

Wait begins as jury gets corruption case

[2,6,7,1 Edition]

The San Diego Union - Tribune - San Diego, Calif.

Author: Kelly Thornton

Date: Jul 14, 2005

Start Page: B.3.1.6

Section: LOCAL

Text Word Count: 1423

Document Text

Editions vary | For chart see end of text.

The jury in the City Hall corruption trial completed its first day of deliberations yesterday without reaching a verdict, and a nerve-racking limbo began for two San Diego councilmen, a council aide and a Las Vegas lobbyist.

"The wait is extremely, extremely difficult," Michael Pancer, attorney for Councilman Ralph Inzunza, said after a brief hearing. "It's a very tense time. It's hard to think about anything else."

Inzunza, Councilman Michael Zucchet and Las Vegas lobbyist Lance Malone are accused of trading money for efforts to repeal the law banning touching between strippers and patrons. Council aide David Cowan, who worked for the late Councilman Charles Lewis, is charged with making a false statement to the FBI. The jury received final instructions and was taken into a deliberation room adjoining the courtroom at 10 a.m. Bailiffs collected jurors' cell phones, shut the door and hung a do-not-disturb sign on it.

At 3:10 p.m., the jury sent U.S. District Judge Jeffrey T. Miller its first note, asking that seven conversations, mostly involving Malone and Cowan, be replayed for them. The request appeared to indicate that the jury has started deliberations by tackling the less-complicated single count against Cowan.

Lawyers, the councilmen and Malone were summoned back to court to learn the contents of the note. After court, Cowan's attorney, Michael Crowley, said: "I think it's obvious they're working his case first. I played those tapes for them at the beginning of the trial. The more the tapes are listened to, the more it shows my client is not guilty."

Prosecutors declined to comment.

The parties were scheduled to return to court this morning for the playing of the recordings. Among the requested calls were exchanges between Malone and Cowan during February, March and April 2003. In one call, Cowan suggested Malone could get his issue on the agenda by speaking during the public-comment period at the meeting of a council committee with jurisdiction over adult businesses.

In another call, Malone offered to help Cowan's brother get a job in Las Vegas, and when Cowan expressed his gratitude, Malone said: "Yes. Well . . . now I need a big favor."

Malone then asked if Cowan could persuade his boss, Lewis, to help him docket an adult-entertainment matter that would require greater distances between clubs and churches and schools. Lewis had been a defendant until his death in August.

During that call, Malone said to Cowan: "And if I could get Charles to say, 'You know that's a good idea and I think that,

ah, you know, I'd like staff to you know start putting that together.' I just need someone to say, 'Let's do it' . . . "

The government has said Malone and the councilmen used the distance issue to disguise the real goal of sneaking the no-touch matter onto the agenda at the last minute, to avoid political consequences. Malone was a lobbyist for Michael Galardi, owner of the Cheetahs strip club in Kearny Mesa.

Cowan is accused of falsely claiming to the FBI that he never discussed the no-touch law with Malone. Crowley, Cowan's lawyer, has told the jury that of the four recorded conversations between the two men, the no-touch matter is not discussed, but merely mentioned by Malone twice in passing.

Legal experts said the jury could be out for a while, considering the complex nature of the case, the volume of evidence (200-plus recorded conversations), the length of the trial (in its 11th week), the number of defendants (four) and number of counts (40). But making predictions is impossible.

"In a case that lasted this long and with jurors who are by all accounts very attentive, it would be very common for the jury to be deliberate and take some substantial time in its deliberations," said Michael Attanasio, a criminal defense attorney and former federal prosecutor who handled corruption cases.

"It also would probably not be a surprise to anybody if within the next couple of days the jury asks to hear certain tapes or testimony read back," Attanasio said, before the jury sent its first such request.

"It's entirely possible that they may ask to hear specific taped conversations involving the councilmen themselves because those tapes probably provide the most direct evidence of the critical issue, which is the councilmen's intent."

Jurors are scheduled to deliberate from 9 a.m. to 4:30 p.m. Monday through Friday, with a 90-minute lunch break.

Before deliberations began, Miller handled a couple of remaining disputes between the defense and prosecution by giving further instructions to the jury.

