

Councilmen now facing trial by jury | Push to let a judge decide their corruption case stalls

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An effort by two San Diego city councilmen to have their corruption case decided by a judge, not a jury, stalled yesterday when another defendant balked and the government declined to state a position.

"It will be trial by jury," Michael Pancer, attorney for Councilman Ralph Inzunza, said yesterday after a conference call with U.S. District Judge Jeffrey T. Miller and all the lawyers. "The government did not waive."

The trial is scheduled to open today with the arrival of 150 to 200 potential jurors, an unusually large pool because of the publicity surrounding the case and other upheaval at City Hall that might have influenced them.

The jury pool will receive lengthy questionnaires -- which prosecutors and defense attorneys have painstakingly crafted with oversight from the judge -- so they can weed out those with strong opinions on such topics as strip clubs, politicians, Las Vegas, the city's financial problems, pension underfunding and the resignation of Mayor Dick Murphy.

Jury selection is expected to conclude by Friday, with opening statements likely to begin May 10.

The 12 who are chosen must decide whether Inzunza and Councilman Michael Zucchet illegally accepted money from strip club owner Michael Galardi and his employees, Las Vegas lobbyist Lance Malone and club manager John D'Intino, to abolish the no-touching law at strip clubs. If found guilty, the defendants could face sentences of up to four years, according to estimates based on advisory sentencing guidelines.

Galardi and D'Intino have pleaded guilty and are cooperating with the government. The councilmen and Malone have pleaded not guilty and have said any money received was in the form of legally reported campaign contributions.

The possibility of a bench trial was raised last week when Pancer and Jerry Coughlan, attorney for Zucchet, made the surprising request, saying they believed a judge would be better suited to evaluate the legal, rather than emotional, aspects of the case. A defendant has a right to a trial by jury but not to a trial by judge.

To have a bench trial, the government, judge and defendants must agree. The government never stated a position, but legal experts said it's unlikely prosecutors would consider a bench trial without consent of all four defendants. Simultaneously trying two defendants before a judge, and two before a jury, would be problematic. For instance, the jury would have to be excused during certain testimony concerning non-jury defendants.

Over the weekend, it appeared a bench trial was a possibility because Malone and his lawyer, Dominic Gentile, had agreed. However, yesterday morning Gentile said in a brief interview: "We're not going to do a bench trial." He declined to explain the decision, and would not say why fellow defense attorneys Pancer and Coughlan were under a different impression.

Pancer declined to discuss the implications of a jury trial or Gentile's change of mind. "If you want to know what Dominic's doing, ask Dominic."

Earlier yesterday, Michael Crowley, lawyer for defendant David Cowan, said he and his client were still undecided. Cowan, a former aide to the late Councilman Charles Lewis, is charged with making a false statement to the FBI.

"We've analyzed from 100 different directions and there's no good answer to it," said Crowley, who echoed concerns of the other defense lawyers who sought a bench trial partially because of the complicated nature of prosecuting multiple defendants at once.

Defense lawyers have said they are worried that evidence against one defendant could unfairly prejudice the other defendants. For instance, Coughlan has said he is concerned the councilmen could be unfairly tarnished by the bribery of an undercover San Diego vice detective, who was paid by Galardi in exchange for warnings of vice inspections at Cheetahs, his Kearny Mesa strip club. The councilmen had nothing to do with that, Coughlan has said.

In cases of multiple defendants, a judge often must give the jury limiting instructions, in which he tells them to disregard particular testimony or evidence as it relates to one defendant, but apply it to another.

Crowley twice asked the judge to sever his client's case from the councilmen's so Cowan could have a less complicated, less time-consuming trial. The judge denied the requests.

"All this additional evidence that's coming in, albeit with limiting instructions, is very difficult for a jury to keep all those things separate," Crowley said. "There's going to be a continuous situation where the judge is going to say, 'This evidence is not coming in as to Mr. Cowan. This evidence is not coming in as to Mr. Cowan.' . . . After a while, it's just going to fall on deaf ears, is what I'm afraid of."

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Abstract (Document Summary)

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