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UNITED STATES GRAND JURY
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RE: INVESTIGATION OF ENRON

BE IT REMEMBERED that on the 15th day of April, 2003, beginning at 9:42 a.m., in the Federal Building, 515 Rusk Avenue, Houston, Texas, the United States Grand Jury convened, at which time the following proceedings were had and testimony adduced as hereinafter set forth.

TESTIMONY OF KATHERINE ZRIKE

ORIGINAL

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1 chance to ask us those questions and also, I'm going to
2 ask you, as we go forward, it's much easier, your rights
3 and obligations, when you understand them.

4 The first thing is that you'll notice
5 there's a microphone in front of you.

6 A. Yes.

7 Q. And that's not recording -- or maybe --
8 actually maybe it is also recording, but the main
9 purpose of it is to project your voice. There's a very
10 bad vent system here. So it's hard in the back of the
11 room to hear, so if I can ask you to keep your voice up
12 and speak into the microphone so everybody can hear you.

13 A. Okay.

14 Q. First, in terms of your rights as a grand jury
15 witness, you have a right to be represented by counsel
16 in connection with the grand jury appearance. In other
17 words, even though you're a lawyer, you also, like
18 everyone else, enjoy the right to have counsel in
19 connection with the grand jury appearance. Your
20 attorneys cannot be present, as you know, in the grand
21 jury. But as I understand it, you have counsel here and
22 they are right outside in the room next door; is that
23 correct?

24 A. That's correct.

25 Q. Could you identify for the record your

1 counsel?

2 A. Robert Ramano.

3 Q. And does he also have a colleague of his, an
4 associate, helping him today?

5 A. He does, but I don't remember her name. I'm
6 sorry. I just met her recently.

7 Q. And in addition to Mr. Ramano and his
8 colleague, do you also have -- is there also company
9 counsel here today?

10 A. Yes, there is.

11 Q. If you could, just identify them for the
12 record.

13 A. Charlie Stillman, who is our outside counsel
14 for Merrill Lynch, and an internal counsel, Rick
15 Weinberg.

16 Q. And is he somebody you know because you're
17 also in-house counsel?

18 A. Yes. He is involved in our practice
19 litigation and regulatory practice. He bears
20 acquaintances and colleagues.

21 Q. And so, Mr. Ramano is your personal counsel
22 and their company counsel, correct?

23 A. Correct.

24 Q. And is it fair to say, without telling us what
25 was said, that if you met with counsel in connection with

1 to advise you that if you were to lie or obstruct the
2 grand jury investigation and you were prosecuted and
3 convicted, because they are criminal statutes, they
4 carry with it a possibility of jail. Do you understand
5 that?

6 A. Yes.

7 Q. Do you have any questions at all about your
8 rights or obligations?

9 A. No. I appreciate you going over them again.

10 Q. Now, let me also go over with you -- as I
11 mentioned to you, I'm not going to give you all of the
12 caveats I told you upstairs but your counsel has asked
13 me with respect to your status whether you were a
14 witness, subject, or a target and you were told that you
15 are a witness.

16 I already talked over with your counsel
17 one area where I had concern with respect to information
18 that we've learned from your interview, but the main
19 thing I want to make sure you understand is you
20 understand that the representations to your status -- as
21 of your status today is not a prediction as to what the
22 future holds. Do you understand that?

23 A. Yes, I understand.

24 Q. Do you have any questions at all about that?

25 A. No. I appreciate the information.

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1 ourselves against being responsible for whatever
2 disaster could strike or someone, you know, suing us for
3 a big fire that blows up things.

4 So we would -- you know, we would have
5 approached it differently and -- as well as asking our
6 bankers to approach the economics and the bona fides of
7 the deal differently, I believe.

8 Q. One of the things you talked about was the
9 risks that if, for instance, the barge blew up. Even
10 though this is a small investment from the perspective
11 of Merrill Lynch as a whole, is it fair to say that
12 there were -- there could be risks in owning a barge in
13 terms of various liabilities that could come from it
14 including environmental risks, all sorts of things that
15 could happen in a country that is viewed by Merrill
16 Lynch and other financial institutions as a risky area
17 to invest in?

18 A. Yeah. I think we were very concerned in the
19 group that vetted this as well as our legal department
20 about that sort of reputational risk from the disaster
21 scenario where -- you know, we all remember the Bhopal
22 incident -- where, yes, you lose your investment like
23 the barge blew up.

