. 2003) (witness "was available to be called as a witness for the defense" so Brady was satisfied); United States v. Salerno, 868 F.2d 524, 542 (2d Cir. 1989) (Brady does not require government to provide grand jury transcript; government informed defense that it may want to interview the witness at issue); United States v. Hicks, 848 F.2d 1, 4 (1st Cir. 1988) (defense knew of and had access to witness); United States v. Grossman, 843 F.2d 78, 85 (2d Cir. 1988) (citing United States v. LeRoy, 687 F.2d 610, 619 (2d Cir. 1982)); United States v. Ringwalt, 213 F.Supp.2d 499, 518 (E.D. Pa. 2002), affirmed, 2003 WL 21356963 (3d Cir. 2003).

then it is not binding.

Eric Boyt

At his initial interview, Boyt said Merrill was serious about buying its investment in the NBD. Boyt was not aware of any sort of oral agreement or arrangement between Enron and Merrill.

Gary Carlin

Carlin thought the NBD was a risky deal in an emerging market. Carlin did not monitor the NBD, and suggested that as he understood the NBD if the barges sunk, Merrill would have borne the risk. Carlin did not think that the guarantee to take out Merrill was literal. Carlin did not think it was unusual for the NBD to be presented to the DMCC for approval.

Kevin Cox

At the DMCC meeting, Cox believed the Merrill representatives asked themselves what the NBD was and concluded that it was not a loan. There were assurances that Enron would use its best efforts to complete the original sale. Enron did not promise to do anything.

When asked about a handwritten notation by Merrill executive Zrike describing the NBD as a "relationship loan that looks like equity," Cox said he did not recall anyone saying that this was a loan that looks like equity.

Cox did not know what was negotiated as to a rate of return. He did recall that there was a forecast of a sales price that would have produced a return. Cox did not have an understanding that Merrill would be repaid its equity investment as well as the return on its equity within six months. At the time that the deal was presented, there were expectations of the ability to realize value within a six-month period.

Brown can be imprecise in his use of language.

Michael DeBellis

Debellis did not know anything about the Merrill-Enron transaction and Merrill-LJM transaction, including the duration of the investment, any agreement to take Merrill out of the deal, other potential buyers, or a guaranty.

Mark Devito

Furst phoned Devito to say that Enron had an equity opportunity, equity bridge need, regarding a Nigerian electricity barge. Enron was looking to see if Merrill would have an interest in purchasing that equity for \$7 million. Devito did not recall the term handshake, as referenced in a Merrill document, and recalls that Enron would assist with finding a third-party equity investor for the NBD. When asked about Bayly confirming with Enron a guaranty, as referenced in another Merrill document, he said he did not recall such a conversation.

Bowen Diehl

Diehl indicated that he was asked by someone whether he recalled Furst saying in 2000, words to the effect: they are not going to get us out of the barges, and that he might have replied affirmatively.

Vincent Dimassimo

Jencks material as to Dimassimo was provided to the defense in early June, 2004, as part of pre-trial discovery of government witnesses.

Gary Dolan

Dolan stated that he understood Enron was providing a moral undertaking to find a buyer for Merrill's interest in the NBD. Dolan stated that the agreement could not be in writing and that he believed it was an oral agreement that had no legal significance. Dolan had a sense that Enron would not give Merrill any assurances in writing and that Merrill would not ask Enron for such a request.

Dolan was asked about a handwritten Merrill document in which he wrote "Dan Bayly & Kevin Cox & Kathy Z [Zrike] & EVP [Executive Vice President] who promises we will be taken out w/in 6 mos." Dolan stated that the word "promises" refers to the assurances made by Enron regarding finding a buyer for Merrill's interest in the NBD. Dolan said that "EVP" refers to Executive Vice President at Enron. Dolan said that promise could mean that the conversation already happened, not that it was going to happen.

