No, corruption isn't 'just politics'

Jurors and judges aren't buying that defense mantra

July 11, 2011

June 27, 2011: Jurors convict Rod Blagojevich on 17 counts of public corruption. In essence, those jurors reject the defrocked governor's suggestion that, during conversations recorded by the FBI, he was engaging in routine politics rather than a self-serving crime spree. The trial outcome leaves Blagojevich likely to serve many years in federal prison.

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July 6, 2011: A panel of the 7th U.S. Circuit Court of Appeals rejects arguments from attorneys for George Ryan, a former Illinois governor already in federal prison, that his conviction for public corruption should not stand. In upholding a lower court's finding against Ryan, the three judges say a conclusion that he had accepted bribes or kickbacks "verges on the inescapable. The district court's opinion canvasses the evidence and demonstrates why a reasonable jury could find that Ryan sold his offices to the high bidders."

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During much of Patrick Fitzgerald's decade as U.S. attorney in Chicago, some Illinois pols have waged a plaintive whispering campaign with journalists and anyone else who would listen:

Fitzgerald's office is criminalizing politics! Public officials trade favors! Always have, always will!

This self-exculpatory rationale for politicians' illicit behavior has, over time, become the defense of choice in Illinois public corruption cases. The Blagojevich and Ryan trials, the federal convictions of Ryan sidekick Scott Fawell and Mayor Richard M. Daley acolyte Robert Sorich — defense attorneys in these and other prosecutions have tried to aw-pshaw their way past the damning evidence by peddling versions of a soothing mantra:

This defendant is guilty of nothing more than politics as usual. All public officials help people who help them. This is just the game — not the serious crimes these prosecutors would have you believe.

But the mantra isn't working. Jurors and judges are having no trouble distinguishing between genuine exercises in political activity and blatant violations of federal laws. "I was one where I felt he was not guilty on several counts," juror Maribel DeLeon of West Dundee said after helping to convict Blagojevich. "But, lo and behold, we would go back through the tapes and there it was. I'd say, 'Ah, Rod.' It hurt me. How could I say not guilty when the evidence was there?"

No agonizing there about whether Blagojevich was Mr. Just-Politics.

Fitzgerald, in comments after the verdicts, crisply synthesized what DeLeon and 11 other jurors had just decided: "There is legitimate politics. There are gray areas. Selling a Senate seat, shaking down a children's hospital and squeezing a person to give money before you sign a bill that benefits them is not a gray area. It's a crime."

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Ryan's case has charted a different path to a similarly unforgiving destination. In April 2006, federal jurors convicted him on 18 corruption counts including racketeering, mail fraud, tax evasion and lying to the FBI. Prosecutors had accused him of receiving illegal cash payments and gifts during his 12 years as secretary of state and governor.

One underpinning of the government's case against Ryan was the allegation that he had defrauded Illinois citizens of their right to his honest services by instead covertly acting on behalf of his cronies. In June 2010, though, the U.S. Supreme Court narrowed the reach of the federal government's so-called honest services statute. The justices basically limited that statute's application in public corruption cases to fraud schemes involving bribery and kickbacks. On appeal, Ryan's attorneys advanced several arguments here, one of which was that he didn't accept bribes or kickbacks — so he shouldn't be in the slammer.

What's remarkable about the appellate court smackdown, written by Chief Judge Frank Easterbrook, is the swift backhand it delivers to that claim. After a long discussion of legal precedents applicable to Ryan's appeal, Easterbrook wastes little ink before announcing that "a properly instructed jury *could* have deemed the payments bribes or kickbacks ..." Then it's a straight shot to the passage quoted atop this editorial, breezily declaring that such a finding "verges on the inescapable." As if to tell Ryan's lawyers:

You cannot be serious. Look at the money this man acknowledges receiving from private parties. And you want us to believe that these payments to him were routine political contributions and gifts — not attempts to influence his official acts?

In its 2010 decision narrowing honest services prosecutions, the Supreme Court majority included an unusual footnote giving Congress clues on how to structure a new statute that would pass constitutional muster. U.S. Sen. Mark Kirk, R-Ill., and U.S. Rep. Michael Quigley, D-Ill.,

said in May that they're jointly trying to move legislation to achieve that end. We hope they succeed — even though prosecutors can use other criminal statutes to pursue public corruption.

We look forward, too, to discerning whether defendants in Illinois public corruption cases keep pretending that politics-as-usual includes behavior that jurors and judges keep viewing as criminal — and nothing more.

Until abusers of the public trust and their hapless attorneys concoct a more compelling defense than "just politics," we offer free legal advice to government officials across Illinois: Don't do the crime if you can't do the time.

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