

WHAT SECRETS IS WILKES PLANNING TO SPRING?

Paul Kiel reported this morning that Brent Wilkes doesn't want the government to mention the prostitutes that Wilkes engaged as part of his bribe scheme to influence Duke Cunningham (here's the filing). And if the Court doesn't exclude the testimony about prostitutes, Geragos threatens, he's going to haul the prostitute whose calendar has been submitted as a business record into court so he can delve into her record-keeping practices. That might be fun.

But I'm more interested in the possibilities presented by two of Wilkes' other filings. The first objects to the government's attempt to exclude duress as a defense. Geragos argues that the case law the government cites doesn't apply, either because the cases pertained to evidence excluded during jury instructions, or because the case wasn't directly on point.

Here, without having seen the government's case, the defense has no way of knowing whether the prosecution's theories of liability and evidence will necessarily foreclose a necessity or duress defense. Tellingly, the government cannot cite controlling authority holding that extortion is not a defense to the offenses charged against Mr. Wilkes. Instead, the government makes its argument through meandering statutory construction analysis and metaphor. Indeed, the only case it cites for a holding regarding the application of federal law does not address whether extortion is a defense to bribery, but rather whether extortion and bribery charges brought in the same case are mutually exclusive.

It's unclear whether Geragos is just objecting to the government's attempt to exclude a defense based on extortion for kicks, or whether the government was correct in anticipating that that may be what Wilkes intends to argue. In any case, though, Geragos seems intent on postponing any decision about the appropriateness of a duress defense until after he presents his case.