

First Circuit Limits the Breadth of “Honest Services” Fraud

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The First Circuit U.S. Court of Appeals recently gave further guidance—and limitation—to the definition of “honest services” fraud, a concept it acknowledged was “vague and undefined by the statute.” In *United States v. Urciuoli*, the court vacated the convictions of two businessmen charged with conspiracy to commit honest services fraud for hiring a state senator as a consultant, and then using him to, among other things, encourage city officials to obey a state law that enhanced the defendants’ business interests.

Although the statute, 18 U.S.C. § 1346, does not define “honest services,” courts have recognized that at its core the statute prohibits government officials from accepting or requesting, or private citizens from making, payments to influence legislation. A classic example of honest services fraud is alleged in the recent indictment of Arizona Congressman Richard Renzi, which alleged that the Representative expressly conditioned his sponsorship of a proposed federal land exchange on the purchase and inclusion of a property in which he had a financial interest.

In *Urciuoli*, however, prosecutors attempted—with mixed success—to apply the statute more broadly than paying an official to influence legislation. The government alleged that two medical executives hired a state senator as a consultant, a job that the government claimed was a sham, designed to disguise the defendants’ bribes. Among other things, the senator lobbied city officials to comply with a state law requiring ambulances to take patients to the hospital of their choice (which would increase the number of patients taken to the defendants’ medical center), and pressured two insurance companies to resolve certain disputes in favor of the defendants.

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Reversing the convictions, the First Circuit disapproved as overly broad, a jury instruction that imposed liability for any action performed under the "cloak of office," particularly in connection with the actions that encouraged compliance with the law, not dishonest interpretation. It also found that the consulting arrangement was not inherently corrupt, since Rhode Island law permits outside employment of legislators. But the First Circuit stressed that "honest services" fraud applies to both formal and informal influence on legislation and prohibits buying influence, even where short of a formal bribe. It found sufficient, therefore, the senator's thinly veiled threats to push legislation harmful to the insurers, should they not settle their disputes favorably to the defendants, because that was related closely to official functions. Nonetheless, on the basis of the overbroad instruction, the First Circuit vacated the convictions and remanded the entire case for a new trial.