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## White-Collar Bar Blasts Federal Prosecutors, FBI in Price Acquittal

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By Mark Curriden

(May 1) – The “not guilty” verdicts Friday in the John Wiley Price trial means that the U.S. Attorneys Office and the FBI need to completely re-evaluate whether they have the appropriate personnel and procedures in place to prosecute high-profile political corruption and white-collar criminal cases, according to legal experts following the case.

A half-dozen former federal prosecutors and prominent members of the white-collar criminal defense bar told *The Texas Lawbook* that the jury verdict to acquit the longtime Dallas County commissioner of federal bribery, mail fraud and other charges lies completely at the feet of the team leading the public corruption case.

“It’s a historic collapse of a case that appeared to have everything going for it — wiretaps and cooperating witnesses,” says **Tom Melsheimer**, a former federal prosecutor and now managing partner at Winston & Strawn in Dallas.

“This really calls for a complete reassessment of how the U.S. Attorney’s Office investigates, evaluates and prosecutes cases,” Melsheimer says. “This is not just a loss, it’s an embarrassment. To lose this case means they really should reassess whether this case should have even been brought.”

While the prosecutors leading the case are being criticized, legal experts say that the defense lawyers representing Price and his assistant, Dapheny Fain, should be applauded for zealously advocating for their clients and that jurors should be praised for diligently listening to the witnesses, reviewing the evidence and not being overly influenced by the government.

Lawyers following the case also say that U.S. District Chief Judge Barbara Lynn handled the high-profile and controversial trial with deftness and fairness.

“She was fair, thoughtful and conscientious about moving a case along that easily could have been bogged down for months,” says Bell Nunnally partner **Jeff Ansley**, who is a former federal prosecutor. “She made sure that both sides followed the law, even when that resulted in multiple instructions that the prosecution had failed to do so, and ensured that the defendants received the fair trial to which they are entitled.”

Judge Lynn declared a mistrial on the tax evasion counts after the jury was unable to reach a unanimous decision.

“The government will have to decide whether [it] will retry on the tax evasion case, but if the FBI behaved as badly behind the scenes with the U.S. Attorney’s Office as they did in the investigation, I can’t imagine such a retrial would happen,” says Dallas criminal defense attorney Paul Saputo.

“I believe the FBI probably undercut its own case and was likely responsible for hiding information from the prosecutors,” he says.

Legal experts say that leaders in the U.S. Attorney’s Office and the Justice Department need to look internally after a major loss in court such as this.

“After more than six years of investigation, eight weeks of trial and a week of deliberation, if an engaged and hard-working jury can’t find a defendant guilty of a single charge, then he’s not guilty,” Melsheimer says. “If you’re going to put the whole county through this, you’d better have the goods.”

Other former federal prosecutors agree.

“The verdict reflects a fundamental mistake that the prosecutors made at the outset of the investigation,” says former federal prosecutor Arnold Spencer, who is now the general counsel at Coinsource. “They investigated and then indicted a corruption and fraud case, even though they never had solid evidence of either. They did have evidence that Price had assets far in excess of the amounts he had historically declared on his federal taxes.”

Spencer says the primary reason that the federal government loses white-collar cases is they “over-indict” the case.

“In economic fraud cases, where a defendant’s intent is at issue, there is a temptation to reach, to reframe charges that may not be as firmly supported,” he says. “It appears that the government lost credibility with judge and jury on all counts when it added the fraud and corruption charges to a narrower tax fraud case.”

Spencer, Ansley and others say that the jury hearing the case also needs to be praised.

“The government’s case, and frankly its presentation of that case, fell dramatically short of what it takes to convict a defendant against skilled defense lawyers and a jury with the courage to follow the law,” says Ansley. A series of government mistakes, he said, combined with the circumstantial nature of the case, ensured that the charges against Price “just didn’t resonate with this jury.”

“It’s very likely that those unforced errors by the prosecution, which rightly led to multiple instructions to the jury by Judge Lynn that the government had not followed the rules, caused the jury to question whether it really could trust the government’s case,” Ansley says. “When that happens, it’s usually not a good outcome for the government.”

**Chrysta Castañeda**, a trial attorney who sat through significant portions of the trial, says that the “government deployed a shotgun rather than a rifle shot approach to the indictment allegations and evidence, and in the end, left the jury with doubts about the whole case.”

“The charge required the jurors to sift through eight weeks of evidence to find that bribery and corruption happened on very specific dates,” Castañeda says. “Then, the jury had to focus on an entirely different set of dates for the tax fraud counts.”

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