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Fraud Cases Get Rehashed After Court Ruling

By [MICHAEL ROTHFELD](#)

Federal lawmakers and Justice Department officials are weighing new legislation to salvage a fraud statute used to pursue corporate and public corruption, as prosecutors grapple with the fallout of a Supreme Court ruling that weakened the law.

The court's decision in June to limit prosecutions for honest-services fraud has affected cases against high-profile defendants such as former Enron Chief Executive Jeffrey Skilling, whose appeal was the basis for the ruling, and lesser-known ones such as Edward J. Price III, the former mayor of Mandeville, La.

The law, making it a crime to deprive someone of the "intangible right of honest services," has long been used to prosecute officials or executives accused of placing their interests above those of taxpayers or shareholders. Defense lawyers criticized it as unconstitutionally vague.

A Second Look

A Supreme Court ruling has ignited a wave of white-collar case reviews.

Jeffrey Skilling: Ex-Enron CEO's request for bail pending appeal was denied Sept. 3. An appeals court has scheduled a hearing for Nov. 1 in Houston on his request to review conviction.

Conrad Black: Former media mogul was released from prison on bail July 21. Argument before appeals court in Chicago is set for next week.

Edward J. Price III: Louisiana judge agreed Sept. 10 to reconsider 64-month sentence the Mandeville ex-mayor received the week before the Supreme Court ruling. A new sentence is to be issued next week.

Joseph Ferriero: Federal judge in New Jersey vacated conviction of the ex-head of the Bergen County Democratic Organization on July 29 after his lawyers argued it was flawed in the wake of the Supreme Court ruling.

The ruling has sparked a wave of requests by criminals and defendants to set aside convictions, reconsider sentences and throw charges out. Many cases are pending, but some have already been derailed by the decision or damaged.

Mr. Price cut a deal with prosecutors to shave two years off the 64-month prison term he received a week before the Supreme Court ruling invalidated part of his guilty plea. He admitted taking golf trips to Pebble Beach, Calif., paid for by a developer and the city engineer. A judge is to impose a new sentence Wednesday.

"It's the first time in 38 or 39 years that I've done this sort of thing in federal court," said Mr. Price's lawyer, Ralph S. Whalen Jr. Louisiana prosecutors declined to comment.

The Supreme Court said the law clearly criminalized bribery and kickbacks, but was too vague to continue to be used against undisclosed conflicts of interest, where the evidence of corruption is more subtle.

Lanny Breuer, head of the Justice Department's criminal division, is expected to testify before the Senate Judiciary Committee Tuesday on the ruling's impact. Justice Department officials and congressional staff are discussing how to close what they believe is a legal hole left by the high court, people familiar with the matter say.

Sen. Patrick Leahy (D., Vt.), the Judiciary Committee chairman, said Friday, "whole categories of corrupt and fraudulent conduct could go unpunished" because of the ruling. He said he was working with colleagues "to determine how best to clarify and restore this statute."

Laura Sweeney, a Justice Department spokeswoman, said the government "will continue to bring all appropriate cases" while evaluating whether new tools are needed.

Yet the ruling appears to have deterred prosecutors from bringing charges they would have brought before. An analysis of federal prosecutions across the U.S. shows that pattern began even before the ruling, as the government and defense lawyers likely began to anticipate it.

In 2008 and 2009, the government brought honest-services fraud charges in more than 100 cases a year, the analysis shows. The pace slowed in the second half of last year, after the Supreme Court agreed to review three cases, including Mr. Skilling's and former media mogul Conrad Black's. This year, new prosecutions using the statute slowed to a trickle.

"The safest course for a prosecutor would be just to find alternative charges that wouldn't be disrupted by the court's decision," said Rachel Barkow, a New York University law professor.

Meanwhile, some say the court didn't go far enough. William J. Costopolous, a defense attorney in Pennsylvania, said he had hoped the law would be overturned completely and that anyone convicted based on circumstances that can no longer be prosecuted "is going to revisit those convictions, as well they should."

So far, only a few cases have been totally upended. A New Jersey judge tossed out the conviction of Joseph Ferriero, the former Bergen County Democratic chairman; prosecutors haven't said whether they would seek a new indictment in the case. Prosecutors in Kansas dropped charges against Westar Energy executives.

Among the big-name defendants seeking to revisit cases are former Illinois Gov. George Ryan, ex-Alabama Gov. Don Siegelman, former HealthSouth chief Richard Scrushy, ex-New York Senate leader Joseph Bruno, and plaintiffs' lawyer Zach Scruggs. Mr. Black, released from prison pending a review of his conviction, is scheduled for a hearing in Chicago Wednesday.

In some cases, prosecutors have had to be creative. In Rochester, N.Y., they negotiated with Robert Morone, a county maintenance supervisor who had pleaded guilty to honest-services fraud, to accept a different charge—stealing from a program that receives federal funds. Mr. Morone was accused of approving payments to employees for services they hadn't performed.

William J. Hochul Jr., the U.S. attorney in western New York who oversees the office that prosecuted the Morone case, declined to comment. At the time of the new plea, he said in a statement: "The facts leading to today's guilty plea remain the same as described previously," Mr. Hochul said. But under federal sentencing guidelines, Mr. Morone would serve 46 to 57 months, up to 14 months less than before.

—Tom McGinty and Ashby Jones contributed to this article.

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