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Re: Grand Jury Leaks in the Brent Wilkes matter

Dear Mr. Bhandari:

This letter will serve to memorialize my conversation this morning with Mr. Bandari and reiterate our grave concern over apparent recent developments in the investigation of our client, Mr. Wilkes. We registered our dismay over the wholesale leaking of matters occurring before the grand jury in this week's media coverage. For example, in the *North County Times* article dated yesterday the following was reported:

Two federal officials say the U.S. attorney's office in San Diego is close to seeking an indictment against Poway defense contractor Brent Wilkes, who allegedly bribed Randy "Duke" Cunningham in return for millions of dollars in government contracts, it was reported today.

"I know we are so close," one of the officials told the *North County Times*. The source, who has intimate knowledge of the case and spoke on condition of anonymity, said a preliminary draft indictment is under review by "many eyes on what is going to be proposed to the grand jury,"..Another official who is with a different agency but is also familiar with the case said an indictment is "imminent,"...¹

¹ Officials close to seeking indictment in Wilkes case, January 31, 2007 *North County Times*.

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Today another article by another news agency appeared again directly quoting government officials:

Federal prosecutors are preparing to seek indictments against a former top CIA official and a San Diego defense contractor linked to the bribery scandal that sent former U.S. Rep. Randy "Duke" Cunningham to prison, two government officials familiar with the investigation said Wednesday. The officials, who spoke to The Associated Press only on condition of anonymity because grand jury proceedings are secret and the charges have not been finalized, said prosecutors plan to ask a San Diego grand jury to return charges of honest services fraud and conspiracy against Kyle "Dusty" Foggo and Brent Wilkes.²

As I told Mr. Sanjay during our phone call today, it has been brought to my attention that yet another reporter who today claims to have been shown two separate indictments of Mr. Wilkes. One in the Foggo matter and one related to Thomas Kontogiannis. In addition, this reporter was apparently told that prosecutors wanted to arrest Mr. Wilkes possibly as early as today on one of those indictments.

Mr. Sanjay agreed with me that these leaks are extremely disturbing. However, I believe that they are on their face violations of Rule 6(e). What makes this situation even more egregious is that these leaks come on the very same day that search warrants were executed with a taint team procedure in place. Obviously, if agents who are members of the taint team are in fact illegally leaking Grand Jury material it seems likely that flouting of a mere court order would be child's play.

Mr. Sanjay asked me what I would propose. As you undoubtedly are aware, your office is currently conducting an investigation of leaks out of the U.S. Attorneys Office for the Central District in the Pellicano matter. In addition, the Central District is investigating leaks out of the Northern District in the Barry Bonds matter. Consequently it would not appear that having some other district's U.S. Attorney's office investigate this matter would make much sense. For the time being we would request that all of the case agents and lawyers involved in this matter immediately execute sworn declarations that they were not the source of these outrageous leaks. We would further ask that those declarations be filed under seal with the clerk of Judge Irma Gonzalez.

² Charges near in Calif. Bribery case, Allison Hoffman, Associated Press, February 1, 2007. As of 1:30 p.m. today this article had been run in 95 separate news papers around the globe since posting 5 hours ago.

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While we explore all of our options as to the willful violations of Rule 6(e) by Government agents I would also like to point out that it has also been reported that the timing of seeking an indictment(s) of Mr. Wilkes has been set to coincide with the imminent departure of Ms. Lam. If what is being reported is true, as to the subject matter and timing of the indictments, the fact that Mr. Wilkes has never received a target letter regarding anything related to Randy Cunningham or Thomas Kontogiannis would appear to be a concerted effort by government agents to deny Mr. Wilkes due process.

Please immediately let me know if and when sworn declarations will be filed with the Court so that we may weigh our options in this matter.

Very truly yours,

ORIGINAL SIGNED BY

/s/

Mark J. Geragos

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