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Quattrone, Fastow Cases Pit U.S. Against One Lawyer

June 24 (Bloomberg) — Frank Quattrone, the indicted former technology banker for Credit Suisse First Boston, and Andrew Fastow, charged with organizing a \$68 billion fraud that sank Enron Corp., share a harsh spotlight.

They also share **John W. Kecker**, a defense attorney who thrives in the spotlight.

Kecker's two clients are among the highest-ranking executives to be charged by federal prosecutors after two years of investigating allegations of corruption on Wall Street and at corporations including Enron, WorldCom Inc., Rite Aid Corp., Global Crossing Ltd., Tyco International Ltd. and Adelphia Communications Corp.

The Quattrone and Fastow trials, in New York and Houston, will be a credibility test for the Bush administration's efforts to discourage corruption, ex-prosecutors and other legal experts said.

"If they don't obtain convictions," said Christopher J. Bebel, a former federal prosecutor, "questions as to bias and favoritism will haunt President Bush every step of the campaign trail" in the 2004 presidential elections.

"The administration's approach is clearly to bring high-profile prosecutions to act as a general deterrent to others on Wall Street," rather than impose regulatory deterrents, said Robert Mintz, another former federal prosecutor. Standing in the administration's way is **Kecker**, a San Francisco trial attorney and former prosecutor.

Iran-Contra Case

Kecker successfully prosecuted fellow former Marine Oliver L. North in the Iran-Contra trial

and once represented former Black Panther leader Eldridge Cleaver. He says he has honed his "slashing and smashing" defense tactics by winning white-collar crime trials and corporate litigation.

Kecker, 59, was named the nation's second-best white-collar criminal defense lawyer in a survey of attorneys this year by the Washington D.C.-based Corporate Crime Reporter, a national weekly legal newsletter. Daniel Webb, a former U.S. attorney now with Winston & Strawn in Chicago, placed first. The poll asked lawyers whom they would pick to represent them if they faced a federal criminal investigation. **Kecker** was the top choice last year in a similar poll by California Lawyer magazine.

"His record in court is nothing short of phenomenal and he has won many big cases," said Jan Handzlik, former chairman of the American Bar Association's White Collar Crime Committee and a Los Angeles-based partner of Chicago's Kirkland & Ellis.

'Ruthless Cross-Examiner'

Kecker is exceptionally combative even by the standard of most American trial lawyers, other attorneys said. In the Iran-Contra trial, he was criticized for comparing North to Adolf Hitler.

He is "a ruthless cross-examiner," said Tower C. Snow, an attorney with the Clifford Chance law firm in San Francisco.

"I like the combat," **Kecker** told the San Francisco Chronicle in 1989. "When you go to court, you get a chance to be a hero, something that

happens less and less in our complicated society.”

With **Keker** as defense attorney, plea bargains are less likely for both Quattrone and Fastow, former prosecutors and lawyers said. **Keker** was chosen separately by Quattrone and Fastow. Their cases are otherwise unrelated.

Quattrone’s trial is scheduled for September. Fastow’s trial is not yet scheduled.

Quattrone, former head of CSFB’s technology banking unit, pleaded not guilty last month to federal charges of witness tampering and obstructing investigations by the U.S. Department of Justice and the Securities and Exchange Commission into how the bank doled out shares of initial public offerings.

Fastow’s Indictment

He is the only Wall Street executive so far to be charged with a crime following federal investigations into how investment banks allocated IPO shares.

Fastow, Enron’s former chief financial officer, faces a 109-count indictment that accuses him of helping Enron construct off-the-books partnerships that hid debt while artificially boosting revenue.

Enron sought bankruptcy protection from creditors in December 2001, wiping out 5,000 jobs and about \$800 million in employees’ pension investments. The filing was the second-largest in U.S. history behind WorldCom. Its collapse helped trigger months of regulatory investigations that spread to other companies, their auditors and banks.

Fastow hired **Keker** because he intends to go to trial rather than plead guilty to lesser charges, said Richard Drubel, a friend of Fastow who was Fastow’s first lawyer in his current case. Drubel said he had chosen **Keker** for that reason and recommended him to Fastow. He is a partner at the Armonk, New York law firm Boies Schiller & Flexner.

Lessons From Napoleon

Keker takes some of his cues from Napoleon.

He hung a poster-size portrait of the French emperor on his office wall during the Iran-Contra prosecution and has Napoleon memorabilia in his offices at his San Francisco firm, **Keker & Van Nest**, according to his partner, Robert Van Nest.

