# Attorney for defense contractor wants trial dismissed

*by Kelly Thornton - CNS*

SAN DIEGO - A lawyer for former Poway defense contractor Brent Wilkes told a judge Monday "there is no way" his client will plead guilty to charges stemming from the Randy "Duke" Cunningham bribery scandal.

The lawyer, Mark Geragos, also said he planned to seek dismissal of the case because he has reason to believe former U.S. Attorney Carol Lam may have leaked secret grand jury documents to the media.

During a hearing Monday, Assistant U.S. Attorney Phillip Halpern acknowledged unfortunate leaks but was measured in his response. "There's a big difference between rhetoric and actual facts," he told the judge. "We look forward to Mr. Geragos' filing."

Geragos contended that Lam wanted the indictments to happen before she was forced from office by the Bush administration. But Lam was meeting resistance from bosses in the Justice Department, who had rejected drafts of indictments against Wilkes and former CIA official Kyle "Dusty" Foggo, saying they needed revisions.

Lam, Geragos theorized, wanted to force reluctant officials to go along with her plans by leaking details of the indictments before they were officially released. Geragos has said he learned about indictments from reporters.

"These indictments as to my client were returned hours before Ms. Lam was to exit. ... If it did come back to Carol Lam, it would strike me as the most compelling reason for dismissal," Geragos told the court.

Geragos did not specify, either inside or outside of court, what caused him to believe that the Department of Justice had rejected drafts of the indictments. In court he referred to e-mails - unearthed as part of the congressional investigation of the controversial firings of Lam and seven other U.S. attorneys - that supposedly bolster his position. After court, he would not elaborate.

A federal grand jury indicted Wilkes and Foggo on Feb. 13 on conspiracy, fraud and money laundering charges, and Lam announced the indictments at a news conference that day; she left office Feb. 15.

Lam declined to comment Monday on the allegations but had said in response to a question at the news conference that her imminent departure did not impact the timing of indictments.

U.S. District Judge Larry Burns told Geragos to make a formal request and he would hear arguments on the matter May 14. He also said he will set a trial date before September for the first of two cases involving Wilkes. The second case, involving Wilkes and Foggo - who was the No. 3 CIA official - will come later because of complex legal matters involving classified evidence.

As for the Lam matter, it's unclear whether the Justice Department was involved in reviewing the case. U.S. Attorneys in various districts are generally autonomous in making charging decisions, legal experts said.

A scenario in which Lam was thwarted by the Justice Department, then leaked documents to the press to ultimately obtain indictments, seemed far-fetched to some lawyers familiar with the office's protocols for obtaining indictments.

"If the Justice Department balked, I would think they would not give approval and she wouldn't have returned the indictment," said defense attorney Charles LaBella, a former San Diego U.S. attorney. "I just can't imagine a U.S. attorney would ignore the approval process. It's not consistent with how Carol operated."

A grand jury in San Diego issued two indictments. One charges Wilkes with 25 counts of conspiracy, fraud, money laundering and bribing a public official. The document details $700,000 in gifts Wilkes allegedly bestowed on Cunningham, from prostitution services to luxury vacations, so the San Diego Republican would steer $100 million in federal government contracts toward Wilkes' flagship company, Poway-based ADCS Inc.

A second indictment charges Foggo and Wilkes with conspiracy, money laundering and honest services fraud. The government said Foggo used his influence at the CIA to direct $1.7 million in business deals to Wilkes, who in turn lavished Foggo with gifts, expensive dinners, trips to Scotland and Hawaii, and promises of high-paying future employment, the government alleged.

Both men have pleaded not guilty.

*Attorney for defense contractor wants trial dismissed by Kelly Thornton - CNS*