

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 UNITED STATES OF AMERICA
Criminal Action
5 VS. No. H-02-121

6 ARTHUR ANDERSEN, LLP, Houston, Texas
May 14, 2002
7 8:12 a.m.
Defendant.

8
9 TRANSCRIPT OF PROCEEDINGS

10 BEFORE THE HONORABLE MELINDA HARMON AND A JURY

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24 VOLUME VII

25 PROCEEDINGS RECORDED BY STENOGRAPHIC MEANS,
TRANSCRIPT PRODUCED FROM COMPUTER-AIDED TRANSCRIPTION

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(Court resumed at 9:05 a.m.)

9 THE COURT: Mr. Weissmann.

10 Mr. WEISSMANN: May I proceed?

11 (The witness, DAVID B. DUNCAN, called on behalf of the
12 Government, was previously sworn.)

13 DIRECT EXAMINATION

14 (continued)

15 BY Mr. WEISSMANN:

16 Q. Mr. Duncan, did Arthur Andersen have a system for
17 evaluating the risks posed by any particular client?

18 A. A system? I'm not quite sure I understand what you're
19 asking me.

20 Q. Did Arthur Andersen evaluate from time to time the
21 various clients it had?

22 A. Yes.

23 Q. And did it assess, as a firm, whether the client should
24 still be retained by the firm?

25 A. Yes, it did.

4 Q. Approximately what time of day did the call start?

15 A. It was 8:30 in the morning.

16 Q. After the analyst call, what did you and your
17 colleagues, Ms. Cash, Mr. Bauer and Mr. Willard, talk about?

18 A. We discussed the call briefly. We discussed Deb's
19 compilation of the LJM transaction listing. And she was
20 soliciting all of our input into its completeness and who had
21 worked on various transactions. And we discussed requests
22 that I had gotten to make sure that we were in compliance
23 with the document retention policy.

24 Q. What was said about that topic?

25 A. I mentioned that I had received a request to ensure that

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1 the engagement team was in compliance with the policy.
2 Everybody acknowledged that that seemed to be a good thing to
3 do. We talked about -- I suggested that everybody should
4 contact their appropriate staff and make sure we're in
5 compliance with the policy.

6 And someone suggested that they thought we
7 should have a meeting to go over the recent events at ENRON
8 and also to discuss becoming in compliance with the policy
9 and have copies of the policy available for people that might
10 not be familiar with it.

11 Q. You said someone suggested this in the larger meeting?

12 A. Yes.

13 Q. Do you remember who?

14 A. I believe it was Roger Willard.

15 Q. You also mentioned that you gotten a request on that.

16 A. Yes.

17 Q. When did you get a request on it?

18 A. I had gotten a request on October 12th.

19 Q. And how did you get that request?

20 A. They -- an e-mail that was forwarded to me from Mike

21 Odom, the original e-mail being from Nancy Temple.

22 Q. And what was the -- in the e-mail?

23 A. What was in the e-mail was a statement to the effect

24 that it would be a -- it would be good to ensure that the

25 engagement team is in compliance with the document retention

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1 policy.

2 Q. Now, you said that in the discussion between you and

3 Mr. Bauer, Mr. Willard and Ms. Cash, I believe you said

4 something like it was agreed that would be a good thing to

5 do.

6 A. Yes.

7 Q. Why?

8 A. Well, it appeared to be a very appropriate thing to do,

9 given the R circumstances surrounding all the events at ENRON

10 at the time.

11 Q. What circumstances?

12 A. The losses recorded in the quarter, the escalating news
13 reports, the lawsuits and the potential for further lawsuits
14 and the SEC inquiry.

15 Q. What did you understand when you brought up the topic of
16 compliance with the document policy? What did you understand
17 people would do to get in compliance with the policy?

18 A. I viewed the policy really having two main themes: One
19 is the compilation of the final work paper product and the
20 filing of that in the central files to where the working
21 papers were preserved. And then the other broad aspect was
22 the destruction of all other materials that didn't make it
23 into the final work papers, extraneous notes and
24 documentation and other things.

25 Q. Now, with respect to the first part, what's your

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1 understanding of what the policy, if applied, as written,
2 would require in terms of timing? When was that stuff
3 supposed to be done?

