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The U.S. Supreme Court to Take a Hard Look at "Honest Services" Fraud

In an unusual move, the U.S. Supreme Court will review three criminal appeals this year challenging the government's prosecution of "honest services" fraud with the most high-profile case- *U.S. v. Jeffrey Skilling*- set for oral argument March 1.

The 1988 law says public officials and executives can be convicted of fraud if they deprive those they represent of the right to honest services. From the questioning of the justices in the first two cases, however, it appears the government may have difficulty defending the statute against charges that it is unconstitutionally vague and overbroad. That is likely to bode well for Skilling, the former Enron CEO, who has been sentenced to more than 24 years and could receive a new trial. If the statute is declared unconstitutional it will also be good news for others indicted under the law, including former Illinois Governor Rod Blagojevich.

"If the court ultimately declares the statute unconstitutional it will have a significant impact on how federal prosecutors approach charging decisions in similar cases," said Stanley Twardy Jr., a partner in the White Collar Defense and Criminal Investigations practice at Day Pitney LLP and a former United States Attorney. "In the absence of evidence justifying the charging of traditional fraud counts -- such as wire and mail fraud -- it will be much more difficult to bring these types of cases in the future."

Two of the cases before the court this year involve corporate officers convicted of defrauding shareholders or investors by misrepresenting the true nature of certain business transactions -- Skilling and media baron Conrad Black. The third involves former Alaska legislator Bruce Weyhrauch who was convicted of having defrauded his constituents due to an undisclosed conflict of interest.

Reporters needing third-party comment about *U.S. v. Skilling* or "honest services" fraud in general should contact one of the Day Pitney LLP White Collar partners listed here.

Stanley Twardy, Jr.

203 977 7368

satwardy@daypitney.com