

WHERE'S DUKE?

Seth Hettena notes that one of Mark Geragos' most effective lines in the Brent Wilkes trial was the insinuation that the government backed off calling Duke Cunningham as a witness.

During his closing argument to jurors, defense attorney Mark Geragos asked jurors to keep one question in mind. If the government prosecutors believed Brent Wilkes had plied Congressman Randy "Duke" Cunningham with more than \$600,000 in bribes, why didn't they put the ex-honorable gentleman on the witness stand?

It's a good question. As the jury enters its third full day of deliberations, they may be wondering the same thing, and it remains to be seen whether keeping Cunningham off the stand will hurt the government's case.

In his closing argument, Geragos told jurors the government didn't call Duke because he would never, ever admit that Brent Wilkes' contracting work was bad for the country. Prosecutor Jason Forge countered that in rebuttal by saying that he didn't want to call the most corrupt congressman in history and ask jurors to rely on his testimony.

So why didn't Geragos call Cunningham? Geragos said the government had the burden of proof. When I reminded him that he had told jurors he would call Duke, Geragos replied that Wilkes was a better witness. It's not too hard to believe that he was worried that Duke would admit that Wilkes had bribed him. And that would be something no amount of brutal cross-examination could undo. You might as well send the jury out right then.

The statements from both sides leave a

bit to be desired; something's missing here. We'll find out someday, but for now, it's clear that both prosecutors and the defense felt there was more harm than good in calling the Duke to testify.

So why didn't the government call Duke to testify? In addition to Hettner's suggestions: that Cunningham would be all-around unreliable, that Cunningham isn't the brightest bulb ever to grace the Congressional chandelier, I've got another suggestion.

Perhaps the government was afraid that Cunningham would open the avenue for testimony from someone else. After all, Geragos did subpoena a whole slew of Congressmen, though he backed off after the judge warned him he needed a better developed reason to call them. Could Geragos have elicited something from Cunningham that would allow him to subpoena Jerry Lewis? That doesn't seem too far-fetched. Perhaps just as importantly, Wilkes' former co-defendant John Michael is due to have his day in court (his trial was postponed because he got viral meningitis). Cunningham has already revealed quite a bit about Tommy K that the government didn't want revealed. Was the government afraid he'd do it again on the stand?