4 A. When you concluded an audit. It should be done, you
5 know, in an efficient manner after the conclusion of the
6 audit.

7 Q. And with respect to ENRON, when is the official end of
8 Andersen audit?

9 A. We generally completed our work in the March time frame

10 of each year for the preceding year.

11 Q. So the end of the audit wasn't in October or September?

12 A. No, it was not.

13 Q. Now, in addition to the e-mail that you talked about,
14 the one from Mr. Odom and Ms. Temple, did anyone orally tell
15 you to comply with the document policy?

16 A. I had been asked a question about our compliance with
17 the policy.

18 Q. Who had asked you?

19 A. Ms. Temple, I believe.

20 Q. And do you remember approximately when that was?

21 A. Sometime in the days before I received the e-mail.

22 Q. And when you say days before, can you give us your best
23 recollection of how many days before?

24 A. Less than a week before.

25 Q. And what do you remember her asking you?

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1 A. What the -- what was the engagement's team's compliance,
2 what was the status of the engagement team's compliance with
3 the document retention policy.

4 Q. And what did you say?

5 A. I responded that we were irregular; that, at best; it
6 was not something that I addressed with the team and focused
7 on on a recurring basis.

8 Q. Had anyone ever asked you this question before about how
9 you're doing on compliance with the document compliance
10 policy?

11 A. No.

12 Q. Had you ever gotten a request by anyone at legal
13 counsel's office?

14 A. No, not to my recollection.

15 Q. Did anyone else on that call talk about the document
16 policy?

17 A. After I was asked that question, someone made the
18 comment that, I recall it being, we should check with Chicago
19 too; that those guys tend to keep everything.

20 Q. Who made that comment?

21 A. I believe it was Larry Rieger.

22 Q. Are you positive of that?

23 A. I'm not positive.

24 Q. And are you positive it was Ms. Temple who had made the
25 request to you?

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1 A. I'm not positive it was Ms. Temple, no.

2 Q. Are you more positive of one as opposed to the other?

3 A. I feel more certain Mr. Rieger made the second comment
4 and Ms. Temple made the first, but both comments were made on
5 the call.

6 Q. Are you positive, regardless of who said them, that that

7 question was put to you by someone on that call and the

8 comment was made about checking with Chicago?

9 A. I am, yes.

10 Q. Now, that comment about checking with Chicago, what do

11 you understand that to be a reference to?

12 A. I viewed it to be a reference to the PSG whom we

13 consulted with often and which would have a lot of

14 correspondence and documentation related to ENRON

15 transactions.

16 MR. WEISSMANN: May I approach?

17 THE COURT: You may.

18 BY MR. WEISSMANN:

19 Q. Mr. Duncan, I'm showing you Government's Exhibit 1012A

20 for identification.

21 Do you recognize that?

22 A. I do.

23 Q. What is it?

24 A. It is the e-mail I referred to previously that

25 originated with Ms. Temple to Mr. Odom that was forwarded to

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1 me by Mr. Odom.

2 MR. WEISSMANN: We offer 1012A.

3 MR. HARDIN: I'm sorry, Judge. No objection.

4 THE COURT: 1012A is admitted.

5 (Exhibit Number 1012A was received)

6 MR. WEISSMANN: And if we could pull that up.

7 And if I could ask Agent Patkus if you could

8 just enlarge the whole thing.

9 BY MR. WEISSMANN:

10 Q. Now, the initial e-mail from Ms. Temple to Mr. Odom is

11 October 12th; is that correct?

12 A. Yes.

13 Q. And if you could just read it, what it is that she says?

14 A. "Mike, it might be useful to consider reminding the
15 engagement team of our document and retention policy. It
16 will be helpful to make sure that we have complied with the
17 policy. Let me know if you have any questions."

18 MR. HARDIN: Excuse me. I'm sorry. I think the
19 witness misread. Can I ask him to reread the word
20 "documentation"? I think it calls to document retention
21 policy.

22 THE WITNESS: Okay.

23 MR. HARDIN: If you could read that sentence again.

24 THE COURT: All right.

25 THE WITNESS: Sure. "It might be useful to

1 consider reminding the engagement team of our documentation
2 and retention policy. It will be helpful the make sure that
3 we have complied with the policy. Let me know if you have

4 any questions."

