

# Friends With Detriments: Former Massachusetts Speaker and Lobbyist Fail to Overturn Corruption Convictions on Appeal

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In *United States v. McDonough*, the First Circuit affirmed the convictions and sentences of former Speaker of the Massachusetts House of Representatives Salvatore DiMasi and lobbyist Richard McDonough for engaging in transactions characterized by the court as “a scheme to funnel money to DiMasi in exchange for political favors.” The court also signaled that harsh sentences may be appropriate when they are needed to combat a culture of public corruption.

During a six-week trial, the government presented evidence showing that the scheme began in December 2004 when McDonough approached Joseph Lally, an employee of software company Cognos Corporation, and told him that DiMasi was interested in supplementing his income. DiMasi had been a Massachusetts state representative since 1979 and became Speaker in September 2004. As his legislative duties had increased, the dwindling income from his personal law practice left DiMasi in a financial bind. McDonough, a longtime friend and lobbyist, was looking to help DiMasi take care of his personal debts and increase his cash flow and believed an arrangement with Lally could be fruitful. Lally was responsible for lobbying on behalf of Cognos in its attempts to sell software products to state and local governments. McDonough suggested that Lally have Cognos hire DiMasi's law partner, Steven Topazio, under a sham lobbying contract and pay him a monthly retainer of \$5,000. A portion of this payment was then transferred to DiMasi under their pre-existing fee-sharing arrangement. Through these payments, DiMasi personally received \$65,000 from Cognos.

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At the same time, the Massachusetts Department of Education (DOE) was initiating a data collection pilot program. Cognos was awarded the contract to provide \$500,000 worth of software for the pilot program in August 2005, but the remainder of the \$5 million project needed legislative funding to continue. At this point, Lally pressed McDonough to have DiMasi ensure funding, telling McDonough that it was time for the financial payments through DiMasi's law practice to "pay off." When then-Massachusetts Governor Mitt Romney did not include this program in his budget, Lally again pressed McDonough. DiMasi then drafted a budget amendment providing funding for the project and earmarking \$4.5 million for DOE software. It was also at this time that Lally left Cognos to start his own firm reselling Cognos software, and he negotiated a substantial commission on any sales of Cognos products. Lally arranged to handle the DOE contract through his new company. Just prior to the enactment of the budget, McDonough approached Lally and told him he needed to pay him and Richard Vitale, DiMasi's friend and financial advisor, \$100,000 each after the legislation passed. After this conversation, funding came through and Lally paid the requested amounts.

Soon after this successful kickback arrangement, DiMasi pushed for a widespread update to the software and data capabilities of the state government, proposing \$15 million in funding. DiMasi worked to steer this contract to Cognos, in consultation with McDonough and Lally. Before the bill passed, Vitale told Lally that he would have to pay \$500,000 to guarantee the legislation's success. After the legislation was passed and Lally received a \$2.8 million commission, he then paid the requested money to Vitale and an additional \$200,000 to McDonough. Part of this money was then made available to DiMasi.

However, an unsuccessful bidder lodged a formal protest, citing irregularities in the contract award process. Soon thereafter, in March 2008, aspects of the arrangement between Cognos and DiMasi's law partner Topazio were reported by *The Boston Globe*. DiMasi, McDonough, Vitale, and Lally, worried that their actions would become public, attempted to get rid of potentially incriminating evidence. Whenever Lally and McDonough met, they would frisk each other to make sure neither was wearing a recording device.

Attempts to cover up the pattern of collusion failed, and in October 2009, DiMasi, McDonough, Vitale, and Lally were indicted in the District of Massachusetts on federal charges including honest-services mail fraud, honest-services wire fraud, extortion, and the related conspiracy. DiMasi was also charged with extortion under color of official right, and Lally was charged with money laundering. At that point Lally entered into a plea agreement and began cooperating with the government. After a six-week trial, the jury acquitted Vitale, but convicted DiMasi and McDonough on all counts. McDonough received a sentence of 84 months' imprisonment, and DiMasi received a sentence of 96 months' imprisonment.

McDonough and DiMasi both appealed a wide range of issues related to their trial, including the sufficiency of the evidence, jury instructions, evidentiary issues, and sentencing. A panel of the First Circuit, which included retired Justice Souter sitting by designation, affirmed the trial court and denied all challenges to the convictions and sentences.

Interestingly, DiMasi and McDonough argued that the district court had improperly considered the history of Massachusetts politics in deciding to sentence DiMasi and McDonough to a long term of imprisonment. The district court had noted during sentencing that DiMasi was the third consecutive Speaker of the Massachusetts House to be convicted of a federal crime and indicated that a greater sentence was necessary in order to deter future misconduct. The First Circuit did not find this problematic, noting that “the shorter sentences received by his predecessors might have actually emboldened DiMasi” and “[i]n the context of deterrence” a materially greater sentence than previous cases was warranted. Both DiMasi and McDonough were aware of a five-year sentence for an extortion conviction given to the former Mayor of Providence, Rhode Island, Vincent “Buddy” Cianci, and yet they were not deterred from their behavior. For this reason, longer sentences were justified in order to create a greater deterrent.

In the end, the First Circuit found no deficiency in the district court proceedings that might have provided the defendants re-trial or resentencing. *United States v. McDonough* offers a cautionary tale about the dangers of allowing friendship and private greed to tempt public officials and lobbyists into public corruption. It also indicates that patterns of public misconduct unrelated to the case at hand may be properly considered during sentencing in order to deter corruption in a particular jurisdiction.