

Fed court: Carmen Ortiz 'overstepped' in probation case



Credit: Nancy Lane

CONVICTIONS TOSSED: A federal appeals court overturned the convictions of William Burke, Elizabeth Tavares and former state Probation Commissioner John O'Brien, and said U.S. Attorney Carmen M. Ortiz, above, overstepped her bounds. AddThis Sharing Buttons

A federal appeals court's rebuke of U.S. Attorney Carmen M. Ortiz in overturning the convictions of the state's former probation chief and two of his deputies was a "great reversal" and part of a trend to rein in federal prosecutors nationwide, one of the trio's lawyers said.

"I think it's more an issue of defining the limits of federal prosecutions of state and public officials. The case is one of several around the country where the courts are beginning to narrow the reach of the federal

laws,” said Martin Weinberg, who represented Elizabeth Tavares, and like other defense attorneys in the case last night heralded the decision.

A federal jury in 2014 found John O’Brien and his deputies Tavares and William H. Burke III guilty of conspiring in a fixed hiring system.

Weinberg said the decision shows, “It’s up to the state to set the limits on ethics issues, on hiring practices. The hammer of federal prosecution ought to be reserved for federal interests.”

In yesterday’s stinging decision, the First Circuit Court of Appeals wrote: “We find that the Government overstepped its bounds in using federal criminal statutes to police the hiring practices of these Massachusetts state officials and did not provide sufficient evidence to establish a criminal violation of Massachusetts law under the Government’s theory of the case.”

An Ortiz spokeswoman said in a statement last night, “The Court of Appeals agreed that the government provided evidence that ‘the defendants abused the hiring process to ensure that favored candidates were promoted or appointed in exchange for favorable budget treatment from the state legislature and increased control over the Probation Department.’

“We are disappointed with the Court’s decision and will continue to fulfill our responsibility to protect the public from corrupt officials by vigorously investigating and prosecuting public corruption in appropriate cases,” the Ortiz statement said.

Both O’Brien’s and Tavares’ prison sentences had been stayed pending appeal. Burke served probation and paid a \$10,000 fine for his now-overturned conviction.

The 10-week trial enthralled Massachusetts political observers for the number of legislators who were called as witnesses or mentioned as unindicted co-conspirators, among them Speaker of the House Robert A. DeLeo.

But the appeals court said, “All the Government demonstrated, however, is that O’Brien and DeLeo met. The evidence does not show, for example, that DeLeo subsequently introduced a bill based on either of O’Brien’s proposals or took some official act with respect to such a bill proposed by another legislator.”

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