Dolan had a conversation with Brown in which Brown conveyed that he was concerned with the commercial risk Merrill was taking on the NBD. Brown wanted to ensure that the deal documents addressed the potential environmental risk associated with owning power plants and Merrill's liability issues.

Brown stated that the NBD was not his transaction and he was being stuck with

handling it because the transaction fit into the type of work his group handled. The NBD was initiated by Merrill's bankers in Texas. Brown also complained because his group was not earning any fees for handling the transaction and that the deal was being consummated close to the end of the year.

The NBD engagement letter was too specific and Dolan wanted the letter to be more general. As to a draft engagement letter in his files, Dolan made changes to some of the engagement letter terms related to the deal because Dolan did not believe that those were the actual terms. Dolan stated that the original draft of the engagement letter obligated Enron to take Merrill out of the NBD eventually. This was contrary to Dolan's understanding of the transaction. Dolan stated that he believed there was no obligation or commitment that Enron would find a buyer or that Enron purchase Merrill's interest if a buyer could not be found. Dolan expressed the view that this was merely an oral understanding between Merrill and Enron that if Marubeni did not purchase Merrill's interest then Enron would help Merrill find another buyer.

Dolan did not believe there was a cap on how much money Merrill could make on their investment in the NBD.

Gerald Haugh

There was an expected rate of return of 13% to 15% for the NBD. Haugh had no knowledge of an agreement between Enron and any Merrill employees to buy back Merrill's position or of a guaranty given by Enron.

James A. Hughes

Hughes did not remember giving Colpean a bad review. Later in 2000, Colpean's function at Enron International disappeared. Hughes recalled going to lunch with someone from Enron North America and giving that person a good recommendation of Colpean.

Hughes was asked why Enron would "inherit" Merrill's interest in the NBD if a buyer could not be found by Enron for the NBD, as has been written by Hughes to Glisan in an Enron email in May 2000. Hughes stated his group would inherit the barges because of assurances Hughes understood Fastow gave to Merrill. Hughes always understood that Fastow gave assurances to Merrill that they would be out of the Nigerian barge deal by June 30th. Hughes thought that Fastow was telling Merrill that Enron would do everything it could to take Merrill out. Hughes did not understand initially that his group would have to buy the barges back if no buyer was found. When Hughes responded to the Glisan email, Hughes stated that he understood that Fastow made assurances to Merrill. Hughes did not

understand that Merrill was given an assurance about a rate of return.

When asked about an Enron calendar reflecting a scheduled meeting, Hughes said he did not recall a meeting or telephone conversation with Kopper and Boyle about the NBD involving LJM2. Hughes would not be surprised to find out that a meeting did take place. Hughes did not recall discussing the terms and economics of the deal involving LJM2.

Hughes has no knowledge of any lies told to Arthur Andersen. Hughes does not recall worrying about Arthur Andersen in connection the NBD. Hughes is not aware of any discussions in May 2000 about what information Arthur Andersen was told in December 1999 about the NBD. Hughes does not recall anyone telling him to manage the information that was being told to Arthur Andersen.

Hughes recalled an issue surrounding information placed in a draft DASH. Hughes did not recall an issue surrounding Kahanek's being mad about information placed in a DASH.

Mark McAndrews

McAndrews had a conversation about the NBD with Bayly prior to it closing. Bayly was concerned about the economic risk to Merrill. According to Bayly, some of the risks were that the investment was illiquid, the barges were based in a third world country, and that the barges might not be completed. McAndrews stated that he agreed with Bayly's assessment of the NBD and that in spite of the risk, Merrill should enter into the transaction for relationship purposes with Enron and that Merrill would receive a 20% return.

Bayly told McAndrews that he wanted assurances from Enron that Enron would get Merrill out of the transaction because Merrill did not want to hold the NBD investment for a long period of time. Bayly wanted Enron to help Merrill find another buyer for Merrill's interest in the NBD. Bayly was planning to have a conversation with someone at Enron to obtain these assurances. McAndrews did not know who Bayly was going to speak with at Enron. Later, Bayly told McAndrews that he did have a conversation with someone at Enron and that person agreed to help Merrill find a buyer for Merrill's interest in the NBD. Bayly did not tell McAndrews who he spoke to at Enron. Bayly did not mention anything about a "handshake deal," "side-deal," and/or "oral assurances" between Enron and Merrill.

