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Lawyers of convicted probation officials allege juror misconduct

By **Milton J. Valencia** | GLOBE STAFF JANUARY 22, 2016

Alleged juror wrongdoing in the 2014 federal trial involving corruption in the state probation department was disclosed in depth for the first time this week, as part of the appeals of the three state probation executives who were convicted of racketeering and mail fraud for running the department like a criminal enterprise.

During the trial, one of the jurors stopped the judge outside the courtroom and expressed approval for one of the judge's decisions, according to court records filed with an appeals court.

Another juror sent the judge a note suggesting that the defense lawyers' aggressive cross-examination of witnesses was making her physically uncomfortable, the records stated.

And, according to the records, jurors may have been preparing questions for witnesses at home — at least one requested transcripts of witness testimony before the case had even ended, suggesting the juror had been deliberating the case in violation of court rules.

John J. O'Brien, the former probation department commissioner, and his top deputy, Elizabeth Tavares, were sentenced to short prison terms, and

another deputy ^{Comments} William Burke III, was sentenced to probation. A jury found that they ran the department like a criminal enterprise by trading jobs in the department to state legislators to boost their political clout.

The prison sentences of O'Brien and Tavares were postponed by a federal appeals court in Boston, which cited the strong claims made by the three defendants.

While much of their appeal is related to the evidence in the case, and the question of whether a federal crime was actually committed, the appeal also centers heavily on the jurors and US District Judge William G. Young's decision to let jurors question witnesses.

The federal appeals court in Boston has ruled jurors can ask a judge questions during a trial, but said the allowance should be used sparingly. During the probation trial, jurors posed 281 questions, and the judge relayed 180 of them to witnesses.

“Permitting juror questioning risks both turning jurors into advocates, compromising their neutrality, and encouraging premature evaluation of the evidence. Those dangers were realized in this case,” Martin Weinberg and Kimberly Homan, attorneys for Tavares, argued in the appeal.

“The number and types of the questions posed by jurors, who enthusiastically embraced the court's invitation to question witnesses, show a jury that had lost sight of its required role as a neutral factfinder and became an investigative/inquisitorial body, fatally tainting the fairness of this trial.”

The appeal also challenges whether there was sufficient evidence in the

case to show that the probation officials were engaged in criminal activity.

Comments

Lawyers for the defendants had argued during the trial that they were engaging in politics that were typical of Beacon Hill.

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