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THE BIG DIG IN COURT: A CITIZEN'S PRIMER

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FREEDOM WATCH**

(August 15, 2007 5:01:53 PM) -- The Big Dig may at long last be 99 percent completed, but the finger-pointing is just in the early stages. Attorney General Martha Coakley kicked things off last week with her indictment of the Dig's epoxy manufacturer, Powers Fasteners, on one count of involuntary manslaughter in the death of Boston resident Milena Del Valle, who died in the I-90 tunnel collapse last summer.

As the worst boondoggle in public works history slowly winds its way through our court system, "Freedom Watch" offers a word of advice to Phoenix readers: be skeptical of our state government's every move.

It is surprising, given how untrustworthy the Commonwealth has proven to be in handling the Big Dig (not to mention other construction projects, such as the crumbling buildings at UMass), that the local media didn't approach the indictment with more skepticism. Here's what to watch out for as this story continues to unfold.

Has Powers Fasteners been indicted to deflect blame from the Commonwealth? According to documents released to the media, the Massachusetts Highway Department was warned back in 1999 that one of Powers Fasteners' two kinds of epoxy, the one referred to as "quick-set epoxy," had failed a crucial "creep test," indicating a potential for the anchors holding the tunnel ceiling to slip. The "quick-set epoxy" could safely handle a variety of uses, but not the task of holding the heavy ceiling panels.

If this is true, it means that Powers Fasteners' role in the tunnel collapse can be seen as no more than minimal and most certainly does not rise to the threshold necessary to prove manslaughter, which is defined as "an unlawful homicide unintentionally caused by wanton and reckless conduct." Since the attorney general's office is seeking to recover perhaps hundreds of millions of dollars from the various contractors for the project's overall flaws (and there are many), it would throw a huge monkey wrench into that pending civil suit if it turned out that the state highway department was largely at fault for the Del Valle catastrophe.

And why is it that the general contractors of the overall project — giant consortium Bechtel/Parsons Brinckerhoff — was not charged for its role in allowing the use of glue that the project managers had been warned not to use? The Bechtel consortium had a much larger role in the Big Dig than did Powers Fasteners.

Powers Fasteners' president, Jeffrey Powers, has said: "The only reason that our company has been indicted is that, unlike others implicated in this tragedy, we don't have enough money to buy our way out."

This appears to be an indirect accusation — perhaps a prediction — that the big boys will indeed "buy [their] way out" of a criminal case by forking over a huge payday in civil settlements with Coakley and with United States Attorney Michael J. Sullivan.

All of this raises troubling ethical, legal, and public-policy questions to which a skeptical citizenry must be alert. Are state and federal prosecutors, in order to close costly budget overruns and provide for future monitoring and repairs of the seriously ailing project, planning to force the major actors in the Big Dig fiasco to fork over huge amounts of money in exchange for not being prosecuted?

This, should it occur, would strike me as a form of extortion, a brazen manipulation of the criminal-justice system in order to settle a civil claim by forgoing a criminal charge. This would be the reverse of the Powers Fasteners indictment, which raises the suspicion that the company was indicted in order to strengthen the Commonwealth's position in its civil litigation by deflecting blame from the Highway Department. In either case, one has to approach with healthy skepticism the prosecutors' charging decisions and analyze carefully any ulterior motives.

As the legal scenario unfolds over the coming months and years, appearances may not always reflect realities, and careful students and reporters will have to delve into the real motives of the players, rather than rely on what's said in news releases and at press conferences.

In other words, stay tuned, and don't rush to judgment.