McAndrews did not have an understanding that Merrill was assured by Enron that Merrill would be taken out of its investment in the NBD no later than 6/30/2000 or any other date. McAndrews believed that the only agreement between Merrill

and Enron was that Enron would help Merrill find a subsequent buyer for its interest in the Nigerian Barge investment. McAndrews stated that Tilney and Furst asked Enron if their accountants approved the NBD and Enron stated that its accountants did approve the transaction.

McAndrews stated that it was common for Merrill to have oral agreements in Private Equity Fund deals.

Jeffrey McMahon

McMahon did not recall any definite push to get the NBD done by year end. Merrill wanted Enron/Fastow's assurance that Enron would use best efforts to syndicate or find a buyer for these assets. It was not unusual for this type of agreement not to be in writing. McMahon does not recall any guaranteed take out at the end of the 6 month remarketing period.

Ace Roman

In June of 2000, Roman believed that a deal had been struck with Merrill and Enron six months earlier that Merrill would be out of the NBD. Roman was not present during any conversations with regard to this deal so he does not know of any explicit promise to take Merrill out of the NBD. Roman does not know if there was a verbal promise to Merrill by Enron to take Merrill out of the deal. Roman was not involved in any discussions about what type of return Merrill would get.

Barry Schnapper

Schnapper understood that there was a commitment from Enron to use its best efforts to take Merrill out of the deal. Schnapper assumed that Arthur Andersen knew about the terms of the NBD. Recently, Boots told Schnapper that she had not heard of any commitment made to Merrill by Enron on the NBD.

Scott Sefton

Sefton did not recall any discussions about promises made to Merrill or LJM to take them out of the NBD at a later date.

John Swabda

Swabda had no recollection of anyone raising the issue of whether Enron would buy the barges back at the DMCC meeting or of a side deal. Swabda did not recall any discussion of a time frame by which Merrill would no longer want to be

involved with the NBD.

Kira Toone-Meertens

The FBI Form 302 as to Toone-Meertens was already disclosed to the defense, and this witness has already been deposed by both parties.

Schuyler Tilney

Tilney thought Fastow said on the call that they could not give Merrill assurances in writing because otherwise it would not have been a true sale. Tilney indicated that he believed Merrill was at risk in the NBD at the end of 1999. If Enron were unable to find a home for the barges, Merrill would own the barges. Enron did not represent that if the Marubeni deal fell through and Enron was unable to secure another buyer then they would make it up to Merrill in some other way. Merrill had been informed by Enron that Arthur Andersen had blessed the transaction and its true sale characteristic. Tilney stated that he believed the NBD was proper.

Joseph Valenti

Brown had reservations about the NBD. Brown was concerned about having barges in Nigeria, which was unstable, and the commercial risk associated with the deal. Valenti stated that based on the information he had at the time, the deal seemed fine.

Paul Wood

During the DMCC meeting, someone on the deal team said that, although Enron could not guarantee that it would take the deal off Merrill's hands, the Merrill deal team had assurances that Enron would take the deal off of Merrill's hands. This was what Wood meant when he wrote "handshake deal" in a document. The DMCC did not discuss obtaining a guaranty from Enron and turning the deal into a loan.

Wood was shown a Merrill document, America's Credit Flash Report. Wood thought that the use of the term "relationship loan" in the document was incorrect because Merrill's investment was not a loan.

Wood had no knowledge regarding the handwritten "aid Enron income manipulation" language used in a December 1999 Merrill document in relation to the deal. He did not know that Merrill had requested assurances from Enron regarding the NBD.