24 So you don't have the barge anymore. Yet,
25 you've got loss of lives; you've got environmental

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1 pollution which could cost you a lot more; you've got a
2 country that is, you know, very corrupt or known to be
3 corrupt on issues associated with how that barge
4 business is being run.

5 Being 100 percent owner of it and not
6 being -- you know, we're not actually in the business of
7 running the barge, electrical barge. So what could be
8 attributed to Merrill Lynch as being responsible for,
9 all sorts of issues. And those were raised and
10 discussed in our consideration of this.

11 Q. Is there anything that goes beyond the
12 representational risk that could also go to that optimal
13 economic risk?

14 A. You're absolutely right.

15 Q. So, it's not just --

16 A. It's not just --

17 Q. -- Merrill Lynch trying to look --

18 A. Right. It's more of this could cost more than
19 our loss of the \$7 million that was the investment in
20 the barge. It could lead to loss of life, litigation,
21 money, entanglement, complications beyond --

22 Q. Now, did you understand at any point that
23 either Mr. Davis or anyone else at Merrill Lynch said,
24 "Okay. We'll go into this investment, but it needs to
25 be made clear to Enron that we're in it for \$7 million

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1 finding a buyer, isn't -- what better way, since frankly
2 we're doing the misaccommodation, according to you, why
3 not hold their feet to the fire as a way to really keep
4 them interested, which is -- and if they don't find a
5 buyer, they will deal with the consequences of what
6 happens if they have to buy it back?

7 A. That's just not my understanding of how the
8 conversations were. Everyone understood the rules, the
9 accounting rules and the accounting treatment. Everyone
10 appreciated that -- people were talking about this as a
11 worst-case scenario. There was no real expectation that
12 any of this was going to be happening. The focus was on
13 the fact that this would be gone in January to Marubeni.

14 I was trying to make sure that Mr. Davis
15 and Mr. Bayly understood that this was a true risk that
16 we would end up owning this barge and so -- and from an
17 exit perspective, we either had to be willing to own it
18 until the thing got sold or -- and keep the risk of what
19 that entails on our balance sheet and -- making sure
20 that they are comfortable with that in the context of
21 making the decision.

22 Q. Now, one of the things you said in your last
23 answer was about people focusing on and thinking that
24 Marubeni would come through and this would be gone in a
25 month or so. But isn't the -- isn't one of the

1 ask Enron for such a provision?

2 A. Merrill -- the Merrill Lynch lawyers in my
3 group and myself did ask that we include a provision
4 that -- two types of provisions that we thought would be
5 helpful to us.

6 One would be to indemnify us or hold us
7 harmless if there was any sort of liability like a barge
8 explosion or an environmental spill, loss of life, or
9 something that was, you know, a disaster scenario; and
10 that was the first thing we talked to them about.

11 The second, it may have been around the
12 same time. You know, we marked the agreement up one
13 time and sent it back to them.

14 The other thing that we marked up and we
15 wanted to add was a best efforts clause, what's called a
16 best efforts clause that they would use their best
17 efforts to find a purchaser to conclude the purchase
18 with the -- another third-party purchaser besides
19 ourselves and that -- realizing that from our
20 perspective as Merrill Lynch lawyers that this was
21 not -- this was still a -- was not a guarantee, it was
22 not an absolute, but that at least would give us an
23 angle, it would give us a legal angle to get them to
24 focus on that obligation if, in fact, we saw them not
25 paying attention to what was the business deal.

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1 In the context of working through the
2 draft of the agreement, you know, our counsel -- it's
3 gone through a merger. I think it was Whitman, Breed &
4 Abbott. Is that right?

5 Q. I cannot answer questions.

6 A. Okay. But it was an outside law firm, outside
7 lawyer that was doing a lot of the negotiations with a
8 couple of guys on our staff; and the response from the
9 Enron legal team was that that -- both of those
10 provisions would be a problem or could be viewed by the
11 accountants as undermining the true sales tax because,
12 first of all, with the indemnity, it was a bit of a
13 stretch but we tried. It would -- it would insulate
14 Merrill from any risk of loss, which was the whole point
15 of there being a true sale. And so, it would negate
16 that treatment; and it certainly made sense that the
17 response would be that.

