

HOUSE RULES

The WaPo has more on the logic behind the refusal of the 13 Congressmen subpoenaed yesterday to testify.

As required by House rules, the subpoenas were read into the Congressional Record late Monday evening. John D. Filamor, assistant House counsel, wrote Geragos on Sept. 6 to object to the subpoenas, citing House rules that forbid members from testifying in judicial proceedings unless their testimony is "material and relevant."

Filamor also cited the "speech or debate" clause of the Constitution as a likely impediment to the testimony and to "many, if not all, of the documents" Geragos is seeking from a handful of lawmakers. That clause protects members from being tried criminally for legislative acts.

We have yet to see the subpoenas themselves, but the mention of documents here suggests that one of the documents Geragos is seeking is the report on the HPSCI's involvement in approving Cunningham graft—and perhaps other documents that chronicle Congress' addiction to earmarks.

I don't think I adequately explained what I meant yesterday when I said Congressional subpoenas are the new graymail. Recall that the goal of graymail is not to actually win a trial. It is to force the government into deciding between actually holding the trial or dismissing the charges against the defendant.

The reason I said this appears to be similar to a graymail attempt is because Geragos subpoenaed testimony that is, arguably at least, protected. If Judge Burns determines that the subpoenaed testimony is relevant to Wilkes' defense, Congress' invocation of "speech and debate" and

House rules will then be weighed. Given the recent Jefferson decision ruling the FBI's raid on Jefferson's office illegal, the speech and debate clause may well be interpreted broadly. Which might—and this is Mark Geragos, mind you, so I say might—mean Congress would be given the choice whether to testify in the trial. And if they don't, Burns might—again, I say might—have to dismiss the charges.

I doubt it'll work (not least because there's only about 3 Congressmen who really have directly relevant testimony, plus that one report), but it's a novel stunt.