

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
vs.	)	<b>No. 08 CR 846</b>
	)	<b>Judge Joan Humphrey Lefkow</b>
<b>JON BURGE</b>	)	

**DEFENDANT’S RESPONSE TO GOVERNMENT’S  
“EMERGENCY” MOTION FOR RECONSIDERATION**

Defendant JON BURGE, respectfully responds to the government’s “emergency” motion for reconsideration as follows:

1. It would be unreasonable to set this case for trial on November 30, 2009 for a host of reasons.
2. First and foremost, it cannot be forgotten that Mr. Burge is currently suffering from cancer. Mr. Burge, who resides out-of-State, has previously-scheduled medical appointments in November and December 2009. On December 3, 2009 he is to undergo certain testing. A procedure also has been scheduled for December 14, 2009.
3. In addition, one does not function normally when afflicted with cancer. The present treatment has side-effects, including fatigue, bowel and urinary disfunction. Why the government desires to put a cancer patient on trial before his treatment is even completed is beyond us.<sup>1</sup> It makes a lot more sense to put a man on trial when his cancer is behind him, rather than in front of him.

---

<sup>1</sup> Defense counsel once before had experience with putting a seriously-ill man to trial in December, *United States v. Pasquale Marcy*. The defendant in that case was physically unable to complete an even shortened trial and passed away.

4. The trial, and preparation for it, would require Mr. Burge to move from Florida to Chicago. Obviously, Mr. Burge has not made arrangements for that to occur in time for a November 30, 2009 trial date.

5. The government says that one of the prosecutors is leaving the office “soon.” If that attorney is making a career change “soon,” would he have been available for a January 11, 2010 trial? If not, then the defendant’s illness is no reason to advance the trial.

6. This Court directed that the 3500 material be provided a month before trial. The government indicated that it would provide *Brady/Giglio* material one month before trial. A November 30, 2009 trial date would deprive defense counsel of this all-important material one-month before trial, let alone an adequate opportunity to review and investigate in conjunction with a healthy client.

7. Potential defense witnesses reside out-of-town, or are incarcerated, and must be subpoenaed or ordered in. We also expect that there may be issues with respect to whether witnesses may validly assert the Fifth Amendment. We highly doubt these issues could be resolved in time for trial if the trial date is advanced.

8. With an unexpected November 30, 2009 trial date, the defense would also be deprived of the opportunity to pursue expert testimony.

9. A jury questionnaire is to be used in this case, and jury selection promises to be cumbersome given the long history of publicity. A jury questionnaire has not been compiled as of this date. Nor has consideration been given to pre-screening jurors. Furthermore, trying an involved case in the month of December is difficult given that jurors and witnesses have prior commitments.

10. To date, the government has not proposed anything with respect to Andrew Wilson's testimony. The defendant's position on this must take into account the ruling with respect to the prior testimony of John Yucaitis and Patrick O'Hara. To date, a ruling has not issued on this subject.

11. Each of defendant's lawyers is a sole practitioner, who, while devoting substantial time to this case, represents other clients. Given that trial had been set for January 11, 2010, they had set a number of matters for the months of November and December 2009. For example, Attorney Richard Beuke is presently in the *middle* of a murder trial. In addition, Messrs. Beuke, Gamboney and Martin have previously scheduled other court matters for November and December 2009.<sup>2</sup>

12. Attorney Martin must prepare, *inter alia*, an appellant's opening brief in a case that lasted over four months, *United States v. Marcello*. The Seventh Circuit scheduling attorney has directed that the brief be filed by January 11, 2010 so the government may have time to respond and the Court can hear oral arguments this term.<sup>3</sup> It would be impossible for Attorney Martin to both prepare the brief and prepare for and be on trial in this case in November and December 2010.<sup>4</sup>

---

<sup>2</sup> Just by way of example: Mr. Martin is a member of the Seventh Circuit's Committee of Jury Instructions in Criminal Cases. That Committee is meeting on November 12 and 13, 2009. Hundreds of proposed jury instructions, most received in the past couple weeks, must be reviewed before that meeting.

<sup>3</sup> Mr. Martin has no knowledge of any defense attorney contemplating seeking a continuance and can state that the scheduling attorney was quite affirmative in saying that no extensions beyond the January 11, 2010 date should be requested.

<sup>4</sup> In addition, Mr. Martin has booked a prepaid out-of-the-country trip with his family between December 27, 2009 and January 3, 2010.

13. The Court gave the defense until January 11, 2010 so they could prepare for trial in light of the massive discovery. And we have been doing so. But we previously made the motion to continue precisely because we did not believe we could be ready in time for an October 2009 trial date. The same is true of a November 2009 trial date.

14. While the government cites the *Canon* civil case, it has yet to tender the Title III tape-recordings, requested as *Brady/Giglio* material, regarding a conspiracy involving Cannon to manufacture allegations against Area Two police officers.

15. With all due respect, the government waited until near the expiration of the statute of limitations to indict a case in which the underlying allegations last occurred more than 20 years ago and in some instances more than 30 years ago. Now all of a sudden there is a rush to get the case to trial. Under the circumstances of this case, it would be unreasonable to advance the trial date with inadequate time for preparation, especially considering the defendant is suffering from cancer.

16. Finally, we notified the government of Mr. Burge's illness in October 2009, and filed medical records and the motion to continue in advance of the October 21, 2009 status date. Up until yesterday, the government was fine with an April 2010 trial date. We fail to see how a month further delay merits the drastic measure of an advanced and unduly rushed trial date.

Respectfully submitted,

/s/ Marc W. Martin

WILLIAM GAMBONEY, JR.  
216 S. Marion St.  
Oak Park, IL 60302  
(708) 445-1994

RICHARD BEUKE  
53 W. Jackson Blvd., Suite 1410  
Chicago, IL 60604  
(312) 427-3050

MARC W. MARTIN  
53 W. Jackson Blvd., Suite 1420  
Chicago, IL 60604  
(312) 408-1111  
*Attorneys for Defendant Jon Burge*

**CERTIFICATE OF SERVICE**

I, MARC W. MARTIN, an attorney for Defendant Jon Burge, hereby certify that on this, the 5th day of November, 2009, I filed the above-described document on the CM/ECF system of the United States District Court for the Northern District of Illinois, which constitutes service of the same.

/s/ Marc W. Martin

MARC W. MARTIN  
MARC MARTIN, LTD.  
53 W. Jackson Blvd., Suite 1420  
Chicago, IL 60604  
(312) 408-1111