

A hearing no one can hear | Judges, lawyers to discuss co- conspirator behind closed doors

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Tomorrow morning, three judges of the 9th U.S. Circuit Court of Appeals will gather in a courtroom inside an elegant 104-year-old building in Pasadena for an extraordinary hearing involving one of the co-conspirators in the Randy "Duke" Cunningham bribery scandal.

The court hearing will be closed to everyone -- the public, the news media, the defense attorneys -- save for the judges and a few lawyers from the U.S. Attorney's Office.

The extreme secrecy is highly unusual. Veteran lawyers could not remember another time when the appeals court held a completely closed hearing.

The subjects to be discussed are transcripts and documents related to the February guilty plea of Thomas Kontogiannis, a New York developer who admitted to a single count of money laundering in the Cunningham case. Kontogiannis' checkered past includes convictions for bribery and bid-rigging, an estimated \$70 million fortune, and a knack for staying out of prison.

Prosecutors say that in this case he laundered \$1.1 million in bribes to Cunningham from two defense contractors through mortgages for the disgraced former congressman's Rancho Santa Fe mansion.

Federal prosecutors in San Diego have gone to extraordinary lengths to keep nearly all information about Kontogiannis' Feb. 23 guilty plea in the Cunningham case under a nearly impenetrable seal of secrecy.

Cunningham pleaded guilty to conspiracy and tax evasion in November 2005 after he admitted accepting \$2.4 million in bribes from defense contractors. He is serving an eight-year, four-month sentence in federal prison.

Three hearings in February revolving around Kontogiannis' guilty plea also were kept secret, with no public notice of two of them and barely any notice of the third.

The plea agreement itself was kept secret for four months, until federal Judge Larry A. Burns -- who initially agreed to the closed proceedings -- said there was no longer a compelling interest to keep the agreement from the public.

Burns also decided in June to unseal transcripts of the three February hearings and a fourth held in April. But prosecutors objected and invoked a provision of a federal law dealing with handling classified information as a reason why the documents have to remain secret.

When Burns turned that request aside, the prosecutors went to the appeals court. That court agreed to hear the appeal -- and ordered all material to remain secret.

Moreover, information on the case is not available on the court's Web site. Type in the case number and a curt "No information available" is all that appears.

Federal prosecutors then asked the court for a closed hearing, which was granted, even though most judicial proceedings are open to the public.

Last week, the judges denied a request from The Copley Press Inc., publisher of The San Diego Union-Tribune, to participate in Monday's hearing. The judges also rejected a similar request from the lawyer for another defendant in the Cunningham case whom Kontogiannis is expected to testify against.

It is widely believed that Kontogiannis is cooperating with the government and will testify in an upcoming trial of Poway defense contractor Brent Wilkes and John Michael, who is Kontogiannis' nephew and is charged with conspiracy to bribe Cunningham, money laundering, three counts of unlawful monetary transactions and obstruction of justice.

Wilkes is accused of plying Cunningham and CIA official Kyle "Dusty" Foggo with bribes in return for lucrative contracts. Foggo and Wilkes are childhood friends from Chula Vista who were associates of the former Republican congressman.

"The only conclusion you can come to is that (Kontogiannis) is cooperating in some way," said San Diego defense lawyer Michael Crowley. "And it's likely he is going to get some very favorable sentencing treatment as far as a recommendation from the government."

At a hearing on June 29, Burns pointedly noted that prosecutors never cited protecting classified information as a reason for closing the February hearings, and said raising it now was erroneous.

Legal experts said it was also an unusual move.

"It's amazing the government would raise the classified information later on and not earlier as a reason to keep it secret," said Charles LaBella, a former federal prosecutor.

Before closing proceedings, courts must publicly give notice that a hearing will be closed and allow anyone to object.

In the Kontogiannis case, both sides met in secret proceedings on Feb. 21 and 22. There was never any notice of those hearings given, according to documents filed by The Copley Press for the appellate court hearing.

It was not until 4:45 p.m. on Feb. 22 -- 15 minutes before the federal courts close -- that a notice was posted on the court calendar. It referenced a closed hearing for the next day, Feb. 23 -- at 8:15 a.m.

Moreover, the notice was advertised on a court calendar under a different case number and different case title. Effectively, there was no way for the public to know that "In re: Request to Seal Proceedings" had anything to do with Thomas Kontogiannis and his case.

"It's almost Orwellian double-speak," said Gregg Leslie, the legal defense director for The Reporters Committee for Freedom of the Press. "They say, 'We need secrecy, but the reason we need secrecy is also secret, so we can't tell you.'"

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Abstract (Document Summary)

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