

such an act. *Id.* The Supreme Court has held that in order to be an *ex post facto* law, the law "must apply to events occurring before its enactment and it must disadvantage the offender affected by it." *Id.*

Each count of the indictment under which Lazar is charged alleges that the scheme to defraud and obtain money from health care benefit programs started "at least as early as 1996." The statute which Lazar has allegedly violated, 18 U.S.C. § 1347, was not enacted until August 21, 1996, some time after the scheme purportedly began. Thus, Lazar claims that the indictment covers conduct which was at the time not illegal and therefore invokes the *Ex Post Facto* Clause of the U.S. Constitution. This argument is without merit because as the government points out none of the counts of the indictment precede the date of the passage of 18 U.S.C. § 1347. In fact, each count in the indictment sets forth the date on which the alleged violation occurred, none of which occurred before 1999.

Lazar contends that the government might possibly use evidence against him that occurred before the passage of 18 U.S.C. § 1347 and that this creates an impermissible risk that the jury could convict him on pre-enactment conduct. The government has avowed however not to introduce evidence about acts related to the scheme that were committed prior to August 21, 1996. Therefore, Lazar's

contention is moot.

Accordingly, it is recommended that Lazar's motion to dismiss be denied.

Respectfully submitted this 29th day of October, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE