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Aaron Swartz Prosecutor Carmen Ortiz Admonished In 2004 For Aggressive Tactic

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WASHINGTON -- U.S. Attorney Carmen Ortiz, under fire over her office's aggressive prosecution of Internet activist Aaron Swartz, was admonished by a federal appeals court in 2004 for advocating a harsher jail term for a defendant than she had promised him in a plea-bargain agreement, [according to a court document](#).

Ortiz, a potential candidate for Massachusetts governor or the federal judiciary prior to Swartz's January suicide, has come under congressional criticism for allowing Assistant U.S. Attorney Stephen Heymann to pursue an aggressive Internet fraud case against Swartz. A court decision from 2004 revealed that Ortiz, while an assistant prosecutor herself, also used an aggressive tactic. A Justice Department spokesman wasn't available to comment.

The appeals court document was brought to light in an [anonymous letter](#) to members of Congress involved in the [House Oversight Committee investigation](#) into the Justice Department's handling of the Swartz case.

Swartz committed suicide two years after he was arrested on federal hacking charges. Prosecutors had told Swartz they would recommend a seven-year prison sentence if he did not plead guilty to a felony and agree to serve six months behind bars. The charges against Swartz accused him of violating a terms of service agreement with the online database of academic articles, JSTOR. Swartz downloaded millions of articles quickly, rather than a few at a time. JSTOR had [opposed Swartz's prosecution](#).

The case has become a flashpoint for Internet activists seeking to reform outdated hacking statutes and for critics of the criminal justice system seeking to curtail abusive prosecutions. Several [lawmakers](#) have [questioned](#) Attorney General Eric Holder over the Justice Department handling of the case.

The letter from "A Concerned Boston Lawyer" was sent to House Oversight Committee Chairman Darrell Issa (R-Calif.), along with Rep. Zoe Lofgren (D-Calif.), Rep. Alan Grayson (D-Fla.), Rep. Jared Polis (D-Colo.), Sen. Elizabeth Warren (D-Mass.), Sen. Ron Wyden (D-Ore.), and Sen. John Cornyn (R-Texas). It includes a ruling from a 1st U.S. Circuit Court of Appeals, [also available](#) on the court website.

According to the ruling, Ortiz had agreed to seek a sentence at the "low end of the guideline range calculated by the court" in a fraud case against Donald Gonczy if he agreed to plead guilty to wire and mail fraud for selling bogus appraisals to timeshare owners.

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The court calculated a sentencing range of 70 months to 87 months. When Ortiz was asked to recommend a sentence, she began by stating that "the government would be seeking 70 months," a punishment "in line" with the plea deal. But she followed this statement with a lengthy digression on the severity of Gonczy's crimes. After the court interrupted her for being "repetitive," Ortiz concluded, "The defendant at a minimum deserves what the guidelines provide for and those are his just desserts," according to the document.

Gonczy ultimately received an 84-month sentence.

When Gonczy appealed, the Justice Department argued that Ortiz had been pressing not for a harsher sentence, but to pre-empt Gonczy's argument for a sentence shorter than 70 months.

The 1st Circuit Court of Appeals rejected Ortiz's argument.

"While paying lip service to a term of 70 months' imprisonment, the AUSA [Ortiz] substantively argued for a sentence at the higher end of the guidelines," Judge Juan Torruella wrote. "In doing so, the government violated the plea agreement it entered into with Goczy."

Torruella vacated the sentence and sent the case back to the lower court for a resentencing of Goczy.

The appeal appeared to have little impact on the trajectory of Ortiz's career. President Barack Obama nominated her to be the U.S. attorney for Massachusetts in September 2009, [praising her](#) "diligence, intellect, integrity and their commitment to serving the public good." She was confirmed by a unanimous Senate vote in November of that year.

The current bipartisan House Oversight Committee investigation into the Swartz case has brought increased scrutiny to a common tactic in which prosecutors threaten a defendant with a lengthy prison sentence, pressuring them to plead guilty to avoid a catastrophic outcome.

"Overprosecution is a tool often used to get people to plead guilty rather than risk sentencing," [Issa told HuffPost in January](#). "It is a tool of question. If someone is genuinely guilty of something and you bring them up on charges, that's fine. But throw the book at them and find all kinds of charges and cobble them together so that they'll plea to a 'lesser included' is a technique that I think can sometimes be inappropriately used."

Read the full anonymous letter to the House Oversight Committee [here](#).

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The Handyman

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4

· Death...the last new experience you will ever have

This reminds me of a not very well known movie named ***Rustler's Rhapsody***. The hero faces of against a gunslinger who is also a "good Guy" hired by the local cattle Baron. They agree they will draw and shoot on the count of three and they will only shoot the gun out of the other person's hand. Well, the cattle Barons guy draws on two and shoots the hero in the shoulder. When the hero says, "you cheated" the other guy says, " I told you I used to be a Lawyer!"

I remember when some Senator Told Bush that the Attorney General was not the Government's Attorney but rather the People's Attorney. Someone needs to tell Obama the same thing. I see no difference between Holder and Ashcroft, Gonzales, or Mukasey!

25 MAR 9:22 PM



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EndTheIllusion

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1

There is no way to know of the contributions that Aaron Swartz would have made to humanity. Instead we have a great mind (Swartz) being destroyed by a small mind (Ortiz) who would do anything for personal gain.

11 MAY 12:49 AM

REPLY

FAVE

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what do you expect the main boss is a crook ,the attorney general and the whole DOJ is corrupted

8 MAY 1:53 PM

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this is very common now days of prosecutors to become popular so they can get paid more when they go into private practice ,until we make prosecutors and judges accountable for theyre wrong doing they will continued ruining peoples life they should go to jail so they stop building carers at peoples expense ,this are people we should trust doing the right thing they should be punish even more severe than criminals

8 MAY 1:50 PM

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arlens
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1

She's on the news now taking credit for the boston bombing apprehension. She's despicable.

19 APR 9:43 PM

REPLY FAVE MORE



1other1
318 Fans

1

Ortiz is despicable.

28 MAR 10:34 AM

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tecumsehpt
332 Fans

1

I wonder how many prosecutors could pass a screening for psycho/sociopathy?

Damn few is my guess...the position is simply too attractive to the type to pass up: virtually limitless power of overs with little to no oversight, and zero consequences for indulging in power trips.

27 MAR 4:28 PM

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addisonsteele
727 Fans

1

The prosecutor may have overcharged, but it is time to stop treating Aaron Swartz as some sort of hero. His crusade to "free" content was the height of hypocrisy because he sold his own program to Conde Nast for millions, while at the same time arguing that content created by others should be freely available to the public.

27 MAR 2:21 PM

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Bulgogi
71 Fans

She just lost my vote.

27 MAR 8:26 AM

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ameliaparvaneh
30 Fans

Carmen Ortiz essentially bullied an idealistic genius to death because he downloaded too many academic articles too quickly. She has to live with that. He left the world better for having been in it, and she's just making it worse. She and all of her kind are the power grabbers of the world; they are everywhere, and that's the saddest part. Insane tyranny is all we can look forward to unless we pay more attention to these people and do everything we can to limit the power they have.

27 MAR 2:47 AM

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frank1946
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Martha Coakley Wannbe !

How sad.

Justice escapes her.

27 MAR 1:00 AM

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