

## Defense calls case vs. exec unproven

### Peregrine officer not part of fraud, attorney argues

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Federal prosecutors failed to show that former Peregrine Systems executive Gary Lee Lenz intentionally joined in the corporate conspiracy to defraud investors, his lawyer told jurors yesterday.

Even though Lenz was Peregrine's president and chief operating officer, "Gary was not in reality a member of the power structure there," defense lawyer Thomas Bienert said.

In a closing argument that lasted nearly six hours, Bienert said Lenz had no previous experience in the software industry or at a publicly traded company. Bienert said Lenz rotated through four executive posts during the 18 months he worked at Peregrine because corporate insiders viewed him as "a do nothing" and never took him seriously.

"It's not a crime if you got hoodwinked, if you were bamboozled," Bienert told the jury. "It's a crime if you acted intentionally, if you knew what you were doing was wrong."

Bienert sought to dispel last week's closing arguments by prosecutors in the financial fraud trial that began April 10, five years after a corporate accounting scandal leveled the San Diego software company. Lenz is charged with 32 counts of conspiracy and fraud arising from a 33-month period that began in April 1999.

The government contends that Lenz knew about the fraud because he attended scores of meetings in which Peregrine insiders discussed the need for bogus software sales to meet the company's revenue forecasts.

In a provocative tactic, Bienert sharply criticized prosecutors' conduct in the financial fraud case.

"One of the things that amazes me about this case is that the government wants to hold Lenz criminally responsible for all the bad things going on in areas of the company that he had absolutely no responsibility for," Bienert said.

He argued that Assistant U.S. Attorneys Eric Beste and Sanjay Bhandari had acted in bad faith in their pretrial debriefing of the main witness, former Peregrine Chairman and Chief Executive Stephen P. Gardner.

Defense lawyers were infuriated by the prosecutors' decision to take no notes, recordings or transcripts during more than a dozen interviews with Gardner after he pleaded guilty to three counts in March. The move deprived the defense of a standard tool – using Gardner's pretrial statements to challenge his trial testimony or show how his story had changed.

Gardner, who was on the stand longer than any other witness, testified that the late David Farley, who was Peregrine's chief financial officer, warned Lenz and other executives about the company's fraudulent practices during an expletive-filled tirade in October 2000.

Bienert also argued that the government had prepared its case to target Peregrine's highest-ranking executives, including Gardner and former sales executives Doug Powanda and Andy Cahill.

Once those executives pleaded guilty, however, Bienert said the prosecutors failed to change their case to prove the culpability of smaller fish like Lenz. As a result, Bienert argued that the prosecutors mischaracterized evidence submitted during the trial, by saying that certain e-mails and other documents implicated Lenz.

Bienert was the second defense lawyer to deliver his closing argument in the marathon trial, before federal Judge Thomas J. Whelan.

Also charged are Joseph G. Reichner, Peregrine's former vice president for alliances; Patrick Towle, the former accounting manager; and Daniel F. Stulac, the former Arthur Andersen partner who headed Peregrine's team of outside auditors.

Bienert argued broadly at first, saying the government's case against Lenz was circumstantial and relied on sworn testimony by inveterate liars.

The lawyer then moved methodically through the details of specific transactions, arguing that e-mails and other exhibits in the case failed to substantiate prosecutors' allegations against Lenz.