UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,	§	
	§	
v.	§	Cr. No. H-03-
	§	
DANIEL BAYLY,	§	Violations:18 U.S.C. §§ 371 (Conspiracy);
JAMES A. BROWN, and	§	1503 (Obstruction of Justice);
ROBERT S. FURST,	§	1623 (Perjury)
	§	
Defendants.	§	

INDICTMENT

The Grand Jury charges:

I. Introduction

A. Enron

1. At all times relevant to this Indictment, Enron Corp. ("Enron") was an Oregon corporation with its headquarters in Houston, Texas. Among other businesses, Enron was engaged in the purchase and sale of natural gas, construction and ownership of pipelines and power facilities, provision of telecommunication services, and trading in contracts to buy and sell various commodities. Before it filed for bankruptcy on December 2, 2001, Enron was the seventh largest corporation in the United States.

2. Enron was a publicly traded company whose shares were listed on the New York Stock Exchange. As a public company, Enron was required to comply with regulations of the United States Securities and Exchange Commission ("SEC"). Those regulations protect

members of the investing public by, among other things, ensuring that a company's financial information is accurately recorded and disclosed to the public.

3. Under SEC regulations, Enron and its officers had a duty to make and keep books, records and accounts that fairly and accurately reflected Enron's business transactions, and file with the SEC reliable quarterly and annual reports.

4. Co-conspirator Andrew S. Fastow was Enron's Chief Financial Officer ("CFO") from March 1998 to October 24, 2001. As CFO, Fastow had oversight over many of Enron's financial activities. During the time that he served as Enron's CFO, Fastow also served as the general partner and otherwise was in control of certain special purpose entities with which Enron did business, including LJM 2 Co-Investment, L.P. and its affiliates ("LJM2").

5. Co-conspirator Daniel O. Boyle joined Enron in 1998 and held a variety of positions, including Vice President in Global Finance. Boyle was a lead employee assigned to effectuate the Nigerian barge transaction discussed below.

6. As Enron employees, Fastow and Boyle each owed a duty to Enron and its shareholders to provide the company with their honest services.

B. Merrill Lynch & Co., Inc.

7. Merrill Lynch & Co., Inc. ("Merrill Lynch") was a Delaware corporation with its headquarters in New York, New York. Merrill Lynch was a major financial institution, with offices in Houston and Dallas, Texas, among other places. Merrill Lynch engaged in business with various leading corporations, including Enron.

8. At all times relevant to Count One of this Indictment, defendant DANIEL BAYLY was the head of the Global Investment Banking division at Merrill Lynch; defendant JAMES A.

BROWN was the head of Merrill Lynch's Strategic Asset Lease and Finance group; and defendant ROBERT S. FURST was the Enron relationship manager for Merrill Lynch in the investment banking division and as such was responsible for generating business for Merrill Lynch from Enron. Defendants BAYLY, BROWN, and FURST were all Managing Directors of Merrill Lynch.

II. The Nigerian Barge Transactions

9. Enron and Merrill Lynch engaged in a year-end 1999 deal that involved the "parking" of Enron assets with Merrill Lynch. The parking of the assets with Merrill Lynch enabled Enron to enhance fraudulently its year-end 1999 financial position that it presented to the public and pay to Enron executives unwarranted bonuses. By facilitating Enron's deception, Merrill Lynch solidified its status as a "friend of Enron" and thereby positioned itself to receive an increased slice of the lucrative deals that Enron dispensed to financial institutions. Defendants DANIEL BAYLY, JAMES A. BROWN, and ROBERT S. FURST, along with coconspirators Andrew S. Fastow and Daniel O. Boyle, and others, all knowingly participated in this illegal scheme.

10. In 1999, Enron unsuccessfully sought to sell an interest in electricity-generating power barges moored off the coast of Nigeria. When Enron failed to sell the project by December 1999, Enron through Fastow, Boyle, and others arranged for Merrill Lynch to serve as a temporary buyer so that Enron could record earnings and cash flow in 1999 and thus appear more profitable to the public than it in fact was. Merrill Lynch agreed to pay $28 million for the barges, with 75% of that amount fronted by Enron itself. Merrill Lynch's purchase of the Nigerian barges allowed Enron to record improperly $12 million in earnings and $28 million in funds flow in the fourth quarter of 1999. Those inflated numbers in turn enabled the business

unit from which the barge deal emanated to meet its targeted financial goals for the year, which in turn led to increased unwarranted bonuses to executives in that business unit.