18 Now, you know, we tested what if we put
19 the damages in caps. You know, we tried to keep it --
20 we were trying to be creative to protect Merrill, but
21 they kept coming back to the fact that it really had to
22 be a true passage of risk and that -- any risk
23 whatsoever.

24 On the other side of -- the other part of
25 this was the best efforts clause, the concern that that

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1 that you're still under oath, right?

2 A. Yes.

3 Q. When we broke, we were talking about a best
4 efforts provision, among other things, and discussions
5 that you were having with counsel regarding that.

6 Were there people on your staff who were
7 working on the legal aspects of that deal?

8 A. Were there people?

9 Q. Yes.

10 A. Yes.

11 Q. Who?

12 A. There were two lawyers that were involved sort
13 of alternating because it was during the Christmas week.
14 One was Frank Marinaro, and the other was a lawyer named
15 Kerry Dolan.

16 Q. And when were you dealing with Alan Hoffman as
17 your outside counsel?

18 A. Alan Hoffman was our outside counsel that they
19 dealt with. I don't believe I ever talked to Alan
20 directly.

21 Q. Now, in terms of the best efforts provision,
22 did you have any conversation either directly or
23 indirectly with your staff or outside counsel regarding
24 whether there would be any accounting problem in having
25 a re-marketing agreement?

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1 A. With the discussions we had with my staff, who
2 I believe were reflecting Alan's discussions with the
3 other law firm and Alan's, you know, acquiescence in
4 that position or at least understanding where they were
5 coming from, in that a re-marketing agreement or
6 approach to use best efforts to find another purchaser
7 could be problematic for the accounting, there couldn't
8 be any contractual obligations in that regard.

9 Q. So was it -- I'm just making sure I -- make
10 sure I've covered this, which is: Was there a
11 discussion that you were aware of, whether you
12 participated in it directly or not, regarding whether
13 Merrill Lynch could, consistent with accounting rules,
14 have an agreement whereby Enron would be obligated to
15 try to re-market Merrill's position in the barges?

16 A. The discussion was on the context of the --
17 the answer is no. There was not a discussion that a
18 re-marketing, per se, of our agreement of our equity
19 interest would lead there to be a problem under the true
20 sale rules. The discussions that were had with the
21 lawyer, our lawyer and my staff, were that any
22 contractual obligations that would require Enron to use
23 their best efforts to take action to sale -- to sell the
24 equity interest on our behalf could be viewed as then
25 being obligated to buy it back.

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1 Q. Well, what if that was just in the contract,
2 that it's not an obligation to buy it back, it's an
3 obligation to re-market it to a third party?

4 A. I think, you know, their perspective is they
5 didn't want any risk that --

6 Q. Did that come up? Did that come up?

7 A. I think we -- we tried a lot of different, you
8 know, ideas to try to get some -- something, you know,
9 contractual that we could go to court, as they say, and
10 get enforced; and the answer was that anything that
11 could be used that could be taken to require them to buy
12 it in the event that they were unable to find a third
13 party would not be acceptable and that's --

14 Q. Okay. So --

15 A. -- why the language was not put into the
16 agreement.

17 Q. Okay. I'm not that smart. So let me -- this
18 can't be something that I've come up with.

19 How about an agreement that obligates them
20 to try to re-market but it doesn't require them, as a
21 worst-case scenario, to buy it back?

22 In other words, you have to help us as if
23 you were -- you were getting a real estate broker to
24 help you find a place, but it doesn't mean your real
25 estate broker is going to have to buy your apartment.

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1 It's just somebody who's going to be required
2 contractually to assist you to re-market but not to
3 actually buy it back. Why not put that in the
4 provisions?

5 That's the sticking point, the -- that
6 Enron buying it back as opposed to assisting and going
7 and finding a third-party buyer.

8 Why isn't the solution to a lot of bright
9 people, "Well, fine. Just put that in the agreement"?

10 A. I think that was our approach in that we were
11 trying to do what we could to get -- consistent with
12 what the business deal was to get some protection, and
13 we were not successful in negotiating that end with
14 Vincent & Elkins.

15 You'll have to talk to Alan and others who
16 were directly involved in their -- that dialogue.

17 I'm hearing the reports back and trying,
18 then, to -- telling them to go back and try it this way
19 and that way and not engage in the dialogue.