“Napoleon is the most fascinating character in the most fascinating period,” **Keker** said last month outside Manhattan federal court, where Quattrone pleaded not guilty to obstructing a federal investigation at CSFB.

What makes the era so fascinating? “Turmoil,” said **Keker**. He declined to be interviewed or answer further questions.

Turmoil has been good to **Keker**.

His victories include the successful 1993 defense of Patrick S. Hallinan, another San Francisco defense attorney, indicted on 30 federal counts of complicity in a drug ring.

‘Slashing and Smashing’

Last September, in Chiron Corp. v. Genentech Inc., **Keker** successfully defended Genentech against claims by its competitor Chiron that Genentech’s breast cancer drug Herceptin, with sales of about \$350 million per year, infringed on a Chiron patent.

As soon as a criminal trial opens “the defense has to leap right into it, slashing and smashing,” **Keker** told the National Law Journal in 1996.

Van Nest, **Keker**’s legal partner, said he can only remember three trials that **Keker** lost, out of hundreds of cases.

One of his notable defeats, other attorneys said, was a \$92 million judgment awarded to Union Oil of California in 1997 in Los Angeles. Unocal alleged that six oil companies, including Exxon Mobil Corp., **Keker**’s client, had violated its patent on a cleaner-burning gasoline.

Keker lost to Minneapolis lawyer Michael Ciresi, who in 1998 represented the State of Minnesota in one of the first state lawsuits against the tobacco industry. Working in both civil and criminal cases, he told the National Law Journal, allowed him to hone his trial techniques — “civil

law is much more creative” — then transfer them to criminal trials.

‘Bellicose’

Keker “has a big personality” and “a flair for the dramatic,” said David Zornow, a fellow former prosecutor in North’s Iran-Contra trial and now chairman of white-collar crime practice at Skadden, Arps, Slate, Meagher & Flom LLP in New York.

Keker’s center-stage courtroom techniques, whether impeaching the credibility of witnesses, filing flurries of unsuccessful trial motions for discovery purposes or quoting Balzac, aren’t applauded by everyone.

“I can understand where people would consider him bellicose because he is aggressive and will try to take over a courtroom,” said Brian Lysaght of the Santa Monica, California law firm O’Neill Lysaght & Sun. Lysaght said he and **Keker** were opposing attorneys in a recent lawsuit until **Keker** withdrew this year because of a conflict.

“I was very pleased to see him in my rear-view mirror,” said Lysaght.

A Prosecutor’s Zeal

Keker was also criticized for his zeal in volunteering as a private attorney to prosecute North, a White House aide to President Ronald Reagan, in the 1989 Iran-Contra scandal. “How would you like someone to volunteer to prosecute you?” said Brendan Sullivan, a Washington D.C. lawyer who represented North. “That’s just not the way the American system works.”

Keker later said he joined Iran-Contra Independent Counsel Lawrence Walsh’s prosecution team because he felt “outraged” by reports that White House officials had funneled money to Nicaraguan rebels derived from illegal arms sales to Iran.

North’s conviction was later reversed on the grounds that it had been based partly on his testimony to Congress, for which he had been granted immunity.

While **Keker** has succeeded as a prosecutor and corporate litigator, he has also represented environmental groups. He referred to himself as a “child of the ‘60s” in a 1997 interview in the San Francisco Examiner.

Black Panther Case

Keker is a political liberal, says Michael Bromwich, a former inspector general for the U.S. Department of Justice and an Iran-Contra prosecutor who worked with **Keker**.

Keker, who is married and has two sons, was born in 1944 in Winston-Salem, North Carolina. He graduated from Princeton University in New Jersey in 1965 and entered the Marine Corps and was sent to Vietnam at the height of the Vietnam War.

Keker served there as a Marine infantry platoon leader until 1966, when his elbow was shattered by North Vietnamese gunfire. He returned home and entered Yale Law School in New Haven, Connecticut, graduating in 1970.

He worked as a law clerk for Earl Warren after the U.S. Supreme Court chief justice retired, as a staff attorney for the Natural Resources Defense Council, an environmental group, and as an assistant federal public defender. He opened his law firm, now **Keker & Van Nest**, in San Francisco in 1978.

That year, **Keker** represented Cleaver in court. He attempted but failed to suppress police evidence after the former Black Panther leader was indicted for attempted murder for his role in a 1968 shootout with police in Oakland, California. Cleaver was sentenced to five years’ probation. He died in 1998.

‘Star Wars’ Lawyer

By 1988, **Keker** was defending corporate clients in civil court, such as “Star Wars” director George Lucas and Lucasfilm Ltd. in three copy-right infringement lawsuits.

