January 31, 2011

White Collar Roundup, January 2011

The Judge Is Fine

The First Circuit recently held that the rule of *Apprendi v. New Jersey*, which mandated that statutory sentencing enhancements must be found by a jury and not a judge, does not apply to determinations about criminal fines.

(I Think I May Object. On Second Thought, Never Mind.) Oops!

It is no longer good enough in the Eleventh Circuit to fail to contemporaneously raise an objection because of either a cowardly attorney or a vindictive judge. That court split from two Second Circuit cases, *Leung* and *Kaba*, and held that an appellant cannot use either excuse to avoid plain-error review. So much for the "shrinking violet" defense.

Wasting Money on Healthcare Fraud Prosecution

Senator Charles Grassley expressed frustration that the government is spending money to prosecute healthcare fraud but is not seeing results. In a letter to HHS Secretary Kathleen Sebelius and Attorney General Eric Holder, he took the two departments to task for this discrepancy.

Security and Electronic Surveillance

In the meantime, Senator Patrick Leahy committed (among other things at the start of the 112th Congress) to focus the Senate Judiciary Committee on reviewing the statute that requires firms to aid the government's surveillance efforts. Senator Leahy noted that the modification of that statute cannot ignore the importance of national security.

Don't Bank on It

Some banks are grappling with the U.S. antifraud and anti-money-laundering rules by refusing to open accounts for some foreign governments and their ambassadors.

Fraud Enforcement Shakeup Across the Pond

After implementing the Bribery Act, which is akin to the U.S. FCPA, the United Kingdom is moving to restructure how it fights fraud. The government is creating an Economic Crime Agency, merging the responsibilities of the Serious Fraud Office and the Financial Services Authority. For more information, click here.