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## Enron prosecutors showed jurors wrong tape

MARY FLOOD, Copyright 2005 Houston Chronicle | May 2, 2005

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Watching two videotapes simultaneously today, jurors in the **Enron** Internet trial learned that prosecutors previously presented an inaccurate version of a stock-analyst conference that's key to the government's case.

While ex-CEO **Jeff Skilling** could be seen talking in unedited raw video from the actual January 2000 conference that's at the heart of the criminal accusations, next to it the government's edited evidence tape instead cut from Skilling to show one of the defendants addressing the conference.

The prosecution's star witness, **Ken Rice**, testified today that he now realizes the government showed him something other than the actual conference tape. The former CEO of Enron Broadband Services said that led him to incorrectly testify that the controversial segment from defendant **Rex Shelby** was shown to analysts at the conference.

Prosecutors had introduced the video, with the brief Shelby segment included, to support their claims that executives lied to analysts about the capabilities of EBS' technology at the conference to inflate the company's worth. The stock price rose within a day of the conference from \$54 a share to \$72 a share.

Rice said he'd seen the government's video before testifying. When prosecutor **Ben Campbell** showed it to him in court Tuesday, Rice testified then that he was surprised that Shelby was talking about the network operating system as up and running when it wasn't.

"The government represented that the tape that included (the) Shelby (segment) came from Enron and was played at the analysts conference," Rice said.

Though the full video of the 2000 EBS presentation to analysts was about two hours, the only segment in question is a couple of minutes from Shelby. The government is contending and Rice has stated there were many other bolstering lies told about the technology during the full length of the conference.

In questioning from defense attorney **Tony Canales**, Rice said he knew Shelby had taped the segment in question and that it was slated to be shown to the analysts.

Rice told Canales he thought about this a lot of over the weekend and even talked to his Washington, D.C.-based lawyer about whether he'd been shown the wrong tape and convinced himself he did see the Shelby segment shown at the analyst conference.

"He wasn't any help to you then? Canales asked Rice.

"All that money, no," Rice said smiling back. It was one of several light moments in the day when Rice acknowledged being somewhat overwhelmed by the circumstances.

Defense attorneys in the case see the government error as a big plus for them, hoping it will create juror doubt about more of the case than just one segment in a video.

"It's very serious when the government offered something in evidence that turns out to be phony," said **Mike Ramsey**, the lawyer for ex-Chairman **Ken Lay**. Ramsey and Skilling's lawyer **Daniel Petrocelli** have been in court

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watching the Rice testimony, which could be repeated in their clients' trial next year.

Ramsey said the government has all the raw footage of the conference and it "knew or should have known that their edited version didn't match reality."

Prosecutors haven't yet explained how the false information got before the jury. They are expected to call a witness to the stand who supplied the edited tape to the government with the Shelby segment in it.

Rice is scheduled to begin his eighth day on the stand Tuesday.

Rice, who is cooperating with the government as part of a plea agreement, has already pleaded guilty to one charge of fraud. He faces a maximum 10 years in prison and a \$1 million fine.

Five former Enron broadband executives are on trial. Shelby, **Scott Yeager** and **Joe Hirko**, another former co-CEO, are charged with misrepresenting the capabilities of the business and profiting from personal stock sales.

**Kevin Howard** and **Michael Krautz**, former finance and accounting employees at EBS, are charged in a separate scheme to inflate the division's bottom line with a sham sale of future earnings off a video-on-demand deal.

The government alleges all five men were in one big conspiracy. All have pleaded not guilty.

Krautz' attorney **Barry Pollack** scored several points for his client in getting Rice to look at three organizational charts and note that Krautz, an accountant, was too low on the totem pole to even be on the charts.

Rice said he thought the video-on-demand deal that Krautz helped monetize was worth way way more than the \$110 million Enron added to its bottom line. He said his understanding of contracts is that it's what's in writing that counts, not oral side deals as the government alleges in the case against Krautz.

Though Rice mentioned the other four defendants when testifying about lies told to the public to pump up the stock, he never included Krautz and he seemed to back off of the involvement of Howard.

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