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Judge finds lawyer can't steal from partnership

'Betrayed' ex-colleague urges SJC, Legislature to take up issue

By [David E. Frank](#)

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A judge has dismissed a seven-count larceny indictment against a Boston lawyer after finding that an attorney cannot steal partnership money from his colleagues.

Philip D. Giordano was accused in 2007 of stealing \$140,000 from law partners James F. Champa and Gina D. Powers.

Superior Court Judge D. Lloyd Macdonald's decision to dismiss the case, Champa said, is the result of "a gap in criminal versus civil law."

"Our position remains that he took money without our knowledge and spent it on all kinds of personal items," he added.

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he added.

According to Champa, now a sole practitioner in Boston, among Giordano's purchases on the partnership's dime were nail appointments for his wife; nursery supplies; trips to Cape Cod and North Conway for family gatherings; shopping sprees at Home Depot for building materials for an addition to his home; and a DVD recorder.

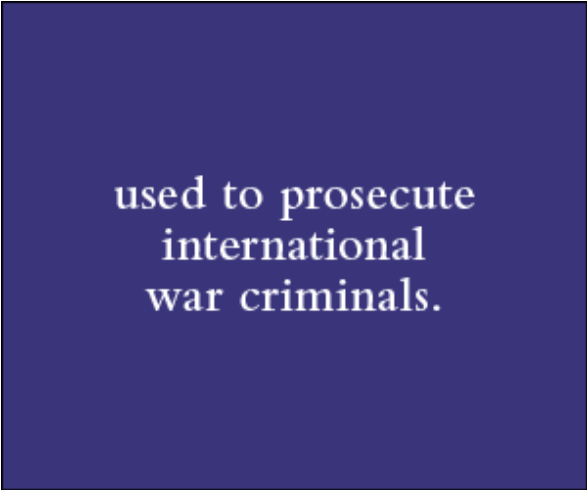
"I felt, and still do feel, betrayed because I had a 10-year relationship with [Giordano]," Champa said last week. "I confronted him about this, and he was very apologetic at the time."

But Giordano's lawyer, Max D. Stern of Boston, said the law is clear that the larceny statute does not apply to the alleged facts in the case.

"Our position has been all along that this was, and still is, and should be again, a civil dispute," he said. "The law says that to be guilty of larceny, you have to steal 'property of another,' and because the lawyers had an undivided interest in the property, a partner can't be considered to have stolen something of which he was a part owner."

Relying on a 1924 Supreme Judicial Court decision, Macdonald agreed, granting a defense motion to dismiss.

"The lesson to be drawn from the SJC's opinion . . . is that in the absence of a specific statute altering the common law rule, common law principles underlying the [larceny statute] apply to bar prosecutions for theft of partnership property allegedly committed by partners," the judge wrote. "Since 1924, the SJC has not spoken further on the subject."



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Champa said that either the Legislature or the SJC should intervene.

"If a person with knowledge knows that they can't be prosecuted criminally when they enter into a partnership, and then take money from other unknowing partners, there is a safe haven created for people to commit this type of conduct," he said.

Giordano, a former federal prosecutor who at one time worked for the U.S. Securities and Exchange Commission, still faces four felony counts for making false entries in the law firm's books. A civil suit is also pending against him.

Jake Wark, a spokesman for Suffolk County District Attorney Daniel F. Conley, said that, while prosecutors are weighing their appellate options, "in the long term, this may be a matter for the Legislature to address."

The 12-page ruling is *Commonwealth v. Giordano*, Lawyers Weekly No. 12-322-08.

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