Catherine Zrike

Tilney and Furst represented to Zrike that Merrill had a business understanding with Enron that Enron would have to find another buyer of Merrill's interest in the NBD if Marubeni did not come through. Based on the representations that were made to her, Zrike did not feel that there was a commitment by Enron to guarantee Merrill's takeout within 6 months. Zrike believed that there was a business understanding between Enron and Merrill that Enron would remarket the barges. There was no legally binding commitment to do so.

Zrike indicated that she believed Merrill's investment in the NBD was at risk. Furst's perspective was that if the barges could not be sold, Merrill would go out and sell it. Zrike tried to make sure that Davis and Bayly understood that this was a risk and that Merrill could end up owning the barges and could lose its money. Zrike's focus was to ensure that Merrill's management understood that Merrill was the owner of the barges, and could be an owner for longer than it expected because there was no obligation for Enron to buy it back. That was made clear from day one. Zrike said she gave Bayly her views that based on what we know and the information we have this was not illegal. Zrike initially said she gave no legal advice on the NBD.

When asked about Merrill documents indicating that Merrill was internally recording the transaction as debt, Zrike said she had believed that the NBD was recorded in Merrill's books as equity. In connection with documents reflecting Merrill's internal accrual of "interest" daily, at a set rate of return, from the NBD, Zrike indicated that the accrual of interest was not consistent with her understanding of the deal.

Prior to seeing the June 2000 Merrill emails that (a) circulated internally the a draft Merrill demand letter to Enron regarding the NBD (seeking payment of a sum certain by June 30, 2000) and (b) indicated that the demand letter was not sent to Enron because it had been rendered moot when Enron found a buyer for the NBD, Zrike said she understood that the draft Merrill demand letter was not sent to Enron because it was incorrect. Furst or someone may have said around the time that the demand letter was incorrect. She believed Merrill found out that the person who prepared the demand letter had been acting on his own and had not received approval or had it vetted. Zrike believed the demand letter was not a correct representation of the obligations the parties had under the contract.

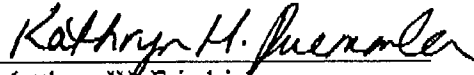
Zrike was present for discussions with either Tilney or Furst in which it was noted that the NBD added to Enron's earnings but was not being done so that Enron could meet its earnings. Zrike said that we looked at the issues and got satisfactory answers as to whether the NBD was material to Enron.

Zrike recalled a meeting in Davis' office attended by herself, Davis, Bayly, and others. Tilney and Furst joined by phone. The participants in this discussion walked through various risks of owning the NBD. There was a discussion about materiality and the year-end nature of the trade. Zrike said that she was comfortable this was not a made-up transaction. Either Tilney or Furst said that the NBD was not being done to meet earnings expectations. Zrike, when asked about her handwritten notation concerning the NBD to the effect of "relationship loan that looks like equity" initially said it was just her jotting down her internal concerns.

Very truly yours,

ANDREW WEISSMANN
Director, Enron Task Force

By:


Matthew W. Friedrich
John Hemann
Kathryn H. Ruemmler
Enron Task Force

**UNITED STATES DEPARTMENT OF JUSTICE
CRIMINAL DIVISION**



ENRON TASK FORCE

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FROM: Kathryn Ruemmler, Esq.

Phone: (202) 353-3060

Fax: (202) 353-3165

DATE: July 30, 2004

SUBJECT:

NUMBER OF PAGES (INCLUDING COVER): 11

MESSAGE:

EXHIBIT Q

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA, Plaintiff,	§	
	§	
	§	
v.	§	CR. NO. H-03-363 (Werlein, J.)
	§	
DANIEL BAYLY,	§	
JAMES A. BROWN, and	§	
ROBERT S. FURST,	§	
Defendants	§	

AFFIDAVIT OF WILLIAM D. DOLAN, III

I WILLIAM D. DOLAN, III, being first duly sworn on oath, depose and state as follows:

