



Curbing corruption with a catch-all

Vague Justice?

By HARVEY SILVERGLATE | June 24, 2011

Sal DiMasi is no saint, but that doesn't mean he's a criminal. His behavior makes us grimace, but it simply doesn't amount to a state or federal felony. Instead, prosecutors went after DiMasi using a federal statute that's vague enough to convict a ham sandwich.

Here is what we know: DiMasi used his influence to get the Department of Education to award \$17.5 million in computer-software contracts to a Burlington company called Cognos, and to get the legislature to appropriate the funds. In return, Cognos paid DiMasi's law partner thousands of dollars in legal fees — which the partner then shared with DiMasi, a common division of firm profits. This is what the US attorney calls "secret personal enrichment."

This obviously corrupt quid pro quo is still not a felony under current federal or state law. Of course, it *should* be. Rather than cheering DiMasi's conviction under an amorphous federal statute, voters should press for the state to make what he did *actually* illegal.

But this won't be accomplished by enforcement of the federal "honest services" statute. The statute gives little guidance as to what conduct is covered, since the term "honest services" is undefined. DiMasi could readily deny that he was acting dishonestly, since his actions were perfectly legal.

After DiMasi was indicted, the Supreme Court ruled to narrow the law, so that it applies only to cases of classic bribery and kickbacks. However, it is unclear whether the evidence presented at DiMasi's trial fits within the narrowed definition. All of this will be the subject of his coming appeal.

There is a reason all of this seeming nitpicking is important: it is dangerous for the federal criminal-justice system to enforce statutes so vague that even state officials can't be certain what conduct is prohibited. One may not like DiMasi, or what he did, but law-abiding citizens should be terrified when the feds prosecute anyone under "catch-all" statutes.

One obvious but rarely mentioned solution to Beacon Hill's oft-reviled "culture of corruption" would be to make the legislator's job a full-time gig for full-time pay, and forbid them from earning money any other way. We expect judges to work for us full-time and not have any

outside sources of income that might pose a conflict with official duties. If we paid our legislative leaders what we pay judges (the Chief Justice of the Supreme Judicial Court earns about \$151,000, while the average legislator is compensated about \$61,000), the public could legitimately demand, and expect, conflict- and corruption-free full-time work. After DiMasi reached the vaunted Speaker's position, a witness from the prosecution testified at his trial, his law income shrank from roughly \$200,000 in the prior year to some \$40,000; this, prosecutors argued, with good reason, was his motivation for taking kickbacks from Cognos.

No House member should have to earn outside income in order to make ends meet while doing public service. And once we pay a full-time wage to legislators, we can draw a clear line in the sand: they should not be allowed to engage in any outside job, including the practice of law.

The technique the feds used to bring down DiMasi — squeezing his conduct within the ambit of a vague catch-all like deprivation of "honest services" — can, of course, be turned against any citizen who for any reason comes to the attention of federal prosecutors. Who, after all, has not done something that some fed might deem "dishonest"? Those cheering the downfall of Sal DiMasi should beware of what they wish for.