Among the matters of contention were a couple of Assistant U.S. Attorney Michael Wheat's comments during his rebuttal argument Tuesday. One of the issues concerned Anthony Wagner, then a Zucchet aide. Wheat noted that the defense failed to call Wagner, who was present at a breakfast meeting between Malone and Zucchet on a day Malone allegedly delivered \$10,000 in cash to the councilmen.

The defense later countered outside the jury's presence that the prosecution's comments were an improper shift of the burden of proof, and that Wagner was willing to testify for the defense but the government refused to grant him immunity. The defense also noted that Wagner was not called to testify by the government, either. Wagner resigned from Zucchet's office days after the FBI's May 14, 2003, search of City Hall.

Miller instructed the jury yesterday that the burden of proof rests with the prosecution, and that "the defense is under no obligation to call Mr. Wagner."

The judge also advised the jury that the case does not involve organized crime, despite a general reference to organized crime and corruption in the strip club industry in a document read to the jury by the prosecution. Miller told jurors their verdict cannot be influenced by sympathy for the defendants.

Miller also reminded jurors that they must not discuss or consider the defendants' decision not to testify. The defense had objected to Wheat's use of the famous quote, "Say it isn't so," arguing Wheat had improperly commented on the defendants' failure to testify.

Miller said the court did not interpret Wheat's statement that way, and told the jury, "It is absolutely vital that this jury not

interpret that reference by Mr. Wheat as a comment on anyone's decision not to testify."

The jury must decide this central question: What was the intent of the defendants? Did the councilmen knowingly conspire with Malone in a scheme to trade money for efforts to repeal the no-touching law, and was there a specific agreement to do so? Or was it legislators and a lobbyist merely doing their jobs?

The judge said the quid pro quo must be unambiguous, but can be based on circumstantial evidence, "including the context in which a conversation took place, in determining whether a conspiracy to commit 'honest services' wire fraud has been proven."

If the jury finds there was no quid pro quo -- no explicit promise to exchange money for official action -- then it cannot convict on any charges against the councilmen. The quid pro quo is a required element that must be proved to obtain convictions on both the wire-fraud and conspiracy counts.

The councilmen and Malone are charged with one count of conspiracy to commit honest-services wire fraud, 32 counts of honest-services wire fraud (each act that carried out the scheme) and three counts of extortion under the Hobbs Act. Malone also is charged with three counts of interstate travel in aid of racketeering. Cowan is charged with one count of making a false statement, for a total of 40 counts.

Defense attorneys told jurors during closing arguments that if they find there was no conspiracy in count one, then the councilmen and Malone are not guilty of the 32 counts of wire fraud. The rationale was that if there is no agreement among two or more to conspire and scheme, then there never was a scheme, and those counts become moot.

The councilmen each face an estimated three to four years in prison if convicted.

Developments

- o The jury begins deliberating, and a few hours later it asks that several recorded conversations be played back.
- o Most of the conversations to be played back this morning involve David Cowan, the council aide charged with making a false statement to the FBI.
- o The jury will deliberate from 9 a.m. to 4:30 p.m. Monday through Friday.

Kelly Thornton: (619) 542-4571; kelly.thornton@uniontrib.com

Credit: STAFF WRITER

Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission.

Abstract (Document Summary)

[David Cowan] is accused of falsely claiming to the FBI that he never discussed the no-touch law with [Lance Malone]. Crowley, Cowan's lawyer, has told the jury that of the four recorded conversations between the two men, the no-touch matter is not discussed, but merely mentioned by Malone twice in passing.

Among the matters of contention were a couple of Assistant U.S. Attorney Michael Wheat's comments during his rebuttal argument Tuesday. One of the issues concerned Anthony Wagner, then a [Michael Zucchet] aide. Wheat noted that the defense failed to call Wagner, who was present at a breakfast meeting between Malone and Zucchet on a day Malone allegedly delivered \$10,000 in cash to the councilmen.

The councilmen and Malone are charged with one count of conspiracy to commit honest-services wire fraud, 32 counts of honest- services wire fraud (each act that carried out the scheme) and three counts of extortion under the Hobbs Act. Malone also is charged with three counts of interstate travel in aid of racketeering. Cowan is charged with one count of making a false statement, for a total of 40 counts.

Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission.