

FILED  
U.S. DISTRICT COURT

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DISTRICT OF UTAH

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

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UNITED STATES OF AMERICA,	:	Case No.
Plaintiff,	:	
vs.	:	INDICTMENT
PATRICK MERRILL BRODY and	:	VIO: 18 U.S.C. § 371 (Conspiracies);
DAVID EUGENE ROSS II,	:	26 U.S.C. § 7203 (Failure to File Tax
Defendants.	:	Return); 18 U.S.C. § 1956 (a)(2)(A)
	:	(Money Laundering); 18 U.S.C. § 1957
	:	(Money Laundering)

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The Grand Jury charges:

PERSONS AND ENTITIES

At all relevant times:

1. Merrill Scott & Associates, Inc., ("Merrill Scott") was a Utah company that solicited funds from wealthy customers by promising huge tax savings and portraying itself as a top-flight financial-services company that had existed since 1969.

Case: 2:08-cr-00410  
Assigned To : Kimball, Dale A.  
Assign. Date : 6/25/2008  
Description: USA v. Ross et al

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2. Defendant **PATRICK MERRILL BRODY** was managing director of Merrill Scott, which he started from scratch in about 1993 with a man whose middle name was Scott.

3. Defendant **DAVID EUGENE ROSS II**, an attorney who once worked for the Internal Revenue Service, joined Merrill Scott in about 1998 and thereafter partnered with Defendant **BRODY** in operating Merrill Scott.

4. Alex Jones was a name Defendant **BRODY** used as his personal nominee.

5. Other nominees that Defendants **BRODY** and **ROSS** set up and used to conduct Merrill Scott's business include, but are not limited to:

a. Merrill Scott & Associates, Ltd. ("MSA Ltd") in the Bahamas;

b. Phoenix Overseas Advisors, Ltd. ("POA Ltd") in the Bahamas (for investments);

c. Gibraltar Permanente Assurance, Ltd. ("GPA Ltd") licensed in Dominica (to support a claim of selling insurance products);

d. Estate Planning Institute, Ltd. ("EPI Ltd") in the Bahamas (to support a claim of privileged communications);

e. Fidelity Funding, Ltd., and Legacy Capital, LLC, in Belize and Utah, respectively (as mortgage-funding conduits).

**COUNT I**  
**18 U.S.C. § 371**  
**(Conspiracy)**

6. From about July 1998 to about April 2002, the exact dates being unknown to the Grand Jury, in the District of Utah and elsewhere,

**PATRICK MERRILL BRODY and  
DAVID EUGENE ROSS II,**

defendants herein, did unlawfully and knowingly conspire, combine, confederate, and agree together and with other individuals both known and unknown to the Grand Jury to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment, and collection of revenue, that is, millions of dollars in their customers' income taxes.

**MANNER AND MEANS BY WHICH THE  
CONSPIRACY WAS CARRIED OUT**

7. The manner and means by which the conspiracy sought to accomplish its objects included, among others, the following:

8. Defendants attracted wealthy customers by falsely marketing Merrill Scott as a long-established (since 1969) wealth-management firm that had a successful history of legally cutting income taxes and generating investment gains through its professional management of financial transactions.

9. From offices in Utah and elsewhere, defendants prepared Master Financial Plans for each of their customers. These plans outlined complex transactions designed to hide any self dealing that would undermine defendants' tax schemes. According to the plans, a customer's funds would cycle through a maze of nominee bank and brokerage accounts in Nevada, the Bahamas, and elsewhere to generate illusory insurance, charity, mortgage, and other expenses

that, if real, the customers could deduct on their individual or business income-tax returns. The web of entities was designed to hide the customer's control and use of the funds.

10. Customers were led to believe that most, if not all, of the deducted funds would be kept available for the customers' use and, indeed, supplied back to the customers in a form that appeared non-taxable or at least in a way that would not easily be traced to the customers. Typically, customers could "borrow" back the deducted money through Merrill Scott's mortgage program. These "friendly mortgages" disguised the returned funds as loans and generated the appearance of more deductions as the customers chose to send their money back to nominees as "interest." Customers could also retrieve the deducted funds by using offshore debit cards pre-loaded with deducted funds and held in the names of the customers' offshore nominees, which were organized as IBCs or International Business Corporations.

#### OVERT ACTS

11. In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed in the District of Utah, and elsewhere:

12. In about October 1998, Defendant **BRODY** told a customer that, in the event of an Internal Revenue Service audit of the deductions Merrill Scott was selling, the customer could avoid penalties and interest by claiming that he had relied on professional advisors.

13. On or about November 4, 1998, Defendant **BRODY** presented a document entitled "Analysis and Recommendations" to a prospective customer.

14. Around January 1999, Defendant **BRODY** helped open a nominee offshore debit account from which a customer could withdraw funds using a so-called Axxess card.