20 Q. Okay.

21 A. So I can't really answer your question
22 specifically --

23 Q. Okay.

24 A. -- more specifically.

25 Q. Let me break it down, then. Do you have a

1 recollection of any discussions regarding what I'll call
2 "the Weissmann Proposal," which is the re-marketing
3 agreement with a provision that says it doesn't require
4 Enron to buy it back?

5 A. You know, I cannot -- I can't tell you that
6 that was not a thought. The only part that I'm
7 hesitating on -- the re-marketing idea, I'm not
8 brilliant on either; but I did focus on that.

9 Whether I would actually go -- is the tail
10 end that's bothering me, without any agreement from
11 Enron to buy it back. I don't know if I combined those
12 two concepts.

13 Q. Okay.

14 A. The focus --

15 Q. Do you remember --

16 A. The focus I remember is that they will use
17 their best efforts to find a purchaser to close the
18 transaction with a third party, to finish, for a period
19 of time. I don't remember specifically, you know,
20 cutting off -- adding that last piece that you
21 mentioned.

22 Q. To solve the problem?

23 A. To solve the problem, yeah.

24 Q. Now, did you get any advice directly or
25 indirectly, whether you sought it out yourself versus

1 purchaser. But you said it a little broader than that
2 in your question.

3 Q. So what's the "no" part? You said there was a
4 yes and no.

5 A. The "no" part is that they could do whatever
6 it took to get us out of the investment. That was --
7 they were not committing to do whatever it took. They
8 were committing to take -- and the business ended up
9 being a, you know, oral business understanding as,
10 "Look. We understand you're not only going to hold this
11 and that we have to find another buyer if Marubeni does
12 come through, does not happen."

13 That was the extent of my understanding.
14 It was more than an understanding. It was
15 representations that were made to me about what they
16 were willing to do.

17 Q. And who made those representations to you?

18 A. You know, these were made in the context of
19 various discussions about the deal; but they came from
20 the banking team, Mr. Tilney and Mr. Furst, at various
21 points in time of our discussion.

22 Q. Let me ask you -- this may be a tough
23 question. It may not. And I don't mean it to be rude,
24 but if there are issues going on in this transaction
25 that to your mind -- and I understand from our interview

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1 several months ago that these were going on in your mind
2 about, you know, "I don't want people to think this is a
3 sham transaction. I want to make sure that this is
4 complete and that there's nothing nefarious going on
5 here. And this is Merrill Lynch. It's a major
6 financial institution. We're not going to do anything
7 close to the line."

8 If all of that is going on as, I take it,
9 the senior sort of lawyer on the deal, why wasn't
10 something like this -- "there are going to be no oral
11 understandings, oral commitments. Nothing is going to
12 exist between the parties that isn't in writing in the
13 signed purchase agreement because I'm not going to have
14 anyone coming back and saying that there's some other
15 part of this deal. We don't like the deal. So I don't
16 want anyone coming back and questioning what's going on.
17 So there is going to be nothing that is not in writing"?

18 A. There was some of that discussion when we were
19 trying to negotiate the terms of the purchase agreement
20 itself; and I was looking at it from the perspective of
21 I don't want anyone at Merrill Lynch coming to me and
22 saying, "Why can't we get rid of this barge?"

23 This is -- was our -- this was our
24 business deal. This was our basis for us going forward
25 and doing a short-term investment.

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1 The fact that they would not put in
2 writing an obligation to buy it back, to indemnify us,
3 all those things were consistent with the business deal
4 and were not things that I felt were nefarious and were
5 problematic.

6 My focus was more on the fact that our
7 management and -- understand that we are owners of this
8 and could be owners of this for longer than the period
9 of time that they thought --

10 Q. But --

11 A. -- because there was no obligation for them to
12 buy it back.

13 Q. Wasn't it clear --

14 A. That was made clear from Day 1.

15 Q. Wasn't it clear to Merrill Lynch and to you
16 that Enron was agreeing that Merrill Lynch would only
17 hold this for a certain period of time, not that Enron
18 would necessarily be the one that's going to buy it
19 back? I mean, there are other ways of disposing of the
20 Merrill Lynch interest. But wasn't it clear that
21 Merrill was only committing on a short-term basis?
22 Wasn't that something that Merrill made clear to Enron?