11. Merrill Lynch, through defendants DANIEL BAYLY, JAMES A. BROWN, and ROBERT S. FURST, and others, agreed to purchase the Nigerian barges only because Merrill Lynch knew that the "purchase" was not real. Enron promised Merrill Lynch that it would receive a return of its investment plus an agreed-upon profit within six months. Specifically, Enron promised in an oral "handshake" side-deal that Merrill Lynch would receive a rate of return of approximately 22% and that Enron would sell the barges to a third party or repurchase the barges within six months. Because of these promises from Enron, Merrill Lynch's supposed equity investment was not truly "at risk" and Enron should not have treated the transaction as a sale from which earnings and cash flow could be recorded in 1999.

12. In order to mask the full agreement from regulators and auditors, Enron and Merrill Lynch entered into written agreements on December 29, 1999, that gave the outward appearance that Merrill Lynch was truly buying the Nigerian barges and accepting all the risks and rewards of an equity investment. Hidden from outside parties were the oral components of the agreement between the parties, which guaranteed Merrill Lynch a rate of return and set a deadline by which Merrill Lynch would no longer hold the barges for Enron.

13. On June 29, 2000, with no true third-party purchaser having been found to buy Merrill Lynch's interest as the six-month deadline loomed, Enron arranged for LJM2, which was operated and controlled by Fastow, to purchase Merrill Lynch's interest. Without any negotiation between Merrill Lynch and LJM2 as to the purchase price, Enron caused LJM2 to pay $7,525,000 to Merrill Lynch, which represented a $525,000 premium over Merrill Lynch's

original investment to account for the agreed-upon approximate 22% rate of return promised by Enron. Enron also agreed to pay LJM2 a substantial but undisclosed fee for entering into the deal with Merrill Lynch. Enron subsequently arranged for a third party to purchase LJM2's interest in the barges, again at a profit to LJM2.

III. The Defendants' Obstruction of The Investigations Into The Nigerian Barge Transactions

14. The Nigerian barge transactions have been the subject of investigation by various entities. To hide their criminal conduct, the defendants DANIEL BAYLY, JAMES A. BROWN, and ROBERT S. FURST, and others, obstructed each of those investigations.

A. The Enron Grand Jury Investigation

15. In March 2002, a special Grand Jury empaneled in the Southern District of Texas (the "Enron Grand Jury") commenced a criminal investigation of all matters relating to Enron's collapse involving potential violations of the federal criminal laws, including an examination of financial institutions' employees who may have conspired with and aided and abetted Enron's employees in criminal offenses. Among other matters, the Enron Grand Jury has examined the Nigerian barge transactions to determine whether Enron and Merrill Lynch entered into an oral side agreement in December 1999. As part of that investigation, the Enron Grand Jury has heard from dozens of witnesses and reviewed voluminous records from Enron, Merrill Lynch, and LJM2, among others.

16. As part of its investigation concerning the Nigerian barge transactions, on September 25, 2002, the Enron Grand Jury called as a witness defendant JAMES A. BROWN to testify. While under oath, defendant BROWN testified falsely as to a material matter by stating, among other things, that he did not know of any oral promise between Enron and Merrill Lynch relating

to the barge transaction.

B. The SEC Investigation

17. The SEC has conducted a civil investigation into the Nigerian barge transactions as part of its larger investigation into the collapse of Enron. It too sought to determine whether there was an oral side agreement between Enron and Merrill Lynch. As part of its investigation it interviewed and deposed numerous witnesses and reviewed voluminous documents concerning the barge transactions.

18. On July 10, 2002, the SEC called defendant DANIEL BAYLY as a witness to testify under oath in a deposition concerning the barge transactions. Defendant BAYLY testified falsely as to a material matter by stating, among other things, that he did not know of any oral guarantee between Enron and Merrill Lynch relating to the barge transaction.

19. On November 20, 2002, the SEC called defendant JAMES A. BROWN as a witness to testify under oath in a deposition concerning the barge transactions. Defendant BROWN again testified falsely as to a material matter by stating, among other things, that he did not know of any oral agreement between Enron and Merrill Lynch relating to the barge transaction.

C. The Congressional Investigation

20. In the summer of 2002, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate ("the Congressional Committee") conducted an investigation and hearing concerning, among other things, the Nigerian barge transactions. As part of that investigation, which was conducted pursuant to the authority of the Congressional Committee consistent with applicable rules of that body, the staff of the Congressional Committee interviewed and deposed witnesses and reviewed hundreds of

documents concerning the transactions.