1. I am over twenty-one (21) years of age.
2. I have personal knowledge of and am competent to testify to each of the matters set forth herein.
3. I am an attorney licensed in the Commonwealth of Virginia, the District of Columbia and was admitted *pro hac vice* in the United States District Court for the Southern District of Texas. I represented Jeffrey McMahon, the former CFO, Treasurer, and post-bankruptcy the COO and President of the Enron Corporation. My representation covered the time period of approximately the summer of 2002 until the fall of 2005.
4. On advice of counsel, and because of ongoing criminal and civil investigations, Mr. McMahon was not available to be interviewed by Counsel for the Defendants in the Nigerian Barge Prosecution at any time between the summer of 2002 and the present.
5. Various defense attorneys contacted me to interview Mr. McMahon regarding his knowledge of the Nigerian Barge Transaction. These requests were made in 2004. In each case I declined their requests and advised and instructed Mr. McMahon to do the same.
6. Had Mr. McMahon been called to testify in the Nigerian Barge Prosecution, on advice of counsel and because of ongoing criminal and civil investigations, I would have advised and instructed Mr. McMahon to decline to testify by asserting his constitutional rights, including the Fifth Amendment to the United States Constitution. Attached are letters I wrote regarding Mr. McMahon's proposed testimony. The attached subpoenas occasioned my response.

Further, Affiant sayeth not.

I hereby affirm, under penalty of perjury, that the foregoing statements are true and correct.


WILLIAM D. DOLAN, III

Executed on December 19, 2007.

EXHIBIT R

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3 UNITED STATES GRAND JURY
4 SOUTHERN DISTRICT OF TEXAS
5 HOUSTON DIVISION

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9 RE: INVESTIGATION OF ENRON

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11 BE IT REMEMBERED that on the 17th day of June,
12 2005, beginning at 10:32 a.m., in the Federal Building,
13 515 Rusk Avenue, Houston, Texas, the United States Grand
14 Jury convened, at which time the following proceedings
15 were had and testimony adduced as hereinafter set forth.

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TESTIMONY OF KEVIN COX

1 Let's see. Probably had a couple of other
2 people whose -- Mark McAndrews. Paul Wood may or may not
3 have been there. And a number of other people that I
4 just -- I don't -- I don't remember them all. If I
5 thought about it long enough, I might be able to come up
6 with some more names.

7 Q Okay. Who ran the DMCC?

8 A John Swabda was the chair.

9 Q Okay.

10 A John reported to me.

11 Q Okay. So, you're there and the person who
12 reports to you is running the meeting?

13 A Correct.

14 Q Okay. Tell us as best you can remember
15 everything that was said at the DMCC.

16 A And I apologize in advance for being a little
17 impressionistic but it was a while ago. But my
18 recollection is that we talked at a fair degree of length
19 about the various aspects of the transaction with
20 particular interest in knowing what -- what the client was

21 trying to achieve. We -- we learned that the client was
22 trying to complete the sale by year-end because another
23 sale they had been working on fell through and was asking
24 us to purchase this equity interest so that they could
25 book the profit during the current year.

1 There were a number of questions asked by a
2 variety of people about the business, how it would be
3 sold, things -- things of that nature. There were people
4 who asked questions about, well, what if we don't get our
5 selling price back. We'll lose money, you know, those
6 kinds of questions. Can the company do anything about
7 that for us? And there were just a variety of
8 conversations and discussions around the structure of the
9 trade, some of the numbers, and the assumptions built into
10 the -- the transaction and projections.

11 Finally, we concluded -- and I thought with
12 a fair degree of consensus -- that the only way for this
13 transaction to meet the client's needs would be if it was
14 an actual sale or a true sale and that in order to have a
15 true sale, Merrill Lynch would have to be at risk and that
16 there wasn't any way that the company could do anything to
17 make us whole or -- or buy it back or do anything that
18 would take it back into its possession at any point in the
19 future and that for us the exit would be to sell it to a
20 third party.

