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Judge Warns Of Unappealable Acquittal In Tribal Bribery Case

By **Brian Dowling**

Law360 (April 23, 2021, 7:08 PM EDT) -- A federal judge put prosecutors on notice Friday that they risk an unappealable order of acquittal if they wait until the very last moment to spell out how they plan to prove an architect's payments to a former Massachusetts tribal chair amount to bribery.

"You are playing with fire," U.S. District Judge Douglas P. Woodlock told Assistant U.S. Attorney Christine J. Wichers during a hearing.

Judge Woodlock's warning followed a revelation from Wichers that the government's evidence of an **alleged quid pro quo** between David DeQuattro and former Mashpee Wampanoag Tribe Chair Cedric Cromwell will come from testimony from the president of DeQuattro's architecture company that has yet to be handed over to the defense.

If the government holds onto the testimony until a jury is seated and it's not enough to prove the bribery case, resulting in the court ordering an acquittal, then double jeopardy attaches and there's no appeal, the judge said. If the government were to lay out its case ahead of trial and the court orders an acquittal, the decision could be appealed.

"You are running a risk that I think can be addressed by advance disclosure of the co-conspirator's statements so I can understand this more fully, earlier on, about what you have to prove to get to a jury," Judge Woodlock said.

"Understood," Wichers replied.

Judge Woodlock said he will issue an order denying the defendants' motions to dismiss the bribery and tax case, saying prosecutors' allegations were "thin" but enough to go forward to trial.

But whether the evidence will prove substantial enough for Judge Woodlock to leave the allegations in the hands of a jury to decide is a source of "anxious concern," he said.

Wichers said the government objected to handing over the co-conspirator's testimony before it is ordered to do so prior to trial because it's not a requirement under the law. The prosecutor pointed to her office and the U.S. Department of Justice's policy.

Judge Woodlock said the prosecution's "rigid" adherence to that policy will lead him to "adhere rigidly to the policy in deciding who gets an appeal." The judge added that inflexibility on granting exceptions to policies, in his experience, can be an "indication of a case not strong enough to bear the light of day."

The warnings aside, the court handed the parties a date for the jury trial on bribery and tax charges to start — Sept. 7, the day after Labor Day weekend.

"I'm very grateful that the court scheduled the trial, even understanding the COVID-related

burdens," DeQuattro's attorney, Martin G. Weinberg, told Law360 after the hearing. "Mr. DeQuattro has sought, and the court has now provided, a speedy trial."

Cromwell's counsel, Timothy R. Flaherty, said his client "asserts his innocence and looks forward to presenting a vigorous defense at the trial."

A spokeswoman for the U.S. attorney's office declined to comment Friday.

An **initial indictment** in November 2020 alleged DeQuattro, the owner of an architecture firm, bribed Cromwell in order to protect the company's role in the development of the tribe's planned casino in Taunton, Massachusetts. In March, the government added the tax charges against Cromwell through a superseding indictment.

Both DeQuattro and Cromwell deny the allegations.

Prosecutors say DeQuattro paid bribes of more than \$57,000 to Cromwell, including five \$10,000 checks, a \$4,000 payment, a used Bowflex home gym and a weekend stay at a hotel in Boston's Seaport District. DeQuattro's company made nearly \$5 million from the Massachusetts tribe, prosecutors say, including 14 gambling authority checks signed or co-signed by Cromwell.

DeQuattro and Cromwell argued in seeking to have the charges tossed that prosecutors never showed the point at which DeQuattro's payments to Cromwell amounted to an agreement to not cancel the contract.

Judge Woodlock, in denying the motion to dismiss and a separate request for a bill of particulars about the government's case, said the prosecutor adequately explained where the government plans to look to prove that element of the charges.

The government is represented by Christine J. Wichers of the U.S. Attorney's Office for the District of Massachusetts.

Cromwell is represented by Timothy R. Flaherty.

DeQuattro is represented by Martin G. Weinberg of Martin G. Weinberg Law PC.

The case is U.S. v. Cromwell et al., case number 1:20-cr-10271, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Chris Villani. Editing by Janice Carter Brown.