23 A. That was the basis of having -- that we bought
24 the investment, yes.

25 Q. And that provision, all I'm trying to focus on

1 Q. And Rick is Mr. Weinberg?

2 A. Mr. Weinberg.

3 Q. Was it your understanding that there was any
4 commitment or representation by Enron to Merrill Lynch
5 in connection with this deal that was not contained in
6 the purchase agreement?

7 A. I'm sure there were representations that were
8 made that aren't in the purchase agreement; but whether
9 or not they are representations that we can bring an
10 action against, the answer is no.

11 Q. And that's because as a lawyer you're thinking
12 if it's oral, it's going to be difficult to bring a
13 lawsuit?

14 A. Well, and also the more explicitly most
15 discriminate has in its boilerplate that it would say
16 that the purchase agreement contains all of the
17 representations which the company -- in this case, Enron
18 and Merrill gave some representations, too. But it can
19 be, you know, liable for.

20 So, you know, there are statements that
21 are made. Representations in the general sense are
22 discussed during diligence that may or may not get put
23 into the binding contract.

24 Q. Have you ever heard of lawsuits being brought
25 based on oral agreements or alleged oral agreements that

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1 And, you know, while it was not optimal
2 from my perspective as a lawyer, from a legal/illegal
3 perspective, I couldn't say, Oh, this is -- stop, you
4 know, that -- that was not necessarily called for.

5 But I was -- I was not very happy that I
6 had not had an opportunity to weigh in on how that had
7 ended up getting resolved.

8 Q. Is there anything else that you recall in your
9 conversation with Mr. Colin?

10 A. No. I can't think of anything specific.

11 Q. Or generally.

12 A. Or generally? We may have talked a little
13 more about it but that's the gist of, you know, the
14 discussion and that's when he told me that, you know,
15 this is all I really know and that we, you know -- we
16 were purchased at basically the price we had in plus
17 some cost funds, something minor on top.

18 Q. Did you have any understanding about how the
19 barge investment fared during the six-month period or
20 seven Merrill owned it; in other words, whether there
21 were any problems that caused it to increase or decrease
22 in value?

23 A. The only thing that I learned -- and I don't
24 think it was in June. I think it was more sort of by my
25 keeping tabs on it and having had some conversation in

1 Q. And just in terms of the deal being approved
2 by a committee, there are different mechanisms within
3 Merrill for doing that; is that correct?

4 A. That's correct.

5 Q. And one is an appropriation request?

6 A. Right.

7 Q. And the other types of deals can go to the
8 DMCC; is that correct?

9 A. Right, which is -- stands for "debt market
10 commitment committee."

11 Q. And then there's --

12 A. But those are loans.

13 Q. And then is there also a STRC committee?

14 A. Right, there's a -- and STRC stands for
15 "special transaction review committee."

16 Q. And this didn't go to the STRC, did it?

17 A. No, it did not.

18 Q. This went to the DMCC?

19 A. It went to the DMCC because that's where I
20 decided it would be best to be vetted, yes.

21 Q. Okay. And here you wrote STRC, question mark.

22 A. Well, because I don't know much -- did not and
23 I do now, but normally the committees that is investment
24 banking that I deal the most with are two: DMCC, which
25 is for financings of the traditional loans, issuances of

1 A. Well, it's not the sole. The main reason, if
2 I could answer it this way, is that I wanted to get it
3 reviewed by people who were familiar with transactions
4 like this -- structured deals, complicated ownership
5 interest -- that had some expertise in the area and they
6 could be convened within 24 hours to 48 hours depending
7 on when they got the materials --

8 Q. And that piece --

9 A. -- and to be reviewed.

10 Q. And that piece was necessary in order to
11 accomplish this by year-end, which is what Enron was
12 seeking to do?

13 A. I think it was the best way to go, yeah, for
14 that reason, for a lot of reasons, including timing.

15 Q. Now, just in terms of looking at this as an
16 outsider, are we supposed to think it's a coincidence
17 that some things where the issue is loan versus equity
18 that the committee that's reviewing it is the debt
19 markets committee, because, you know, to match up the
20 names --

21 A. Well, it's not a coincidence.

22 Q. -- and you sort of -- you sort of think,
23 well -- in trying to decide whether this was internally
24 viewed in some ways as a loan, one might think, "Well,
25 it did end up in front of the debt markets commitment

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1 the buck.

2 Q. Well, don't you think that some people in the
3 DMCC -- don't you think that what was -- you took away
4 from the bottom-line discussion in terms of -- not the
5 substantive issues that we're raising but in terms of
6 their position with respect to approval was that they
7 were saying both as an institutional matter in terms
8 what DMCC does and in terms of this sort of last minute
9 nature of a year-end deal that they weren't particularly
10 enamored of doing, that they were saying, "You know
11 what? Here's an easy out for us," which is, "You want
12 to deal with this? Go to the right people because we're
13 the wrong committee for approving this"?

14 A. That's not the impression that I got. I mean,
15 I think that that would not -- that's not the spirit in
16 which it was -- that the discussion was had in. We
17 talked for at least an hour.

18 Q. Well, why didn't somebody say, "Wait a second.
19 This purview committee is not just debt. The reason we
20 came to you is because you don't deal just with debt.
21 In fact, I can think of at least, for instance, two
22 other deals which were supposed to be equity, in
23 short-term equity. So that is your purview. So you
24 can't actually pass the buck. You're supposed to deal
25 with this"?

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1 A. Well, that's, in essence, what I said, is that
2 we --

3 Q. Okay.

4 A. -- I -- you know, I had asked that this
5 meeting be convened to look at this and they stayed and
6 they continued to review it. No one walked out of the
7 room saying, "I'm not wasting my time."

8 They appreciated -- from the get-go I told
9 everyone it was going to be going up to Mr. Davis, that
10 I wanted someone other than the DLT to look at it and to
11 provide input and their issues. They had a chance to
12 read the document.

13 And this was a way for me, as one of the
14 control people, and for our commitments chairman, who I
15 know Mr. Davis would turn to, to get some, you know,
16 neutral, not-involved input; and it was done quickly.

17 Q. Can we just focus on the issue of the role of
18 the DMCC because it sounds like they just disagreed,
19 then, ultimately with your view that they were the
20 appropriate body to pass on it because at the end of the
21 day, it sounds like they said, "No, we're not"?

22 A. And that was communicated to Mr. Davis.

23 Q. Okay. So --

24 A. But they did -- they did -- we did ask them
25 where -- did you have any strong feelings that we should

1 purchase price set with Marubeni and they were going to
2 be selling it to Marubeni at that price that -- whatever
3 that was would be what we would get, whatever the spread
4 was; and if it was going to be for a month hold or a
5 two-month hold or three-month hold, however long it
6 was -- I don't know how to calculate what that rate of
7 return would be on the 7 million, but the business and
8 the understanding I had and that everyone had at the
9 meeting where this was considered was that we were
10 buying it, in essence, what Marubeni was buying it at;
11 we were a placeholder until Marubeni could get their act
12 together and buy it for the price they had negotiated.

13 Q. If you look at the "fees" line, one of the
14 things that we've done is we've looked at that and then
15 we looked at some internal Merrill Lynch documents where
16 people are assessing 15 percent interest to Enron within
17 Merrill. Do you have any information at all about why
18 people would be assessing the exact rate of interest
19 that appears on the Appropriation Request?

20 A. I have no -- other than someone may have used
21 this as a basis to provide for some -- for the reason
22 for assessing it. This was held in our books as equity
23 and it was booked on our books as equity and it was
24 treated as equity. I don't know anything about
25 assessing any interest at all.

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1 Q. -- where it says: "Dan Bayly will have a
2 conference call with senior management of Enron
3 confirming this commitment to guarantee the ML takeout
4 within six months."

5 Now, is it your testimony that you didn't
6 see that at any -- that sentence at any time prior to
7 the deal closing?

8 A. No. I saw that after -- before the deal
9 closed was between Christmas and New Year's. The deal
10 closed on the last day of the week of 2000 -- I mean,
11 1999, whatever date that was.

12 And when I came back from Christmas break,
13 I saw this and was -- I focused on it. You know, I
14 hadn't really focused on anything other than the
15 appendix where all the structure and the things were
16 laid out. That's not correct, because it's not -- we're
17 not -- they are not committing to guarantee our
18 takeout -- I don't like the use of the word. But when I
19 read it in the context of the prior sentence which
20 didn't read "Enron will facilitate our exit from the
21 transaction with third-party investors," Dan -- "Dan
22 Bayly will have a conference call with senior management
23 of Enron confirming this commitment to guarantee (our)
24 takeout within six months."