15. On or about March 24, 1999, Defendants **BRODY** and **ROSS** informed a customer that Merrill Scott would backdate contracts to support a \$158,000 marketing deduction for the 1998 tax year.

16. On or about January 15, 1999, Defendant **ROSS** had a legal-opinion letter issued under the name, "Estate Planning Institute," that purported to support Merrill Scott's foreign-variable-annuity tax-reduction plan.

17. On or about April 29, 1999, Defendant **ROSS** sent a letter to an attorney in Washington D.C. seeking a tax opinion-letter for Merrill Scott.

18. Around October 1999, Defendants **BRODY** and **ROSS** gave a prospective customer a Question and Answer sheet that assured the customer that the assets he turned over to Merrill Scott would be managed in accordance with the customer's wishes.

19. On or about March 22, 2000, Defendants **BRODY** and **ROSS** caused \$3,008,136.98 in customer money to be wired from a Gilbralter Permanente Assurance bank account in the Bahamas to a Merrill Scott bank account in Belize.

20. On or about July 28, 2000, an attorney working for Merrill Scott issued an opinion letter to Merrill Scott's president of Gilbralter Permanente Assurance, Ltd., regarding "Loss of Income Insurance Policy Premium Deductibility," which letter appeared to come from an attorney independent of the Merrill Scott organization.

21. On or about July 31, 2000, at a meeting with Merrill Scott employees, Defendant **ROSS** noted the importance of leaving no trail for the Internal Revenue Service to use in proving a customer has control of annuity funds that Gilbralter Permanente maintained.

22. On or about October 15, 2000, Defendant **BRODY** signed a tax return for a customer's nominee company.

23. Around December 2000, Defendants **BRODY** and **ROSS** solicited a customer to buy into their tax scheme, offering to generate, through a so-called loss-of-income insurance policy and a purportedly tax-exempt support organization, the appearance of deductible insurance premiums and charitable contributions.

24. On or about December 21, 2000, Defendant **BRODY** sent to a customer a letter with recommendations for maximizing the customer's wealth and a reminder to get rid of his copy of the Master Financial Plan.

25. On or about March 12, 2001, Defendant **ROSS** sent an e-mail on the topic, "Gibraltar License."

26. On or about September 20, 2001, Defendant **ROSS** signed a lulling letter to a customer explaining that Merrill Scott had forwarded a memo to Alex Jones regarding Alex Jones's unpaid debt to the customer's nominee.

27. In about November 2001, Defendant **BRODY** directed that letters go out under Merrill Scott letterhead soliciting customers to buy loss-of-income-insurance policies.

28. On or about December 5, 2001, Defendant **BRODY** sent out a Merrill Scott letter advertising its loss-of-income policy as a way to significantly reduce tax liabilities for 2001.

29. On or about December 18, 2001, Defendant **ROSS** wrote a check on the Grey Diamond Marketing bank account payable to Firstar Home Mortgage for a customer's second home.

30. On or about December 27, 2001, Defendant **ROSS** wired \$5,772.16 from his bank account in Salt Lake City, Utah, to a bank in Washington, D.C., to pay a customer's legal expenses.

31. On or about April 5, 2002, Defendant **ROSS** signed a liquidation request for the Grand Slam Park LLC brokerage account.

32. At various times throughout this conspiracy, Defendants **BRODY** and **ROSS** solicited customers with brochures and other materials that fabricated stories of customers obtaining tax savings from Merrill Scott's programs.

33. At various times throughout this conspiracy, Defendants **BRODY** and **ROSS** used customer funds to pay for Merrill Scott's payroll and other overhead expenses.

34. At various times throughout this conspiracy, Defendants **BRODY** and **ROSS** used customer funds to buy and furnish a home in Park City, Utah.

35. At an unknown date during the conspiracy, at a Planning Team presentation, Defendant **BRODY** told those present about the loss-of-income insurance, "We tell all of our customers to--pretty much off the record, don't file a claim, you're wasting your time."

36. At various times throughout this conspiracy, Defendants **BRODY** and **ROSS** told customers to return their financial plans to Merrill Scott or destroy them so that they would have nothing to turn over in the event of an audit or other inquiry.

All in violation of Title 18, United States Code, Section 371.

**COUNT II**  
**18 U.S.C. § 371**  
**(Conspiracy)**

37. Beginning around January of 1999 and continuing to at least April 2002, the exact dates being unknown to the Grand Jury, in the District of Utah and elsewhere,

**PATRICK MERRILL BRODY and**  
**DAVID EUGENE ROSS II,**

defendants herein, did unlawfully and knowingly conspire, combine, confederate, and agree together and with other individuals both known and unknown to the Grand Jury to willfully evade the individual income taxes of Defendant **BRODY** for tax years 1999, 2000, and 2001, in violation of Title 26, United States Code, Section 7201 and to file false income-tax returns for Defendant **BRODY** for tax years 1999 and 2000 in violation of Title 26, United States Code, Section 7206(1).

