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# DiMasi Agonistes and the federal 'justice' system

By HARVEY SILVERGLATE | July 6, 2012

Question: what do the federal government's "war on terror" and its "war on political corruption" have in common?

Answer: torture.

America was outraged when it learned of abuses committed by enlisted personnel at Abu Ghraib. As details of waterboarding and other enhanced forms of interrogation emerged, a vigorous national debate ensued.
But when the news broke recently that Salvatore DiMasi, a former Speaker of the Massachusetts House convicted of political corruption and now serving time at a federal prison, was subjected to treatment so Borgia-like, so inhumane as to constitute a form of torture, the community mostly yawned.

There is compelling evidence that DiMasi was subjected to torture-lite in his assignment to a faraway prison in Lexington, Kentucky, there to serve his eight-year sentence, rather than at the nearby federal prison hospital at Fort Devens in Ayer. At the time of DiMasi's September 9, 2011, sentencing, US District Court Chief Judge Mark Wolf recommended to the Federal Bureau of Prisons (FBP) that DiMasi serve his sentence in Ayer. Wolf expressed concern about DiMasi's then-diagnosed heart condition and the prospect of forcing his cancer-stricken wife to travel long distances for visits. Yet the distant Kentucky assignment was callously selected by the FBP, a subdivision of the Department of Justice (DOJ).

It is difficult to avoid suspecting that the FBP chose a distant prison in order to persuade DiMasi that, if he were to testify helpfully (translation: tell prosecutors what they wanted to hear), he would be rewarded with a more convenient prison assignment and other amelioration of his conditions and length of confinement.

**ROAD TRIP TO HELL**

The DOJ's likely reasons for incarcerating DiMasi in distant Lexington began to bubble to the surface when the press reported that he was making the 900-mile trip from Kentucky to the Wyatt Detention Facility in Central Falls, Rhode Island, while shackled in a prisoners' van. He was held at Wyatt for more than a month in order to appear before a federal grand jury sitting in Worcester and looking into additional suspected corruption. Had he been a "cooperating" witness, he likely would have gone first-class in a FBP plane, assuming, of course, that he was not being permanently housed closer to home. Instead, he was taken on a grueling, circuitous eight-day road trip in each direction, making overnight stops in such out-of-the-way lock-ups as those in Oklahoma City and Brooklyn.

Worse yet, we now are told that at least some federal officials knew that, in addition to cardiac problems, DiMasi likely had cancer. In December 2011, DiMasi found lumps in his neck and made repeated requests for a medical examination. In January 2012, a prison doctor examined him, determining that the lumps were potentially cancerous and that further testing was required.

Despite the fact that DiMasi should have immediately been given diagnostic tests and started on a treatment regimen, the feds launched him on his seven-week odyssey, during which he requested urgent medical attention at every stop, but to no avail. He was not taken to see a cancer specialist for another month after his return to Kentucky, despite yet again requesting care the day after he arrived. And, in one last sadistic twist, the Bureau of Prisons instructed doctors to cease taking calls from DiMasi's wife concerning his condition. This chronology strongly suggests that DiMasi experienced something more serious than mere negligence: in effect, DiMasi was given a possible death sentence for political corruption (or, perhaps more precisely, for not providing "helpful" testimony concerning the activities of others). One need not feel particular sympathy for DiMasi in order to see how dangerous it is to allow the feds to cross a line where they can effectively torture anybody into giving testimony that the DOJ wants to hear.

What is needed is a criminal investigation asking the same type of questions Watergate raised: who at the DOJ knew what about DiMasi's health, and when did they know it?

The federal statute books are littered with laws making it a crime, at least in theory, to intentionally mistreat a prisoner (deprivation of civil rights), as well as to take extreme steps — such as torture — to get a prisoner to give, much less to concoct, testimony (obstruction of justice and subornation or facilitation of perjury). Many federal prosecutions these days are unscrupulous stretches to "get" high-profile targets whose conviction and incarceration might

build the careers of prosecutors and the institutional power of the DOJ — think John Edwards and Roger Clemens, most recently — and toying with a prisoner's health in pursuit of such ends surely deserves scrutiny in any criminal-justice system claiming to be civilized.

**CRUEL AND UNUSUAL**

The federal courts have long had an uneasy but in the end too tolerant attitude toward pressure applied or inducements offered to vulnerable defendants or prisoners in order to get their "cooperation." In an instructive 1988 Boston case, federal District Judge Joseph Tauro threw out the testimony of accomplice witnesses who had agreed to cooperate against some of their former cohorts pursuant to a plea agreement. Under the agreement, the accomplice witnesses would be rewarded with leniency if their cooperation assisted in convicting the defendants who insisted on going to trial rather than pleading guilty. The government promptly went to the Court of Appeals, which reversed Tauro's exclusion of the cooperators' testimony despite the appellate court's expressing "concern and uneasiness . . . over the coercive potential of these plea agreements." The court's "uneasiness" with the enormous pressure put on the witnesses to perform was overcome, in the judges' own words, because the coercive cooperation practices were "so firmly established" that their cessation could cause the collapse of the whole federal approach to obtaining testimony. (That the system developed by the DOJ for producing incriminatory testimony was corrupt to its core did not deter the court.)

But even the excessively compliant appellate court might raise an eyebrow were there a provable case that prosecutors, knowing of a prisoner's illness, intentionally deprived him of urgent medical attention. Such a practice might not, after all, be blithely seen as "so firmly established" as to be acceptable. Would the courts really tolerate prosecutors' softening up a potential witness by subjecting a diagnosed cardiac patient to the physical discomfort of being shackled for a 900-mile bus trip? Worse, would the courts turn a blind eye to forcing the months-long postponement of diagnosis and treatment of what soon reached stage-IV metastatic tongue and lymph cancer?

Such deliberate denial of life-saving medical intervention likely would be deemed violative of the Eighth Amendment's prohibition against cruel and unusual punishments, as well as federal statutes outlawing corrupt or extremely coercive practices used to extract testimony. (The likelihood that such testimony poses a high risk of being false adds yet another layer to the potential lawlessness of such tactics.) Yet the feds, emboldened by the apparent indifference of the courts, and by the blithe attitude of much of the press and public toward the plight of prisoners (particularly those dubbed "corrupt pols"), seemingly have begun to more broadly apply the aggressive tactics they learned (and justified, at least to themselves) during the war

on terror. DiMasi may be just the latest victim of a "justice" system that threatens to brutalize the sensibilities of our entire society and make truth a dispensable commodity.

*Harvey Silverglate is a lawyer and the author of* Three Felonies a Day: How the Feds Target the Innocent *(Encounter Books, 2011). Zachary Bloom provided research and editorial assistance.*