

# BARDSLEY & CARLOS LLP

MONDAY, OCTOBER 14, 2013

## News and Media

Union-Tribune Staff Writer  
The San Diego Union-Tribune

November 29, 2005

### **Randy 'Duke' Cunningham Case becomes argument over sentencing**

In the end, Rep. Randy "Duke" Cunningham, a former Navy fighter pilot whose Top Gun swagger carried him to military glory and then to Congress, was left with little room to maneuver. That was the consensus among local lawyers and legal experts yesterday who analyzed Cunningham's guilty pleas to conspiracy and tax evasion charges that toppled him from Congress and likely will send him to prison.

The strength of the government's case also means Cunningham may not have much leverage as he faces a maximum prison sentence that could be up to 10 years.

"He's admitted in open court he defrauded the United States and the people of the United States and he purposely evaded – with a criminal intent – paying taxes," criminal defense lawyer Marc X. Carlos said.

"It will be difficult for any judge to give leniency given these facts," he said.

In a 33-page plea agreement, prosecutors spelled out the case against Cunningham, who admitted to accepting \$2.4 million in bribes in exchange for steering government contracts to friendly defense contractors.

That Cunningham pleaded guilty before being indicted and did not challenge any of the government's evidence against him are telling signs that prosecutors had assembled an overwhelming case, lawyers said.

"He fell on his sword," criminal defense lawyer Michael Crowley said.

A grand jury had been investigating Cunningham's financial dealings with contractors for several months. Often, defendants plead guilty before a grand jury has issued an indictment to lessen the damage.

"You take responsibility so that you don't get slammed later on," said Carlos, who also wondered whether prosecutors may have indicated they were prepared to pursue more serious charges against the Cunningham.

"Usually you come in, pre-indictment, to avoid the filing of more serious charges and work out a deal more beneficial to your client," he said.

U.S. Attorney Carol Lam declined to comment on what kinds of charges prosecutors were contemplating bringing before the grand jury, citing the secrecy of grand jury proceedings.

She said that the plea deal came together over time, but that negotiations "took a serious turn about a week or so ago." Cunningham's signature on the plea agreement is dated Nov. 23, the day before Thanksgiving.

Now the Cunningham case shapes up as an argument over sentencing.

He faces a maximum of 10 years when he is sentenced Feb. 27 by Judge Larry A. Burns. Prosecutors said yesterday they are prepared to push for that term.

Federal sentencing guidelines give Burns some leeway and he could give Cunningham a lesser term based on several factors. Pleading early in the case can be weighed as a factor in his favor.

Cunningham's history, especially his Vietnam War service, is the strongest element in his argument for leniency, said Mario Conte, a law professor and former head of Federal Defenders of San Diego, a nonprofit legal firm.

"They'll try to counteract all the corruption and disingenuousness and bribes," he said of Cunningham's legal team. "And that's a fairly significant thing to use. I mean, how many times do you have a fighter ace sitting in a courtroom about to be sentenced?"

On the other hand, Cunningham's biography could work against him. Prosecutors will portray him as someone who betrayed the public

On the other hand, Cunningham's biography could work against him. Prosecutors will portray him as someone who betrayed the public trust, who traded on his office and perhaps even his stature as a war hero for personal gain.

The experts also say Cunningham's fate could largely hinge on what is outlined on the 29th page of the agreement, under the heading "Cooperation."

Cunningham agreed to provide "substantial cooperation" to the ongoing investigation into the contracting scandal. He agreed to be interviewed by investigators about what he knows of the other, unnamed, co-conspirators in the case.

Cunningham even has agreed to submit to lie detector tests with regard to his truthfulness.

Several lawyers said Cunningham's best chance of shaving time off his sentence is to help the government convict others.

Even that might not be enough to convince Burns, a former prosecutor.

"He's a tough sentencer, and he is known for that," Carlos said.

Simply cooperating is no guarantee, since the agreement says prosecutors will determine the importance of Cunningham's help and whether it merits any lesser sentence.

"He's got a lot to work down," Conte said of Cunningham's potential sentence. "He's got a big, uphill battle."