21. On July 17, 2002, the staff of the Congressional Committee interviewed defendant ROBERT S. FURST concerning the barge transactions. Defendant FURST made false statements as to a material matter by stating, among other things, that he did not know of any oral promise or guarantee between Enron and Merrill Lynch relating to the barge transaction.

22. The staff of the Congressional Committee also sought to interview defendant JAMES A. BROWN concerning the Nigerian barge transactions. Defendant BROWN authorized the submission of information concerning the barge transaction to the Congressional Committee staff. On July 28, 2002, defendant BROWN caused his agents to make false statements as to a material matter by causing them to state, among other things, that BROWN did not know of any oral promise or guarantee between Enron and Merrill Lynch relating to the barge transaction.

23. On July 30, 2002, the staff of the Congressional Committee deposed defendant DANIEL BAYLY under oath concerning the barge transaction. Defendant BAYLY testified falsely as to a material matter by testifying, among other things, that he did not know of any oral commitment or guarantee between Enron and Merrill Lynch relating to the barge transaction.

D. The Bankruptcy Examiner Investigation

24. On or about May 24, 2002, the United States Bankruptcy Court for the Southern District of New York approved the appointment by the United States Trustee of a Bankruptcy Examiner ("the Bankruptcy Examiner") to inquire into a broad array of Enron transactions. As part of the Bankruptcy Examiner's inquiry, it interviewed and deposed witnesses and reviewed voluminous documents concerning the Nigerian barge transactions.

25. On April 28, 2003, the Bankruptcy Examiner called defendant JAMES A. BROWN

as a witness to testify under oath in a deposition concerning the barge transactions. Defendant BROWN testified falsely to the Bankruptcy Examiner as to a material matter by stating, among other things, that he did not know of any oral promise or commitment between Enron and Merrill Lynch relating to the barge transaction.

26. Defendant BROWN also testified falsely in his testimony to the Bankruptcy Examiner concerning an E-mail that he sent to colleagues at Merrill Lynch dated March 2, 2001 ("the BROWN E-mail") concerning his suggestion that Merrill Lynch enter into an oral side-agreement in a deal with a company unrelated to Enron (the "Company"). The BROWN E-mail stated in relevant part:

> I'm not convinced yet that we can't obligate [the Company] more than Frank indicated, but I've been on the road the last 3 days and haven't been able to determine that. If its [sic] as grim as it sounds, I would support an unsecured deal provided we had total verbal surrances [sic] from [the Company] ceo or Cfo, and schulte was strongly vouching for it. We had a similar precedent with Enron last year, and we had Fastow get on the phone with [defendant Daniel] Bayly and lawyers and promise to pay us back no matter what. Deal was approved and all went well.

When questioned by the Bankruptcy Examiner about the BROWN E-mail, BROWN testified falsely that it did not accurately reflect the agreement between Enron and Merrill Lynch and that in the BROWN E-mail BROWN deliberately told his colleagues at Merrill Lynch something that was not true.

COUNT ONE
(Conspiracy to Commit Wire Fraud and Falsify Books and Records)

27. The allegations of paragraphs 1 through 26 are realleged as if fully set forth here.

28. In or about and between December 1999 and January 2001, both dates being approximate and inclusive, within the Southern District of Texas and elsewhere, the defendants

DANIEL BAYLY, JAMES A. BROWN, and ROBERT S. FURST, along with co-conspirators Andrew S. Fastow and Daniel O. Boyle, and others conspired to: (a) knowingly and intentionally devise a scheme and artifice to defraud Enron and its shareholders, including to deprive them of the intangible right of honest services of its employees, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and for the purpose of executing such scheme and artifice to transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce writings, signs, signals, pictures and sounds, all in violation of Title 18, United States Code, Section 1343; and (b) knowingly and willfully falsify books, records and accounts of Enron in violation of Title 15, United States Code, Sections 78m(b) (2) (A) & (B), 78m(b) (5) and 78ff and Title 17, Code of Federal Regulations, Section 240.13b2-1.