5 BY MR. WEISSMANN:

6 Q. And the -- and then it's signed "Nancy"?

7 A. Yes.

8 Q. And there's a link there to the document policy?

9 A. Yes.

10 Q. Now, in that language, where it says "document retention
11 policy" and the whole initial e-mail --

12 A. Yes.

13 Q. -- is there any reference there to ENRON or the ENRON
14 engagement team?

15 A. No, there is not.

16 Q. And Mr. Odom forwarded that to you; correct?

17 A. Yes.

18 Q. And he wrote "more help"?

19 A. Yes.

20 Q. How did you take that "more help" language?

21 A. As a sarcastic remark by Mr. Odom that we were getting a
22 lot of advice on things to do around this time frame. And I
23 took it as a pseudosarcastic remark by him of more things to
24 do.

25 Q. Now, this e-mail is on October 12th. You said that you

1 spoke about this with your colleagues right after the analyst

2 call on the 23rd; is that correct?

3 A. Yes.

4 Q. What's the reason that you waited from the 12th to the
5 23rd?

6 A. The 12th was a Friday, the Friday before the earnings
7 release, and we had a number of issues that were being
8 managed through earnings release and afterward, and the
9 opportunity and the -- by the time that certain time had
10 passed, the recollection of complying with the policy didn't
11 occur to me again until that point in time.

12 Q. Is there anything that made it more important to you on
13 the 23rd than it was on the 12th?

14 A. Yes.

15 Q. What?

16 A. The continued escalating events surrounding ENRON.

17 Q. And what was escalating?

18 A. The negative press after the earnings release, the
19 filing of lawsuits and the SEC inquiry.

20 Q. Now, you mentioned that people discussed right after the
21 analyst call about this would be a good thing to do.

22 Why did you think it would be a good thing for
23 the engagement team to be in compliance with the policy?

24 A. To protect the interests of the firm; to not have a lot
25 of extraneous material that weren't -- materials that weren't

1 a part of the final audit work papers laying around for

2 others to discover.

3 Q. And when you say "protect the interests of the firm,"

4 how would it protect the interests of the firm?

5 A. Well, in the event of civil litigation or investigation,

6 things that were not a part of the final conclusions or work

7 papers could be taken out of context, blown out of

8 proportion, any number of reasons of how they might be used

9 or misused against the firm.

10 Q. Did you have a discussion with Ms. Temple about that

11 very topic?

12 A. Over time? At this particular date?

13 Q. No. At any point.

14 A. Yes. Over time, we had several references to that type

15 of an item or an idea.

16 Q. Now, you mentioned that this was generally agreed on by

17 you and your colleagues.

18 Was that plan of action put into effect?

19 A. Yes, it was.

20 Q. And how was that put into effect?

21 A. I asked my assistant to arrange to have a meeting of the

22 people -- the audit partners or the partners and managers on

23 the floor as soon as she could put it together.

24 Q. And when you say "as soon as she could put it together,"

25 how soon after this conversation with your colleagues was

11 Q. Now, what was it that you and Ms. Temple talked about
12 regarding how extraneous documents could be harmful?

13 A. Well, in the context of litigation, I recall.

14 MR. HARDIN: Excuse me. I'm sorry. Can I have a
15 point in reference as to time of these conversations, Your
16 Honor?

17 THE COURT: All right.

18 MR. WEISSMANN: Your Honor, I'll clarify that.

19 BY MR. WEISSMANN:

20 Q. First, do you remember when these conversations were?

21 A. I don't remember exactly when they occurred, no.

22 Q. And do you remember approximately, in other words, the
23 time frame?

24 A. I was dealing with Ms. Temple from the late September,
25 early October time frame through the November, December time

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1 frame. So somewhere in that time frame is when these would
2 have occurred.

3 Q. And what do you remember her telling you about
4 extraneous documents?

5 A. That they are often used against us in litigation. A
6 plaintiff lawyers can take the most innocent thing and make
7 it seem to be a very, very significant thing, an example such
8 as that.