

## Superlatives (and Contradictions) in a Fraud Trial

By KEN BELSON

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**A**FTER the blizzard of high-profile corporate-executive trials last year that featured Martha Stewart, Frank P. Quattrone and John J. Rigas, Americans might be forgiven for saying "enough!"

But, like it or not, the frenzy is likely to start anew on Tuesday, when the government begins its case against Bernard J. Ebbers, the former C.E.O. of WorldCom.

Prosecutors have accused Mr. Ebbers of conspiracy, securities fraud and filing false statements to regulators in an \$11 billion accounting fraud, the biggest in history; he faces up to 85 years in prison if convicted on all counts. The fraud led to the largest corporate bankruptcy in history when WorldCom collapsed in 2002.

The company's lead investment banker, Citigroup, paid \$2.65 billion to settle claims by investors who were burned in the meltdown, and 10 former WorldCom directors agreed to pay \$18 million of their own money to settle the same lawsuit.

The superlatives, firsts and continuing fights over WorldCom are a big reason that the Ebbers trial is being called the granddaddy of all fraud cases. Not undeservedly, it is also being billed as a coda to the excesses of the stock market bubble that catapulted and then consumed the telecommunications industry in the last half decade.

In digging through WorldCom's wreckage, the government has methodically built its case against Mr. Ebbers, a former high school basketball coach who turned a cut-rate long distance telephone company into a behemoth worthy of the name he gave it. Prosecutors have secured guilty pleas from five of his underlings, including his former chief financial officer, Scott D. Sullivan.

Judge Barbara S. Jones of United States District Court in Manhattan denied attempts to move the trial to Mr. Ebbers's home state, Mississippi, and rejected motions to grant immunity to witnesses for the defense. On their face, these victories would seem to presage a slam-dunk for the government's case. But legal analysts say the trial will be anything but clear-cut because Mr. Ebbers is such a contradictory figure.



Hyungwon Kang/Reuters

Bernard J. Ebbers, left, the former chief executive of WorldCom, and Scott D. Sullivan, the former chief financial officer, at a hearing in Washington in 2002.

# The New York Times

ON THE WEB

Many trials involving former corporate highfliers come down to whether the executive planned or knew about the fraud, or whether the dirty work was done by subordinates with his or her direct knowledge. Proving that Mr. Ebbers was "in the loop" will not be easy. According to managers who worked with him, Mr. Ebbers was a detail-oriented and hands-on executive who was concerned - even obsessed - with sales growth figures and efforts to cut costs.

But he did not appear to be a financial whiz capable of devising Enronlike accounting schemes, they said, and instead was more focused on buying companies to merge into WorldCom and on increasing revenue. While prosecutors say they have damning voice mail messages and memos, Mr. Ebbers rarely sent e-mail messages, making it harder to compile a paper trail of instructions to subordinates.

"It's pretty much what did he know, what should he have known and what he was aware of based on conduct," said Michael Missal, a partner at the law firm Kirkpatrick & Lockhart Nicholson Graham and a contributor to the bankruptcy court report on WorldCom last year by a panel led by Richard E. Thornburgh, the former attorney general. While not a complete review, Mr. Missal said, "our reports showed that Ebbers did have involvement in the financial reporting process." He added, "The question will be: How deeply was he involved in the process?"

Prosecutors are likely to call former co-workers, including the five financial officers who have pleaded guilty, to the stand. Mr. Sullivan, Mr. Ebbers's right-hand man, will be a particularly important witness.

The defense is likely to counter by saying that these witnesses are motivated to cooperate with the government because they are eager to reduce their possible maximum sentences, which range from 15 to 25 years. Former directors and financial industry analysts may also be called, though Mr. Missal said Mr. Ebbers generally kept his own counsel so witnesses with direct knowledge of his plans may be hard to find.

In lieu of a specific memo showing that Mr. Ebbers instructed Mr. Sullivan or someone else to cook WorldCom's books, the government would have to build a case around Mr. Ebbers's motivation, legal specialists said. Here again, contradictions abound.

Mr. Ebbers was a persuasive salesman and an aggressive businessman, having bought dozens of companies over two decades. Seeing opportunity in the breakup of AT&T, he was among the earliest entrepreneurs who helped usher in cheap long-distance service.

But as WorldCom grew, Mr. Ebbers also became a slave to Wall Street. Under pressure to meet analysts' expectations, he had to continue buying companies. When a downturn in the broader market hurt WorldCom's stock, prosecutors say, the company used accounting gimmicks to paper over losses and buoy its shares.

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Whether Mr. Ebbers ordered those antics, or was even privy to them, is the question. Prosecutors are likely to try to show that there was no way an executive so involved in the company's climb could not have been involved in its demise.

The company was not the only thing at stake. WorldCom made Mr. Ebbers fabulously wealthy. He borrowed millions of dollars against his stock to buy a 500,000-acre ranch in Canada, where he was born, and acquired timberland, boats, homes and businesses.

Yet Mr. Ebbers kept his WorldCom shares even as they fell. And while he lived lavishly, at least on the surface he seemed loyal to his company.

He also has humble roots, which his lawyers are sure to emphasize. After moving to Mississippi, he ran some motels before entering the telephone business in the 1980's. Without formal training in engineering or finance, he relied on grit and instinct.

As defense lawyers have done in other cases against corporate executives, Mr. Ebbers's are likely to portray him as someone who focused on the big picture and let his accountants handle the books.

"The government has to paint him as a robber baron whose sole goal was to get rich," said Robert W. Seiden, the president of Fortress Global Investigations and a former prosecutor in the Manhattan district attorney's office. "The defense has to play up the Horatio Alger angle: a guy with a simple background who built a fledgling industry into an alternative to AT&T."

How the jury weighs these competing pictures may be crucial to whether Mr. Ebbers is convicted, particularly because the accounting in question may prove too arcane and incomprehensible for the layperson.

If the prosecution succeeds in lumping Mr. Ebbers in with other executives who have become synonymous with greed and excess, like Ivan F. Boesky and Michael R. Milken, he stands a good chance of being found guilty. At the same time, juries may identify with Mr. Ebbers's modest background and give him the benefit of the doubt.

"Jurors are very, very forgiving," said Angela C. Agrusa, a partner at the law firm Baker & Hostetler in Los Angeles who has won two civil cases against WorldCom, "as long as you're not dealing with the death of a human being."