OVERT ACTS

29. In furtherance of the conspiracy and to effect the objects thereof, within the Southern District of Texas and elsewhere, the defendants DANIEL BAYLY, JAMES A. BROWN, and ROBERT S. FURST and their co-conspirators did commit and cause to be committed the following overt acts, among others:

a. In late December 1999, FURST caused a document that summarized the proposed Nigerian barge transaction between Enron and Merrill Lynch to be circulated within Merrill Lynch, including in Merrill Lynch's Houston, Texas office; the document stated that defendant BAYLY "will have a conference call with senior management of Enron confirming this commitment to guaranty the ML [Merrill Lynch] takeout within six months" and noted that the proposed return on the transaction would be "$250,000 plus 15% per annum or a flat 22.5%

return per annum."

b. In late December 1999, FURST spoke to BROWN concerning the terms of the proposed Nigerian barge transaction between Enron and Merrill Lynch.

c. On or about December 22, 1999, FURST, BROWN and others at Merrill Lynch attended a meeting to discuss the proposed Nigerian barge transaction.

d. On or about December 22, 1999, Merrill Lynch executives spoke with BAYLY concerning the proposed Nigerian barge transaction.

e. On or about December 23, 1999, BAYLY spoke on a conference call to Fastow in Houston, Texas, and Fastow promised BAYLY that Enron would take Merrill Lynch out of the deal within six months.

f. On or about December 29, 1999, in Houston, Texas and elsewhere, Enron and Merrill Lynch finalized their written agreement concerning the Nigerian barge transaction, which did not set forth the oral agreements reached between the parties.

g. On or about June 14, 2000, when Enron had not yet found a third party to buy the barges from Merrill Lynch, FURST, BROWN and others caused a letter to Enron to be drafted demanding payment by Enron of the agreed-upon return on its investment in the barges by June 30, 2000.

h. On or about June 14, 2000, in Houston, Texas, Fastow and others arranged for LJM2 to buy Merrill Lynch's investment in the barges, fulfilling the promise by Enron to Merrill Lynch that it would be bought out within six months at a rate of return of approximately 22%.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNT TWO
(BROWN: Perjury Before The Enron Grand Jury)

30. The allegations in paragraphs 1 through 26 are realleged as if fully set forth here.

31. On or about September 25, 2002, in the Southern District of Texas, defendant JAMES A. BROWN, while under oath and testifying in a proceeding before a Grand Jury of the United States, knowingly did make a false material declaration as set forth below.

32. At the time and place stated above, the Enron Grand Jury was conducting an investigation into potential federal criminal offenses relating to the Nigerian barge transactions. It was material to this investigation that the Enron Grand Jury determine all the terms of the agreements, whether written or oral, between Enron, Merrill Lynch, and LJM2.

33. At the time and place stated above, defendant BROWN, appearing as a witness and testifying under oath at a proceeding before the Enron Grand Jury, knowingly made the following declarations in response to questions with respect to matters material to the Grand Jury's investigation (the portions that have been underlined are false):

Q: Do you have any understanding of why Enron would believe it was obligated to Merrill to get them out of the deal on or before June 30th?

A. It's inconsistent with my understanding of what the transaction was.

(Tr. at 80, lines 6-11.)

Q: ...Again, do you have any information as to a promise to Merrill that it would be taken out by sale to another investor by June 2000?

A: In - - no, I don't - - the short answer is no, I'm not aware of the promise. I'm aware of a discussion between Merrill Lynch and Enron on or around the time of the transaction, and

I did not think it was a promise though.

Q: So you don't have any understanding as to why there would be a reference [in the Merrill Lynch document] to a promise that Merrill would be taken out by a sale to another investor by June of 2000?

A: No.

(Tr. at 88, lines 13-23.)

(Title 18, United States Code, Sections 1623 and 3551 et seq.)

COUNT THREE
(BROWN: Obstruction of the Enron Grand Jury Investigation)

34. The allegations of paragraphs 1 through 26, 32, and 33 are realleged as if fully set forth here.

35. On or about September 25, 2002, in the Southern District of Texas, defendant JAMES A. BROWN did corruptly endeavor to influence, obstruct, and impede the due administration of justice in that BROWN did knowingly and willfully make false and misleading declarations before the Grand Jury with intent to obstruct and impede the Enron Grand Jury investigation.

36. At the time and place stated above, BROWN corruptly endeavored to influence, obstruct, and impede the due administration of justice by giving false and misleading testimony

including, but not limited to, the declarations which are underscored in Count Two.

(Title 18, United States Code, Sections 1503 and 3551 et seq.)

Dated: Houston, Texas
September 16, 2003

A TRUE BILL

_____
FOREPERSON

Joshua R. Hochberg
Acting United States Attorney

LESLIE R. CALDWELL
Director, ENRON TASK FORCE

By: _____
ANDREW WEISSMANN
Deputy Director, ENRON TASK FORCE