

After *United States v McDonnell*: Can It Still be a Crime for a Politician to Try to Improve the Economy?

The New York Times provides the background for this fascinating question in its September 23, 2016 article, *Physicist in Albany Corruption Case Was a Geek With Big Goals*, by Vivian Yee. As Ms. Yee tells it:

“For eight of the nine defendants charged on Thursday in the wide-ranging bribery and bid-rigging scheme surrounding Gov. Andrew M. Cuomo’s economic development programs in upstate and Western New York, the motive for the alleged crime seemed to be simple, old-fashioned greed.

But for Alain E. Kaloyeros, a physicist who rose from a basement laboratory at the State University at Albany to oversee hundreds of millions of dollars in state economic development funds over a quarter-century, a more complex purpose seemed to be at work. Beyond money, the rewards he sought appeared to be power, prestige and, perhaps most of all, the fulfillment of a long-held dream: reinventing upstate New York as a Rust Belt Silicon Valley.”

And indeed, Professor Kaloyeros succeeded: “The Albany clean rooms, engineering programs and chip-fabrication plants he had a hand in eventually came to be worth about \$14 billion.”

The Criminal Complaint filed by the United States Attorney’s makes says very little about Professor Kaloyeros. Of the Twelve Counts in the Criminal Complaint, Count Nine, names him and charges him with Wire Fraud Conspiracy. It seems that the Professor would write the Requests for Proposals (“RFP”) or solicitation to bid on a job for proposed contractors who were then awarded the contracts. There is no allegation that Professor Kaloyeros took or solicited bribes.

This is yet another case of someone in government who generates business for a State being charges with a crime for doing just that. Of course, taking or soliciting a bribe is a crime. Or isn’t it?

In *McDonnell v. United States*, a unanimous Supreme Court vacated the conviction of Governor Robert McDonnell on charges of bribery. The case turned on whether Governor McDonnell committed or agreed to commit an “official act” in exchange for loans or gifts. A review of the Criminal Complaint shows no allegation that Professor Kaloyeros received anything in return. Of course, he was highly paid. According to the Times:

“He consistently ranked among the state’s highest paid employees, earning a total of \$1.17 million in salary and other performance-based payments last year....”

“...Whenever questions arose about the power and the money the state had concentrated in Dr. Kaloyeros, his bosses always concluded that he had earned it.

“His salary was a bargain,” Mr. Constantine said.

Mr. Cuomo apparently made the same calculation”

And the story of Professor Kaloyeros is one of rags to riches. The Times traces his trip to America:

“Raised in East Beirut, Lebanon, Dr. Kaloyeros was a 19-year-old American University student when, he later told Albany acquaintances, he was attacked by members of the Palestine Liberation Organization in the early stages of Lebanon’s civil war. Later, he joined a small Christian militia before immigrating to the United States, where he earned a doctorate in physics from the University of Illinois.

By the early 2000s, as a State University at Albany professor, Dr. Kaloyeros was persuading state leaders to commit millions of dollars of state funds to high-tech equipment and laboratories, which he used to entice corporations and jobs to the area.

“We’re out to put Stanford out of business,” he told the Albany Times-Union in 2002.”

In *McDonnell v. United States* the Supreme Court threw out the case. In the words of Chief Judge John G. Roberts:

“There is no doubt that this case is distasteful; it may be worse than that. But our concern is not with tawdry tales of Ferrari’s, Rolex’s and ball gowns. It is instead with the broader legal implications of the government’s boundless interpretation of the federal bribery statute. A more limited interpretation of the term “official act” leaves ample room for prosecuting corruption, while comporting with the text of the statute and the precedent of this Court.”

Professor Kaloyeros was not an elected official. But he was certainly in the sphere of politics. If the conviction of Governor McDonnell was vacated (and, incidentally, the Justice Department decided not to seek to re prosecute him), it is hard to see how Professor Kaloyeros can be convicted of a crime. We’ll have to wait and see.

