

'Co-conspirators' list in John J. O'Brien trial a shocker



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EYE-OPENER: Federal prosecutors in the case against John J. O'Brien have labeled 34 witnesses as racketeers and 'unindicted co-conspirators.'

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By: Laurel J. Sweet, O'Ryan Johnson

As opening arguments kick off today in the blockbuster federal corruption trial of former Probation Commissioner John J. O'Brien, legal experts say a government list of 34 witnesses it labeled racketeers and "unindicted co-conspirators" show federal prosecutors may be selectively prosecuting three people while excluding dozens of other wrongdoers.

"Calling these officials as witnesses is likely to expose just how deep-seated patronage is in state government and how unfair it is to target just these defendants," said noted lawyer and professor Jonathan Shapiro.

Defense lawyers for O'Brien, 57, and former deputy commissioners William H. Burke III, 70, and Elizabeth V. Tavares, 56, asked federal prosecutors to provide a list of crimes their potential witnesses may have committed in relation to the conspiracy alleged against O'Brien. In response, U.S. Attorney Carmen Ortiz provided a letter naming the racketeers and conspirators among the government's witnesses. The names were blacked out in the copy of the letter filed publicly yesterday.

Shapiro suggested the government's witnesses could easily backfire on the prosecution.

"Undoubtedly, these witnesses are the various public officials with whom the defendants allegedly provided patronage," Shapiro said. "It is just as overreaching to claim that they are guilty of the conspiracy and the substantive crimes as it is overreaching to charge the defendants with racketeering."

Attorney Martin G. Weinberg, former director of the National Association of Criminal Defense Lawyers who won the only acquittal of three defendants — accountant Richard Vitale — in the federal public corruption trial of former House Speaker Salvatore F. DiMasi, said the prosecution's shocking disclosure "certainly opens the door to the defense to argue to the jury that decent, ethical, principled public figures committed acts that they clearly don't believe violated federal law and neither did the defendants.

"It lets them say, 'Look, nobody understands where the lines are being drawn, and it's quite possible the government has drawn them in the wrong place,'" Weinberg said.

Weinberg does not know who is on the list, but suspects those individuals' lawyers brokered immunity deals in exchange for their testimony — which prosecutors will have to divulge if they testify.

He expects the defense to argue, "We did what the 34 did and we thought it not to be criminal and we shouldn't be here, either."

O'Brien, Burke and Tavares are accused of creating a fraudulent system that passed over qualified candidates for Probation jobs and promotions in favor of people sponsored by legislators to benefit their own department.

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