HALFTIME AT THE ENRON TRIAL

You've seen it on TV over and over again. Its one of the few things TV law shows tend to get right. Sooner or later, but in every case before the defense has to bother doing anything, the prosecution has to set forth its case. They don't get another chance to do anything other than defend against the defense's case, if the defense chooses to put on a case at all. And given that whole burden of proof thing the prosecution has to meet (TV law shows really hammer home that point) the defense can simply do nothing, and simply ask the judge to dismiss all the charges. Without the defense having to call a single witness or introduce a single piece of evidence.

That's exactly what happened in the Enron trial against Jeffrey Skilling and Ken Lay earlier today. The prosecution rested its case. Having put on 22 witnesses over the past two months – the length of a trial being one of the areas where TV law shows consistently get it wrong – the defense attorneys for Skilling and Lay asked United States District Judge Sim Lake to dismiss the charges against their clients. And, based solely on a lack of evience put on by the prosecution, 2 counts were dropped against Skilling and one was dropped against Lay.

The Skilling charges that were dropped concern crimes that allegedly occurred in early 2000. Apparently, the prosecutors didn't have, or otherwise just failed to present evidence dealing with that time period. The same holds true of the dropped charge against Lay, which concerns a conference call from November 200l.

Here's one big reason why they were dropped: Neither one used e-mail. In an age of Blackberry's and wireless hotspots, that just sounds absurd, but it seems both Lay and Skilling were old-school. They ran the company the way CEO's used to: in board meetings and on the telephone. Both of which have the benefit of (assuming no audio recording is made) being extremely hard to account for, word for word, 5 years later. If either Skilling or Lay had used e-mail to talk about Enron's accounting practices, this trial would be astonishingly different.

But this is not a trial where documents rule the day – rather it is a case of competing testimony. The defense will put on its case beginning Monday, and it's a safe bet both Skilling and Lay will take the stand. The prosecution based its case primarily on oral testimony of witnesses who had already pleaded guilty to related crimes. These witnesses were used to tell the prosecution's story. In a nutshell, the prosecution's story is that Lay and Skilling orally expressed optimistic sentiments to analysts and investors that was intentionally designed to mislead the public as to Enron's true financial state.

The government had no knockout punch, though, because it lacked documents. There were no notes or e-mails. These days, most trials of this kind would methodically take the jury through a litany of e-mails. Not so in this case, which provides a small glimmer of hope for Skilling and Lay.

Skilling still faces 28 more counts against him, and Lay still faces 6. They have a long battle before the case is over. At the beginning of this case, each side, in its opening statements, presented competing themes. The prosecution's themes have stuck – they put on a case about lies and choices. The defense now has to make everyone forget about that. They promised that they would show everyone that the prosecution thinks Skilling and Lay were evil – and that they would show that no evil existed.

Its halftime in what amounts to the Superbowl of financial trials. The prosecution scored a lot of points, but didn't have any knockouts. The next month should prove to be very exciting. The testimony of Skilling and Lay themselves will likely determine the outcome of the trial. Which only increases the pressure on both sides. Which increases the drama. Which is probably exactly the way the Enron trial would look if it were a TV show.