25 So the fact that they were going to help

1 us re-market it and get us out within six months, that
2 was not my understanding. I thought it was three,
3 that -- you know, I'm not comfortable with it, plus this
4 document was never viable in my view. It was not a
5 record of the deal, did not reflect the transaction.

6 Q. Okay. Well, was there a commitment to
7 re-market or not?

8 A. There was a business understanding to
9 re-market it. There was a business arrangement. You
10 know, when you say the word "commitment," it sounds like
11 a legally binding commitment.

12 If Enron had done nothing to help us
13 re-market it, we would have -- we would be pretty much
14 annoyed and angry and we could shake our fist at them
15 but there's not going to be much recourse to us to get
16 them to do their job other than just sort of threatening
17 to sell it to somebody that they wouldn't want to be a
18 partner with.

19 So there was no commitment in a legally
20 binding way; but, yes, there was a business
21 understanding that that's what was going to happen. It
22 was the whole point. I mean, how can you be a temporary
23 bridge to permanent equity and not be the permanent
24 equity? That was the basis for the deal.

25 Q. Could you turn to Exhibit 78, please?

1 A. 37378?

2 Q. No, I'm sorry. Exhibit 78 tab and ML 6887 is
3 the Bates number on the bottom right.

4 A. Okay.

5 Q. Have you ever seen this document before?

6 A. No. No, I haven't.

7 Q. And Gary Colin is a senior official at Enron;
8 is that correct? I'm sorry, Merrill Lynch.

9 A. No. He's Merrill Lynch CFO, chief financial
10 officer, of investment banking.

11 Q. So, he's a senior official at Merrill Lynch?

12 A. Uh-huh.

13 Q. I'm sorry. You have to --

14 A. Yes, he was. Sorry.

15 Q. For our court reporter, "uh-huh" doesn't work.

16 A. Yes, he was.

17 Q. And do you know if Mr. Colin raised any issues
18 with respect to this e-mail, whether it was
19 inappropriate to be accruing interest on this investment
20 at 15 percent from the date of closure at 12-29-99
21 through the date of the -- the day before the e-mail,
22 which is May 3rd, 2000?

23 A. I don't know what Gary may or may not have
24 done. I never saw it before.

25 Q. And if you could, turn to Exhibit 82. Have

1 Q. Okay. I just want to -- let me make sure
2 because I think we've had some miscommunication about
3 what it is that I'm asking you.

4 A. Okay.

5 Q. So, let me just try again.

6 A. Try again.

7 Q. And I'm taking all responsibility for my
8 question not being clear enough.

9 My question is: What is your basis of
10 knowledge for the statement that the reason this wasn't
11 sent out was because it was incorrect?

12 In other words, I think you've explained
13 to us that you understand that this is incorrect; it's
14 not your understanding of the deal; that this person,
15 you know, may have been trying to just clear it off the
16 books or do something; but that this document, as you
17 see it, is not your understanding of the deal and from
18 your perspective, it's wrong.

19 What I'm trying to find out is about your
20 earlier statement where you said this -- your
21 understanding was that this draft was not sent out
22 precisely because it was not reflective of -- accurately
23 reflecting the deal?

24 A. It's more -- the basis for it is discussions
25 that I had with attorneys in the group who found out

1 about it and had said -- maybe it was Rob Furst or
2 someone said, "Hey, you're asking me to sign this. This
3 is incorrect." And that's when we found out that this
4 had been prepared and it had been -- this person was
5 acting on their own and with their own steam to sent
6 something out and hadn't really bothered to get it
7 approved and get it vetted and it wasn't a correct
8 representation of what was happening both from the
9 perspective of characterizing the deal and from the
10 obligations that they had under the contract to take
11 action to buy it.

12 Q. And when was that, this what you're just
13 telling us?

14 A. I think it was, you know, after the fact that
15 this -- sort of, who did this? You know, not at the
16 time that I -- because I really wasn't involved in
17 the --

18 Q. When you say "after the fact," can you --

19 A. I mean after July, after July.

20 Q. Of 2000?

21 A. Of 2000.

22 Q. And can you be any more precise than that
23 because "after July of 2000" could include anytime up
24 until today? So can you --

25 A. Well, it wasn't like yesterday but it was

1 like, you know, around the -- I don't know. It could
2 have been in July. It could have been right around
3 August; but it was sort of post the transaction and, you
4 know, looking at where we were and what had happened.