MANNER AND MEANS BY WHICH THE  
CONSPIRACY WAS CARRIED OUT

38. The manner and means by which the conspiracy sought to accomplish its objects included, among others, the following:

39. With Defendant **ROSS's** assistance, Defendant **BRODY** enriched himself by upwards of \$75,000 a month from Merrill Scott accounts that contained customer funds and fees. Through nominees of his own (including Alex Jones, Ltd., and Management and Marketing Services, LLP), Defendant **BRODY** obscured his true income by paying his personal expenses through those entities and by identifying many of the funds that he took from the Merrill Scott organization as loans to himself or one of his entities.

40. Defendant **ROSS** assisted Defendant **BRODY** in preparing and filing false individual income-tax returns for 1999 and 2000 that substantially understated Defendant **BRODY**'s gross income and tax liability.

OVERT ACTS

41. In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed in the District of Utah, and elsewhere:

42. On or about March 31, 2000, Defendants **BRODY** and **ROSS** signed a Corporate Resolution to Borrow \$520,000 as Alex Jones & Associates, Inc., to fund the purchase of a home for Defendant **BRODY**.

43. In about June 2001, Defendants **BRODY** and **ROSS** met with a return preparer to discuss Defendant **BRODY**'s income-tax obligations.

44. On or about July 8, 2001, Defendants **BRODY** and **ROSS** prepared and caused to be filed with the Internal Revenue Service false 1999- and 2000-year individual income tax returns for Defendant **BRODY**.

45. At various times throughout the period of this conspiracy, Defendants **BRODY** and **ROSS** used customer funds to pay Defendant **BRODY**'s personal expenses.

**COUNT III**  
**26 U.S.C. § 7203**  
**(Failure to File Tax Return)**

46. During the calendar year 2001,

**PATRICK MERRILL BRODY,**

Defendant herein and then a resident of Salt Lake City, Utah, received sufficient gross income that the law required him to file with the Internal Revenue Service a federal individual income tax return on or before August 15, 2002, but Defendant **BRODY** willfully failed to file his return in the District of Utah or elsewhere on or before that date.

All in violation of 26 U.S.C. § 7203.

**COUNTS IV - VI**  
**18 U.S.C. §§ 2, 1956 (a)(2)(A)**  
**(Money Laundering)**

47. On or about the dates indicated below, in the District of Utah and elsewhere,

**PATRICK MERRILL BRODY and**  
**DAVID EUGENE ROSS II,**

defendants herein, did transmit and attempt to transmit funds (in the amounts listed below) from a place in the United States, that is, Salt Lake City, Utah, to a place outside the United States, that is, Belize, with the intent to promote the carrying on of specified unlawful activity, that is, mail, wire, and securities fraud:

COUNT	DATE	AMOUNT	TRANSFER
IV	October 15, 2001	\$30,000	wired from a Merrill Scott account at Wells Fargo in Salt Lake City, Utah, to an MSA Ltd account at Provident Bank & Trust of Belize
V	November 15, 2001	\$33,050	wired from a GPA Ltd account at Washington Mutual in Salt Lake City, Utah, to an MSA Ltd account at Provident Bank & Trust of Belize
VI	December 10, 2001	\$13,000	wired from a Merrill Scott account at Wells Fargo in Salt Lake City, Utah, to an MSA Ltd. account at Provident Bank & Trust of Belize

All in violation of Title 18, United States Code, Sections 1956(a)(2)(A) and 2.

**COUNT VII**  
**18 U.S.C. §§ 2, 1957**  
**(Money Laundering)**

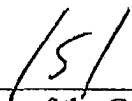
48. On or about December 14, 2001, in the District of Utah,

**PATRICK MERRILL BRODY and**  
**DAVID EUGENE ROSS II,**

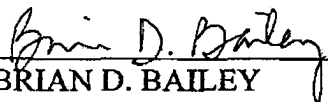
defendants herein and residents of Salt Lake City and Park City, Utah, did knowingly engage and attempt to engage in monetary transactions by, through, and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000, that is, the transfer of funds, in the amount of \$40,000 from a brokerage account at TD Evergreen in Canada to a bank account at Provident Bank & Trust of Belize, such property having been derived from specified unlawful activity, that is, mail, wire, and securities fraud.

All in violation of Title 18, United States Code, Sections 1957 and 2.

A TRUE BILL:

  
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Foreperson of the Grand Jury

**BRETT L. TOLMAN**  
United States Attorney

  
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**BRIAN D. BAILEY**  
Special Assistant United States Attorney