

## Las Vegas prosecutor challenged by defense | Judge rejects motion to acquit Inzunza, Zucchet

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### Document Text

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The defense in the City Hall corruption trial called two unlikely witnesses yesterday to bolster its position that strip club owner Michael Galardi is a liar: Eric Johnson, the original federal prosecutor on the parallel case in Las Vegas, and San Diego FBI agent Leonard Davey.

For Johnson, it was only 20 minutes on the stand, but it was incongruous to see one federal prosecutor cross-examining another about whether he had ever been to a strip club.

Galardi, who made a deal with the government and testified that he bribed three San Diego city councilmen with cash between 2001 and 2003, has alleged that Johnson visited one of his strip clubs in Las Vegas and accepted free lap dances and drinks.

Johnson, the chief of the organized crime strike force in the U.S. Attorney's Office in Las Vegas, was asked by San Diego Assistant U.S. Attorney John Rice whether he had ever been to a Las Vegas strip club. Johnson answered: "Prior to 1990 ... I believe I was in a strip club in Las Vegas on four occasions."

Johnson also testified that Galardi's allegations against him are untrue and that a Justice Department investigation into the matter tremendously affected his emotional well-being. The investigation resulted in no disciplinary action, he said.

Also yesterday, U.S. District Judge Jeffrey T. Miller denied a defense motion for an acquittal of Councilmen Ralph Inzunza and Michael Zucchet after the prosecution argued the evidence shows a quid pro quo occurred between the politicians, Galardi and lobbyist Lance Malone to change the law banning touching between strippers and club patrons.

The defense argued that the councilmen should be acquitted because prosecutors failed to prove an explicit quid pro quo, and therefore no reasonable jury would convict.

"There's not an iota of promise in those conversations. It's not even implied," Zucchet's lawyer, Jerry Coughlan, told the judge yesterday. Later he added: "Here we have Mr. Galardi admitting on the stand all he really had at that point was a hope" that the councilmen would help him.

The judge's denial benefits prosecutors in that they cleared a hurdle with his finding that there is sufficient evidence to send the case to the jury.

But some experts said meeting that standard is not particularly hard because it's difficult for defense attorneys to persuade a judge to grant the acquittal without an egregious problem with the government's case.

"In the vast majority of criminal cases, a motion for acquittal is a formality that is routinely denied," said Michael Attanasio, a criminal-defense attorney in white-collar cases and former federal prosecutor who handled public corruption cases in Washington, D.C.

"Judges are extremely reluctant to take the case away from the jury, and the motion can always be revisited after, and if, the jury returns a guilty verdict."

Miller questioned lawyers on both sides and heard arguments, then denied the motion to acquit without stating his reasons.

Miller reserved ruling on the request for acquittal by an attorney for David Cowan, a peripheral figure who is charged with making a false statement to the FBI. The government said Cowan, a former aide to Councilman Charles Lewis, falsely said he never spoke to Malone about the no-touch ordinance. Lewis had been indicted in the case, but the government removed him after he died in August.

Cowan's lawyer, Michael Crowley, said Cowan spoke to Malone four times and that while Malone mentioned the no-touch rule in passing three times, they never discussed it.

Crowley said the government has not shown that Cowan made a false statement, that he did it willingly and that it was material to the case -- all elements the government must prove.

After court, Crowley said he is optimistic the judge will acquit his client. "I'm confident that either the judge or the jury will see that" the government failed to prove its case. He noted that it would be the first time in 20 years as a lawyer that a judge hasn't denied outright his motions for acquittal.

The jury was not present for those arguments.

Earlier in court, the jury heard testimony from Johnson, but what effect his appearance will have is difficult to measure. Some experts said jurors might take the word of an accomplished prosecutor and dismiss the claims of a strip club owner out to save himself from prison. Others said jurors will focus instead on comparing Galardi's testimony to the secretly recorded conversations.

"This is a highly unusual scenario that is relevant only to the credibility of Mr. Galardi," said Attanasio, the defense attorney and former prosecutor.

"The defense will obviously claim (that) if Mr. Galardi was untruthful about his relationship with this prosecutor, then he was untruthful about his relationship with the councilmen. But that evidence would be less important to the jury than any inconsistencies between Galardi's testimony and the tape recordings involving the councilmen themselves, which goes to the heart of this case."

During cross-examination of Johnson, Rice, the prosecutor, was shut down by Miller on several avenues, in particular on a broad question about whether Johnson had ever been to strip clubs. The judge allowed him to narrow the inquiry to clubs in Las Vegas.

Miller also stopped Rice when he asked, "Are you aware Mr. Galardi made allegations about having given things to FBI agents? Do you know those allegations have been found to be true?"

An objection by the defense was sustained.

Rice was referring to Galardi's claims that he bribed or gave freebies to FBI agents. He also said he was paying various

public officials, judges, deputy district attorneys and police officers.

Judge Miller previously had ruled that Galardi may not testify about Las Vegas-related accusations. Results of any federal investigations into those claims have not been made public.

However, the Justice Department investigation of the Johnson matter was inconclusive, finding Johnson "credible" and Galardi "consistent."

Some of Johnson's colleagues traveled from Las Vegas for his brief time on the stand, including the current prosecutors on the Las Vegas case. They included Dan Schiess, an assistant U.S. attorney, and David Malagold, a lawyer with the Department of Justice. They were also present for most of Galardi's testimony, and for opening statements. The Las Vegas case is scheduled for trial in January.

The defense also called FBI agent Davey, who had already testified for six days for the prosecution. The defense questioned Davey about surveillance photos he took April 16, 2003, of Malone and Zucchet walking to and from the Grant Grill restaurant, trying to show that there was no exchange of an envelope with cash.

Davey testified that he did not witness any exchange, but the government elicited testimony on cross-examination that none of the agents or police detectives on surveillance that day were in the restaurant where the meeting took place between Malone and Zucchet and they could not have seen a transfer of an envelope.

Also on the stand yesterday was Herman Collins, who said he was a campaign manager for Lewis when Malone gave Lewis \$2,500 in \$100 bills in an envelope during a breakfast meeting May 16, 2001.

Collins testified that Lewis came directly to his office after receiving the money, seeking advice about what to do. Collins said he suggested Lewis return it. Collins said he called Malone, informed him of the decision to return the money, and then mailed it to Las Vegas.

The trial resumes today.

#### Developments

- o The defense tried to show that strip club owner and prosecution star witness Michael Galardi lied.
- o The judge rejected a defense motion for an acquittal of Councilmen Ralph Inzunza and Michael Zucchet.

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#### **Abstract** (Document Summary)

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