5 And frankly, Mr. Weissmann, it could have
6 been after this whole investigation. I just remember
7 looking at this going, "Wow. That's not good. This
8 does not look good," and then I was told it wasn't sent.

9 So it's a combination of -- I just don't
10 think it was before June.

11 Q. Also, you, at some point, felt like you wanted
12 to speak to counsel. I don't know if there's an issue
13 pending, but if you need an opportunity to speak to
14 counsel now --

15 A. I've answered you now. So --

16 Q. Great.

17 A. That's the last time you're going to trick me
18 into doing that.

19 Q. No. I mean, seriously, this is really not
20 about -- I mean, there's privilege --

21 A. I mean, I don't have a problem telling you
22 that I don't think it's -- it's not -- it's not anything
23 other than this is just another situation where
24 something was prepared and it wasn't sent out, and
25 that's basically all I know other than I was glad that

1 A. Correct. That's a fair way to say it.

2 Q. Okay. And in terms of the group, in addition
3 to the two individuals that you mentioned, is there
4 anyone else who would be in that group of people who
5 you think that --

6 A. At that point in time that was pretty much the
7 only people that I had ever, you know, talked to about
8 this just as keeping up with what's going on.

9 Q. Now -- so, basically, for this document, it's
10 just this document exists but it just isn't consistent
11 with your view of the transaction and somebody was just
12 off -- you know, not on the same page?

13 A. Correct.

14 Q. And in terms of the other document involving
15 15 percent interest being accrued, that would suggest to
16 you somebody else -- or maybe it's the same person.
17 It's just another reflection of they just didn't get it
18 right?

19 A. Well, it wasn't the same person but -- and the
20 fact is if it had been -- it wasn't the same person.

21 My view is that it didn't comport with
22 what I understood the deal was; and I certainly didn't
23 like some of the language in it and, therefore, it would
24 have never been circulated. If that's the way we would
25 have gone, it would have been absolutely correct and

1 legal issues with respect to -- not sort of risk issues
2 but whether it was -- any legal issues were involved, so
3 you gave a legal opinion?

4 A. I gave legal advice that I didn't see any
5 actions here -- in looking at the year-end trade and
6 the -- you know, whether there was a part because those
7 things were specifically considered -- that this
8 transaction did not -- well, this -- it was a right
9 avenue to consider. It didn't lead to their -- in my
10 view, there was not a part and this was not a sham
11 transaction.

12 Q. Okay. Who asked you for that legal advice?

13 A. It was in the context of the Mr. Davis
14 discussion. You know, it was there -- "What are your
15 views, Kathy, about this transaction?"

16 And I talked about the fact that we had
17 gotten comfortable on two important, sort of what we
18 call legal issues: One is the earnings management,
19 whether or not there is some facilitation of them moving
20 or taking earnings when they shouldn't; and the other is
21 the parking aspect.

22 But I talked about the fact that there
23 were other legal issues associated with the deal and the
24 way it was structured in that they wanted to understand
25 the risk, and that gets to the point you told me not to

1 talk about.

2 Q. Okay. And did you give that opinion in any
3 other form, or was it only with Mr. Davis?

4 A. I remember explicitly talking about it with
5 Mr. Davis and I also remember explicitly talking about
6 the same issues with Mr. Bayly, but I don't think he
7 asked me, "What's your legal opinion or view on this?"
8 It was, "Give me a brief."

9 Q. Okay. Did you give him --

10 A. So I did.

11 Q. -- your legal opinion?

12 A. I gave him my legal views on an opinion on the
13 fact that based on what we knew and the information we
14 had and -- this is not illegal.

15 Q. Now, during your interview with the Department
16 of Justice and the SEC, do you remember talking about
17 whether you gave any legal advice?

18 A. Yes.

19 Q. And do you know if you said the same thing, in
20 essence?

21 A. I think I was trying to make it --

22 Q. And I don't mean word for word.

23 A. I don't know that you accepted the point; but
24 I was trying to make a point about giving a legal
25 opinion, that we don't give in the written sense but in