21 We also concluded that that's not what this
22 committee was there for. That's not the kind of
23 transaction that we had any authority over. We weren't in
24 a position to approve it or to really do anything with it
25 other than to suggest that they go to their business

1 management and try and get -- get approved.

2 Q Okay. Now, anything else that you remember being
3 said at the DMCC meeting?

4 A Nothing that wouldn't be encompassing that --
5 sort of that laundry list of --

6 Q Okay.

7 A -- potential...

8 Q And, Mr. Cox, you sort of mentioned at some point
9 there's the discussion of, you know, whether or not
10 Merrill Lynch can get sort of protection for its
11 investment, you know, how's it going to get out.

12 A Uh-huh.

13 Q Who do you remember being involved? Can you give
14 us any sense, if you have any, of sort of who was saying
15 what and was there any disagreement? You have any
16 association with one person being of one view or any other
17 person being of another view?

18 A I don't know that there was any real agreement.
19 There were widely varying degrees of knowledge on the
20 topic in the room. I think I knew pretty quickly what the

21 requirements were for -- for a good trade or a good sale.

22 I'm not sure that all of the lawyers knew at that time

23 what would and wouldn't qualify and what could and

24 couldn't be done later on.

25 Q Was there some discussion about that?

EXHIBIT S

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UNITED STATES GRAND JURY

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SOUTHERN DISTRICT OF TEXAS

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HOUSTON DIVISION

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9 RE: INVESTIGATION OF ENRON

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11 BE IT REMEMBERED that on the 9th day of June,

12 2005, beginning at 11:02 a.m., in the Federal Building,

13 515 Rusk Avenue, Houston, Texas, the United States Grand

14 Jury convened, at which time the following proceedings

15 were had and testimony adduced as hereinafter set forth.

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TESTIMONY OF PAUL WOOD

1 my potential witness appearance and in that meeting some
2 information was shown to me that now leads me to think
3 that possibly the conference call I was on was not the
4 Debts Market Commitment Committee but I believed it was at
5 the time and I always believed it until that information
6 was given to me.

7 Q Okay. When you talk about information given to
8 you, are you talking about a document?

9 A I was shown -- I remember being shown a Xerox
10 copy of Kevin Cox's meeting planner.

11 Q Okay.

12 A And I just vaguely remember some information
13 being given to me in that interview that led me to wonder
14 whether the call that I was on was really the DMCC.

15 Q Okay. When you say "information," you're talking
16 about Merrill Lynch documents basically?

17 A Well, it was the -- again, it was the -- Kevin
18 Cox's -- a Xerox copy of that meeting planner and then
19 something I was -- I was told, you know, by someone from
20 the Department of Justice but, again, I just remember it

21 left me with the impression that, you know, perhaps there
22 was another meeting that other people think of as the DMCC
23 meeting but I -- the conference call that I'm describing I
24 thought at the time and always thought was the DMCC
25 meeting.

1 remember participating in a phone call following that
2 E-mail?

3 A Yes, I do.

4 Q Okay. And can you tell the Grand Jury about when
5 that was? What's your best recollection of when that call
6 took place?

7 A It was also that same Christmas week. I don't
8 know how long after my initial hearing about this
9 transaction it was. My sense was -- my sense is that it
10 was, you know, within a day or two of first hearing about
11 the transaction but I really can't say whether it was, you
12 know, one, two, or three but it wasn't a week later.

13 Q Okay. Do you remember at what time of day this
14 call took place?

15 A I'm not really sure. I was on the call -- I was
16 taking the call from home. At that point I was -- you
17 know, I had planned time off. So, I was taking the call
18 from home; but I'm not really sure what time it was. In
19 terms of business hours, I don't know what time of day.

20 Q Okay. Do you remember where you were when the

21 call took place?

22 A Yes. I was -- I was in my home on the phone.

23 Q Okay. And do you remember who else was on the

24 call?

