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# Probation case focus on lawmakers may backfire

Some wonder why legislators not indicted

By Milton J. Valencia | GLOBE STAFF JULY 14, 2014



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**Former Probation commissioner John J. O'Brien.**

During the opening of the Probation Department corruption trial in May, lawyers for the three defendants stood before jurors and pointed out who was absent — the legislators who allegedly

accepted bribes.

Over the next 10 weeks of the trial, prosecutors accused legislative leaders such as Senate President Therese Murray and House Speaker Robert A. DeLeo of influencing hiring in the Probation Department.

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Last week, prosecutors focused on DeLeo, accusing him of quid pro quo bribery by doling out legislative favors in exchange for probation jobs for friends, including those of legislators whose vote DeLeo was seeking in his bid for House speaker.

The focus on DeLeo has renewed questions about why — if legislators accepted jobs for their friends in exchange for votes — no legislators were sitting at the defense table.

“If this is a bribery case, how come this person isn’t charged?” Stephen G. Huggard, a defense attorney with Edwards Wildman and a former federal prosecutor and former head of the US attorney’s public corruption unit in Boston, asked of DeLeo. Huggard questioned the fairness of accusing DeLeo of quid pro quo bribery if US Attorney Carmen Ortiz chose not to indict him.

Ortiz’s office would not comment on why no legislators were charged. DeLeo has forcefully denied any quid pro quo agreement involving probation hiring, and on Wednesday he called on prosecutors to retract their statements.

The strategy of alleging that the probation officials’ scheme went as far as bribing legislators could backfire for prosecutors if jurors don’t see anyone being held accountable on the other end of the alleged bribe, analysts said.

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“It’s a wider, overarching theory of a crime, and if the prosecutors are dependent on a quid pro quo theory, the defendants will drill home that there’s no proof that any public official participated,” said Martin Weinberg, a prominent defense attorney from Boston. “The government has to prove what it charges.”

Prosecutors charged John J. O’Brien, the probation commissioner from 1998 to 2010, and top deputies Elizabeth Tavares and William Burke III with running the department like a criminal enterprise, by trading jobs for legislative favors, allegedly passing over more qualified candidates for the friends of legislators. Prosecutors called the jobs “political currency” that helped O’Brien build his

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clout.

Defense attorneys say their clients did nothing illegal, but prosecutors allege they committed fraud by creating a bogus hiring system to make it look like they were complying with policies and procedures.

The defendants face up to 20 years in prison on charges including racketeering conspiracy, racketeering, and mail fraud. The racketeering count alleges that the defendants took part in a criminal enterprise that committed underlying acts of mail fraud, bribery, and gratuity, which requires a lesser threshold of intent than bribery and is considered a reward, rather than an intent to influence someone.

The emphasis on DeLeo's role in probation hiring came as US District Court Judge William G. Young pressed prosecutors to explain their case, and their bribery theory. The judge has questioned whether the prosecution's evidence constitutes bribery, and said he will decide whether jurors will deliberate on that accusation. The judge has repeatedly told jurors that patronage by itself is not a crime.

Lawyers are slated to make closing arguments on Tuesday. Jurors heard from 60 witnesses over 35 days, including probation officials who said they took part in the alleged scheme, judges who say they were duped by the defendants, and legislators who did not believe they were committing a crime when they recommended job candidates.

Several witnesses testified that DeLeo's office doled out probation jobs to the friends of legislators whose vote he was seeking in the race for House speaker in 2009. Legislators agreed that their friends were hired, but some said they would have voted for DeLeo anyway.

Ed Ryan, a legislative liaison for O'Brien, told jurors that DeLeo's aide Lenny Mirasolo told him that they needed jobs for specific legislators whose votes they were still seeking.

He said O'Brien told him, "We were trying to gather support for [Representative] DeLeo."

According to other testimony, legislators from across the state pushed for jobs for friends, or political donors. Murray's office pushed for the hiring of friends and campaign donors, including the son of a judge from Brockton who had a heroin addiction. Lower-ranking legislators such as former senator Fred Berry would sometimes seek the Senate president's endorsement for a candidate.

Senator Mark Montigny, of New Bedford, at one point wanted five people appointed, and he allegedly pushed for a job for his then-girlfriend, who was in her early 20s at the time.

Ryan told jurors that Senator Marc Pacheco of Taunton "did not want anyone in his court who did not share the same zip code as him."

And prosecutors sought to show that Representative Thomas Petrolati of Ludlow controlled hiring in the western part of the state. Petrolati sponsored legislation to increase the number of jobs in the probation electronic monitoring program. His wife was named coordinator for the western part of the state, and Burke's daughter was hired as her assistant. They were the only two people hired in that region.

O'Brien apparently grew so frustrated with the pressure of providing jobs that he glanced in the

direction of the State House and complained, “They’re a bunch of pigs. It’s never enough,” according to the testimony of one of his aides.

“It’s embarrassing, it’s embarrassing to DeLeo, especially,” said John C. Berg, a political science professor at Suffolk University. “It adds to the general public distaste of politics.”

He questioned, however, whether jurors, and the public in general, will see the case as politics as usual, rather than a crime. Beacon Hill, he said, has not seemed shocked by the case.

“It’s what allows this type of thing to continue,” he said. “Had they indicted DeLeo, it might have been different.”

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