

Dismissal of Wilkes' indictments sought

by Kelly Thornton

SAN DIEGO - Lawyers for former Poway defense contractor Brent Wilkes on Monday asked a judge to dismiss indictments stemming from the Randy "Duke" Cunningham scandal because the government deliberately and illegally disclosed grand jury secrets to the media.

Wilkes' attorney, Mark Geragos, also alleged in documents filed in federal court that the leaks were part of a campaign by former U.S. Attorney Carol Lam to use Wilkes and other defendants as "pawns" in a "political squabble" with bosses at the Justice Department who wanted her fired.

Geragos contended that Lam wanted the indictments to happen before the Bush administration forced her from office. The indictments were issued Feb. 13; Lam left two days later.

"The United States Attorney used the leaks to create a public atmosphere that compelled the grand jury to return indictments and present (the Justice Department) with a *fait accompli*, a gesture of defiance by Carol Lam as she was forced out of office," Geragos wrote.

Assistant U.S. Attorney Phil Halpern declined to comment; Lam could not be reached late Monday.

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 Rancho Santa Fe Republican would steer \$100 million in federal government contracts toward Wilkes' flagship company, Poway-based ADCS Inc.

A second indictment charges Wilkes and former CIA official Kyle "Dusty" Foggo 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.

Geragos based his characterization of Lam as an instigator of leaks on reporters' stories and comments to him, states the court document filed Monday.

Lam's supporters have alleged she was targeted for firing because of her corruption prosecution of Cunningham and its spinoff probes that have implicated Republicans.

Geragos said he was contacted by at least six reporters before indictments were issued, and some said they had seen drafts of the document to be presented to grand jurors by prosecutors. The grand jury process is secret; it is a violation of federal law to disclose grand jury matters.

It's rare for a judge to grant dismissal based on leaks or government misconduct.

Geragos noted that prosecutors and the judge acknowledged the leaks during a recent hearing. Assistant U.S. Attorney Jason Forge called them "embarrassing," "reprehensible" and "inexcusable." Geragos quoted U.S. District Judge Larry Burns as characterizing them as "prejudicial" to the defendants. The leaks affected the impartiality of the grand jury, Geragos argued.

Burns is scheduled to hear arguments on the matter May 14. Failing the motion to dismiss, Geragos urged the judge to hold an evidentiary hearing into the leaks.

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