25 A I remember some people because I remember them

1 speaking and I know that I took notes on, you know, other
2 people who were on the call.

3 Q Okay. As you sit here today, who do you remember
4 being on the phone?

5 A Principally I remember Kevin Cox was on the call,
6 you know, and I don't really remember the other people the
7 same way. I remember him because I remember him speaking.
8 A number of people on the call didn't speak. A couple of
9 other people on the call who spoke, I'm not sure -- they
10 were investment banking people, but I don't necessarily
11 know which ones.

12 Q Okay. Okay. Was Tina Trinkle on the call?

13 A I think she was because I wrote down she was but
14 I don't remember her speaking on the call. You know, I --
15 I wrote down people's names in my notes as I became aware
16 of them coming on to the call. So, it may have only been
17 just, you know, the -- the announcement that she was
18 coming in on the call.

19 Q Okay. Mr. Wood, tell us what you remember being
20 said on the call and to the best of your memory who was

21 saying it. And sometimes the answer may be, "I don't

22 remember who was saying it but I remember the

23 following" --

24 A Right.

25 Q -- "thing being said." And if that's the case,

1 just let us know.

2 A My main recollection of the call is that the
3 investment banking team described this request, that they
4 talked about the Enron relationship and the profitability
5 of the Enron relationship to Merrill Lynch, that they
6 talked about the nature of this assurance that -- that was
7 going to be given by an individual -- senior individual at
8 Enron. And I remember very well the conclusion of the
9 call which, you know, was basically the decision that
10 was -- was given at the end of the call by Kevin Cox.

11 Q And what was that?

12 A My recollection is that the meeting concluded
13 with his decision that -- that that was not the proper
14 forum to -- to approve a transaction like this; that, you
15 know, because it was an equity-like investment and because
16 of the nature of this assurance, that it would be more
17 appropriate for this to be a business decision.

18 Q Okay. And the significance of Mr. Cox saying
19 that this should be a business decision, what does -- what
20 did that mean to you and the folks on the phone? Let me

21 just -- let me strike that.

22 What did that mean to you?

23 A That meant a lot to me because I was very focused

24 primarily and almost completely focused you might say on

25 whether or not Enron Corp. would be guaranteeing this

1 investment. And that's why my recollection is quite vivid
2 on that because that was my role. My role was to
3 potentially be rendering a -- you know, a -- a -- excuse
4 me while I think of a word here. A -- I would be in a
5 position of recommending -- is the word I'm looking for --
6 whether or not we would -- we should do something, we
7 should extend this credit if it had had an Enron Corp.
8 guarantee behind it. I was very focused on that. And so,
9 when the -- when the decision was given at the end of the
10 call that, well, you know, since this does not have an
11 Enron Corp. guarantee, it is, therefore, not really a
12 corporate credit matter, that was -- that was very crucial
13 to me.

14 Q Let me ask you this, Mr. Wood. What do you mean
15 when you say that there was no Enron Corp. guarantee when
16 you had heard on the call that there was a senior person
17 who had basically assured a repurchase by Enron of Merrill
18 Lynch's interest?

19 A I mean that for a credit person -- for a
20 corporate credit person, the only thing that we would want

21 to rely on and could evaluate would be the corporate
22 credit of Enron, that that would have to be something that
23 would be a formal corporate guarantee with substance,
24 something that would be documented as an Enron Corp.
25 guarantee, unconditional and, you know, irrevocable, that

1 (approximately \$40 million in annual revenues) and
2 assurances from Enron management that we will be taken out
3 of our \$7 million investment within the next 3 to 6
4 months. Enron itself will have \$45 million invested in
5 the project." And then at the end it says T. Trinkle and
6 P. Wood.

7 Q Okay. Mr. Wood, do you remember in terms of the
8 drafting process, do you remember any part of this that
9 you wrote versus someone else writing it or are you able
10 to say?

