

A ‘slap in the face’ to federal prosecutors? Specialists weigh in on Boston Calling decision

By [Danny McDonald](#) Globe Staff, Updated February 12, 2020, 7:54 p.m.



Timothy Sullivan (left) and Kenneth Brissette were found guilty of strong-arming Boston Calling into hiring union workers in 2014. PAT GREENHOUSE/GLOBE STAFF FILE PHOTOS

Some legal experts said [a federal judge's order vacating](#) a jury's decision that found two former City Hall aides guilty of conspiring to extort organizers of the Boston Calling music festival is an unusual development that represents a repudiation of the prosecution's handling of the case.

Martin G. Weinberg, a Boston-based defense attorney who was not connected to the case, said judges typically find it “difficult to vacate jury verdicts after trial, but the evidence was conclusively determined to be outside the scope of the federal extortion statute.” He called federal Judge Leo T. Sorokin's order “a principled and courageous decision.”

“That's why we have independent judges,” he said.

The prosecution, said Weinberg, was “well outside the heartland of extortion.”

“When the government prosecutes the perimeter rather than the core of a statute, they always run great risks,” he said.

The 90-page ruling regarding Kenneth Brissette, Boston's former director of tourism, and Timothy Sullivan, former chief of intergovernmental affairs, was a victory for City Hall.

The men had been convicted by a jury of eight women and four men of strong-arming the festival into hiring union workers in 2014.

Daniel Medwed, a law professor at Northeastern University, said judges seldom vacate a jury's decision.

"To some extent, it undermines the function of the jury — that's the fear at least," he said.

Sorokin appears to have had problems with some of the prosecution's tactics, said Medwed.

In his decision, Sorokin wrote, "In the waning moments of a ten-day trial and after years of litigation, the government gave up the central pillar of its case: that federal labor law prevented the defendants from demanding that Crash Line hire union labor, and that the defendants knew it. And, contrary to the government's argument, the law does not recognize its alternative theories for establishing that the defendants acted wrongfully."

He continued, "The Hobbs Act does not empower federal prosecutors to use the criminal law to enforce a contract, a state code of conduct that itself has no criminal or even civil penalties, or a local government policy."

Said Medwed, "It's fair to say this decision is a slap in the face to the US attorney's office for pursuing this case and the way they pursued it."

Wednesday's decision represented the latest chapter in a legal saga that has had its share of twists. In March 2018, Sorokin dismissed charges after prosecutors [conceded](#) they could not prove Brissette and Sullivan had personally benefited from the union jobs, the legal standard the judge had established for a conviction.

Prosecutors appealed, and in March 2019 the First Circuit Court of Appeals ruled that Brissette and Sullivan did not have to benefit personally from the jobs to have committed extortion. At the same time, the appeals court said it was not taking a stance on whether the City Hall workers had acted illegally and noted "the concerns expressed by the Supreme Court that an overly broad application of the Hobbs Act could unduly chill official conduct."

Federal prosecutors could still appeal Sorokin's change of the verdict, but whether that would be a wise move is a different question.

David Siegel, a professor at New England Law Boston, pointed out that Sorokin had previously found the theory the case relied on "to be a stretch."

"This is not a case where people were charged with getting money from the vendor for work that wasn't done or employees that didn't exist," he said. "This was a theory of extortion based on openly advancing a city policy by city officials."

The government, he said, has appeared to have "fully ventilated its theory both during pretrial and in the appeals court and now in the jury trial."

Rosanna Cavallaro, who teaches criminal law and evidence at Suffolk University, said there is a strong argument to be made that the government overreached.

"They're using a very big stick — threat of criminal punishment and a very long prison sentence — to try to demonstrate disagreement with another branch of government's exercise of their political options," she said. "It's a very dangerous line to cross to see these people were prosecuted for something done solely in their public role."

Simply put, government officials are "allowed to be pro-union," she said.

Cavallaro speculated that the government would appeal this most recent decision, given that the US attorney's office has already committed significant resources to the case and tried to use it as a way to demonstrate the office would have zero-tolerance for corruption.

"But it doesn't seem like a great hill to die on," she said.

She said Sorokin's decision was carefully reasoned, and thought it would be "a very difficult opinion to get a reversal on."

Cavallaro acknowledged that a federal judge overturning jury verdicts is not something that happens every day, before adding, “Everything about this case is unusual.”

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