December 30, 2010

White Collar Roundup, December 2010

The Honest-Services-Fraud Saga Continues for Mr. Black.

The Seventh Circuit denied an en banc review of the panel's refusal to reverse all of Conrad Black's fraud convictions. In October, a panel reversed two of the fraud convictions in light of the Supreme Court's *Skilling* opinion but let the pecuniary-fraud conviction stand.

And in Other Honest-Services-Fraud News...

The Ninth Circuit held, over a dissent and in spite of a conflict among the circuits, that prosecutors do not have to prove that a defendant charged with honest-services mail fraud breached a fiduciary duty to obtain a conviction.

More Insider-Trading Wiretaps?

After the district court in the *Rajaratnam* prosecution denied the defense motion to suppress the wiretaps, perhaps the government will look toward using the wiretaps in more insider-trading and other white-collar investigations. Only time will tell.

WikiLeaks and Espionage?

The U.S. House of Representatives Committee on the Judiciary held hearings about whether the founder of WikiLeaks could be prosecuted under portions of the Espionage Act of 1917, which prohibits the dissemination of information relating to the national defense. So far, the jury's out.

Looking for Clarity for the FCPA.

At a hearing of the U.S. Senate Committee on the Judiciary's Subcommittee on Crime and Drugs, senators and witnesses expressed their frustration with the DOJ's enforcement of the FCPA. A common complaint was the lack of clarity for what constitutes an FCPA violation and what conduct will result in a government enforcement action. To watch the testimony (which starts at about the thirty-minute mark), grab some popcorn and click here.

No Victim? No Restitution? Not Fine.

The Third Circuit held that a district judge could not convert restitution to a fine simply because the identifiable victims could not be found. The court noted that imposition of a fine required the sentencing judge to consider the appropriateness of a fine under the Guidelines and 18 U.S.C. ? 3572(a).

Dancing Around the Foreign-Cubed Dilemma.

The U.S. Attorney for the Southern District of New York has added some old-fashioned wire- and mail-fraud counts in a case otherwise susceptible to dismissal, in light of the Supreme Court's *Morrison* ruling. *Morrison* barred securities-fraud cases under Section 10(b) of the Securities Exchange Act of 1934 if the securities were bought or sold outside the United States by foreign securities issuers in transactions in foreign countries. The superseding indictment adds conduct (such as using the mail) in the United States, apparently to circumvent the foreign-cubed problem.

Blame the Lawyers, Too.

The U.S. Attorney for the Southern District of New York announced the filing of an indictment against a lawyer who allegedly helped facilitate a Ponzi scheme. The same day, the SEC filed an amended complaint to include the lawyer in its case against the other defendants in its Ponzi-scheme case. The two agencies charge that the lawyer used escrow accounts to help perpetrate the scheme by laundering funds.