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## Former prosecutors weigh in on DOJ handling of Stone case

By [Shelley Murphy](#) Globe Staff. Updated February 13, 2020, 8:44 p.m.



Former Massachusetts US attorney Carmen Ortiz said, "I think people need to start realizing that we are a country that is being led by someone who thinks he is completely above the law and is proud of it. JONATHAN WIGGS/GLOBE STAFF/FILE

As criticism escalated over the Justice Department's unusual decision to seek less prison time for a longtime ally of President Trump, several former federal prosecutors Thursday said the reversal was an alarming display of political interference that compromised the department's independence.

"There's no attempt to even avoid the appearance of improper political influence in this matter," former Massachusetts US attorney Carmen Ortiz said. "I think people need to start realizing that we are a country that is being led by someone who thinks he is completely above the law and is proud of it."

On Monday, federal prosecutors asked a judge to sentence Roger Stone, Trump's former campaign adviser, to as long as nine years in prison for lying to Congress and obstructing its investigation into Russian interference in the 2016 election.

The next day, just hours after Trump denounced the sentencing recommendation on Twitter as a "horrible and very unfair situation," prosecutors rescinded the original recommendation, saying it "would not be appropriate or serve the interests of justice in this case."

In an apparent protest, the four career prosecutors who took the case to trial withdrew Tuesday, while Trump praised Attorney General William Barr for “taking charge of a case that was totally out of control and perhaps should not have even been brought.”

The Justice Department said the decision to revise the sentencing recommendation was made before Trump denounced it on Twitter. But critics said it marked an abuse of power, coming less than a week after Trump was acquitted by the Senate on impeachment charges.

On Thursday, Barr said in an interview with ABC News that Trump’s attacks on his department had made it “impossible for me to do my job.”

Ortiz, a Democrat who served as the state’s top federal prosecutor from 2009 to 2017, said prosecutors routinely brief Justice Department leadership on developments in high-profile cases and it’s “highly unlikely” department leaders were unaware prosecutors planned to recommend a long prison sentence.

That makes it more suspicious that the Justice Department changed course so quickly after Trump voiced his angry disapproval, she said.

“Just by sending that bombastic tweet, that sends a message to the head of the Department of Justice, who behaved in a way that clearly showed no support to the people who have been there,” Ortiz said.

It is extremely rare for Justice Department leaders to revise sentencing recommendations after they have been submitted to the court, prosecutors said.

But Michael J. Sullivan, a Republican who served as US attorney for Massachusetts from 2001 to 2009, said the initial sentence was excessive, and he applauded Barr’s decision to rescind it.

“I think he’s doing precisely what ordinary citizens of this country would expect the attorney general to do, which is to stand up and point out something that he thinks is unjust.”

Sullivan said he didn’t think it was improper for Trump to tweet about Stone’s sentencing.

“The president hasn’t forfeited his First Amendment rights because he’s president,” Sullivan said. “If he wants to express his outrage over a sentence, he has a right to do it.”

Donald K. Stern, US attorney for Massachusetts from 1993 to 2001, said Trump’s fiery comments on the case, which included criticism of the judge who presided over it and of the foreperson of the jury that convicted Stone, were troublesome.

“It’s a whole series of public comments all designed to undercut the integrity and independence of the prosecution by the president,” said Stern, a Democrat.

In the short term, the Justice Department’s decision to recommend a lighter sentence will damage the morale of line prosecutors, Stern said. But the long-term impact could be more serious.

“I just think, over time, it’s corrosive to the system of justice and it’s going to, at least in the immediate run, make us less safe because jurors and judges and the public are going to have less respect for the integrity and independence of the cases that are brought into court,” Stern said.

The seven- to nine-year sentence initially recommended by prosecutors was based on federal sentencing guidelines and included enhancements for threatening a witness and other conduct that added several years.

In the amended filing, prosecutors wrote that if the enhancement for threatening a witness weren’t applied, then Stone’s guideline range would be 37 to 46 months, a sentence more typical of obstruction cases.

Brian T. Kelly, a federal prosecutor for 25 years who was part of the team that prosecuted notorious Boston gangster James “Whitey” Bulger, said the initial sentence recommended for Stone was excessive and appeared to be politically motivated.

“I do think that’s more politics than law enforcement,” said Kelly, who questioned whether Stone would have faced such a stiff sentence if he weren’t a Trump ally. “Some mobsters get less time than that for more serious crimes.”

William Weinreb, who was a federal prosecutor for 20 years and served as acting US attorney after Ortiz’s departure in 2017, said federal prosecutors pride themselves on being nonpolitical in their decisions.

While it’s unclear what happened behind the scenes to prompt the reversal, the decision was highly unusual, he said.

“It is, I’m sure, sending some shock waves through the system, and people are going to wonder, ‘Is this just a tremor that will pass or a tremor that presages an earthquake,’ ” said Weinreb, a partner at Quinn Emanuel in Boston. “My guess is that it won’t become a common practice.”

David Schumacher, who was a federal prosecutor for eight years, struck a more ominous note.

“There’s nothing more disheartening for the morale of the US attorney’s office than believing the boss doesn’t have your back,” he said. “And here the assistant US attorneys were undercut by their boss. It’s dangerous for morale within the Department of Justice and it’s dangerous for the country in terms of the administration of justice.”

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