

# Ethics: Enron's Skilling is not out of the woods, yet.

On 1 March, the US Supreme Court will hear oral argument in the case of U.S. v. Jeffrey Skilling.

The Supreme Court will review three criminal appeals - Skilling's is the most well known - against convictions based on what the US government called "honest services fraud."

"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."

A 1988 statute says public officials and executives can be convicted of fraud if they deprive those they represent of the right to honest services. But Day Pitney says that they have concluded that, from the questioning of the justices in the first two cases, it appears the government may have difficulty defending the statute against charges that it is unconstitutionally vague and over-broad.

That, the firm says, 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.

But Skilling is not the only high-profile person caught under the Act: 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.