Keker charged “in the mid \$400s” per hour,

according to a 1998 article in the Recorder, a San Francisco legal newspaper. There is no way to estimate what **Keker** will be paid for the Quattrone or Fastow cases, defense lawyers said. Total fees depend on how long a case remains unresolved, whether it goes to trial and how long a trial lasts.

In the Quattrone and Fastow cases, Department of Justice prosecutors are looking for convictions, not plea bargain deals, to set an example, former prosecutors said.

The U.S. attorneys who will prosecute Fastow and Quattrone — James Comey in New York and Michael Shelby in Houston — are unlikely to push for compromise because they want to make examples of the two men, said Bebel and Mintz, the former prosecutors.

A Justice Department spokesman in New York, Michael Kulstad, declined to comment. Fastow spokesman Gordon Andrew and Quattrone spokesman Dan Hill declined to comment.

Fear of Acquittals

Corporate crime “is clearly an issue that is at the very top of the agenda for this Department of Justice,” said Mintz, who said he is a Republican. “Unlike the dynamic in Washington where there is tension between high profile prosecutions and more broad-based regulatory reforms, for U.S. attorneys, there is only one game in town. And the check in that system is the fear of the high-profile acquittal.”

Rite Aid’s former chief executive officer, Martin Grass, pleaded guilty on June 17 to conspiring to inflate income by \$1.6 billion at the No. 3 U.S. drugstore chain. He agreed to an eight-year prison term. He is the first CEO known to have pleaded guilty to such a large misstatement since the collapse of Enron.

On June 10, ImClone Systems Inc. founder Samuel Waksal received a maximum sentence of seven years in prison and \$4.3 million in penalties on insider trading and related charges. The sentencing judge rejected the prosecutors’ plea that

Waksal receive a stiffer sentence.

White Collar ‘Crackdown’

The sentence shows that judges “are on board with the new crackdown on white-collar crime,” said Bebel. “In the past, prosecutors have been routinely frustrated by the minimal sentences imposed against white-collar defendants.” Waksal was the first U.S. chief executive officer punished in the corporate frauds that surfaced after Enron’s collapse in 2001.

Quattrone faces a maximum of 25 years in prison, if convicted, though under federal guidelines he’d likely receive two years, said Robert Giuffra, a securities defense lawyer and partner at the New York law firm Sullivan & Cromwell.

Because the possible two-year sentence for obstruction “is not so high,” and a plea bargain would probably require a year in prison, Giuffra said, “maybe he’s preparing to roll the dice.”

Keker asked a New York judge yesterday to transfer Quattrone’s case to California, where the former banker worked for CSFB. **Keker** also told the court that he wants the names of government witnesses and what they told a grand jury. Quattrone’s attorneys say they want to show that a December 2000 e-mail he sent that led to his indictment on obstruction of justice charges didn’t interfere with the government probe.

‘File Cleaning’

Prosecutors say Quattrone forwarded that e-mail, a subordinate’s memo encouraging employees to “catch up on file cleaning,” and added his own endorsement. The original memo, reminding employees of the company’s document-retention policy, was meant as a directive to destroy evidence, prosecutors allege.

To show this, defense lawyers said, the government might be forced to put bank employees on the witness stand, where they will be vulnerable to **Keker’s** skills as a cross-examiner.

Keker contends Quattrone never saw the sub-

poenas served on CSFB and didn't know that the investigation of the firm's IPO practices would extend to his investment banking unit.

"The facts turn on what was going on in his head, which is always a challenge for the prosecution," said St. John's University Law School Professor Michael Simons, a former federal prosecutor in New York.

'An Agonizing Choice'

Fastow, in contrast to Quattrone, faces a long sentence if he is convicted because of federal limits on judicial sentencing discretion, said Handzlik, the former American Bar Association official. That's because Quattrone was charged with three counts compared with 109 for Fastow.

Keker said the former Enron executive was acting on orders from former Enron chief executive officers Jeffrey Skilling and Kenneth Lay. Neither Skilling nor Lay has been charged with a

crime. Skilling's lawyer, Bruce Hiler, did not return calls seeking comment. Lay's lawyer, Earl J. Silbert, declined to comment.

Defense lawyers said the indictment in May of Fastow's wife, Lea Weingarten Fastow, who also worked at Enron, means that prosecutors are trying to persuade him to provide evidence against Skilling and Lay in exchange for leniency for him and his wife. She faces conspiracy and tax charges and is represented by Houston lawyer Andrew Jefferson. He did not return a call seeking comment.

"In this age of sentencing guidelines and no parole," said Handzlik, "white-collar crime defendants in these high profile cases face an agonizing choice."

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