11 A You know, I don't really remember -- I don't
12 remember who wrote it but based on our practices in our
13 group, you know, I would normally have a hand in this.
14 So, it's entirely possible that I wrote it.

15 Q Okay. Mr. Wood, speaking in terms of what you
16 knew and understood in December of '99, once we reach the
17 point of that -- of that conference call that you
18 described, at any time, you know, during the call or in
19 the following days thereafter, did you have any view one
20 way or the other as to whether or not it would be

- 21 appropriate for Enron to book this deal as a sale given
- 22 that Enron had made assurances to Merrill Lynch that --
- 23 that Merrill Lynch would be taken out?
- 24 A No, I didn't.
- 25 Q Didn't cross your mind?

1 I'm just putting some flesh on what -- something that was
2 very bare bones, you know, when it was presented to me but
3 this is -- this is the impression it left me with.

4 Q Okay. Well, you know, Merrill Lynch is a very
5 sophisticated company. Would you agree?

6 A Yes.

7 Q And when Merrill Lynch needs experts like
8 appraisers or lawyers and -- or accountants, it knows how
9 to -- how to find those people. Is that correct?

10 A Yes.

11 Q Okay. The only reason I'm standing is I just
12 can't see you with the light of the document camera here.

13 And given that Merrill Lynch knows how to
14 find professionals when it needs professionals, at any
15 time at any of these conference calls did anyone ever talk
16 about the distinction that you draw between a personal
17 assurance and a corporate guarantee and say, "Gee, I think
18 I better go talk to some lawyers and some accountants
19 about this so that we'll know how to treat this deal"?
20 Did anyone ever say that?

21 A Well, again, in the conference call I was on
22 which was the main forum that -- you know, where the deal
23 was discussed, I remember it being presented that this was
24 going to be, you know, an individual giving assurances. I
25 don't recall, you know, discussions as I mentioned earlier

1 about, you know, written or unwritten. I can only say
2 that my recollection is that there was a lawyer on the
3 phone and that there was someone from accounting on the
4 phone. I think my notes indicate that.

5 Q And who was the lawyer on the phone?

6 A Kathy Zrike.

7 Q Do you remember Ms. Zrike saying anything on the
8 phone?

9 A I only recall her coming on the call. As people
10 came on the call, I wrote their names down on my list.

11 Q Okay. And let me refer back to your list. Do
12 you have -- can I just retrieve what's in front of you?

13 A Yes.

14 Q Okay. And this is the -- I'm reading off of 7242
15 which I believe is actually one of the duplicate pages but
16 it's the list at the bottom that you're referring to?

17 A Correct.

18 Q Okay. The first bracket, the second name down,
19 what's that name? Rob Furst?

20 A Okay. Yeah. Rob Furst is on there, yes.

21 Q Okay. And at the bottom you have John Peacock?

22 A Yes.

23 Q Who is John Peacock?

24 A I didn't know him.

25 May I explain something about how I did

1 this?

2 Q Sure. Please.

3 A Okay. I think it's important.

4 Normally it was my practice in something
5 like this not to make a list of people I think -- I think
6 are going to be on the call but to make a list of people
7 that come on the call as they come on the call. And
8 I'm -- I have a very firm recollection that that's what I
9 did in this case. So, when Peacock -- and I can't think
10 of his first name right now -- when John Peacock came on,
11 all I knew was at some point, you know, he came on and I
12 didn't know who he was but at some point I became aware of
13 the fact that he was -- somebody from accounting -- from
14 accounting and that's why I wrote that down next to that
15 for my own recollection, accounting.

16 Q Do you know -- do you know what office this John
17 Peacock works in within Merrill Lynch?

18 A I don't know anything about him.

19 Q Have you ever tried to locate a John Peacock
20 within Merrill Lynch?

21 A No.

22 Q Would you have a -- without assuming that a

23 Mr. Peacock who made that notation could not be located --

24 without assuming that -- do you have any information as to

25 why or why not it wouldn't be within the power of Merrill