

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

UNITED STATES OF AMERICA)	
)	
vs.)	No. 08 CR 846
)	Honorable Joan H. Lefkow
JON BURGE)	

**DEFENDANT’S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR NEW TRIAL**

How this case could have been tried in Chicago, while at the same time affording Burge a fair and impartial jury, remains a mystery. The prejudicial publicity mounted against Burge for more than two decades before trial was insurmountable. See R. 54, 176, 277. Selected jurors were not ignorant of the pretrial publicity, including prejudicial front-page stories appearing around the time of jury selection, and during trial.¹

Nobody wants to do anything about the conduct of the government and officers of the Court in contributing to *post-indictment* publicity. The United States Attorney held a press conference after indictment in which he compared Burge to Al Capone. This comment resonated in the community, as one prospective juror reported that another repeated the Capone comparison.²

The U.S. Attorneys Office sought the indictment at the urging of G. Flint Taylor and his firm, the PLO. The PLO plainly participated in the investigation of this and related civil cases.³ During trial, Taylor and PLO attorneys made prejudicial statements

¹ During trial, members of the audience, largely comprised of reporters, plaintiff lawyers and government supporters, audibly reacted to testimony. At one point, the Court admonished spectators. The jury could not help but to have heard and been affected by the audience reactions.

² Another sitting juror (DS) heard about this episode.

³ The PLO appeared on Anthony Holmes’ behalf at a civil deposition, and Holmes first made allegations about Burge – decades after his murder conviction – to the PLO. Taylor

that were reported in the press. On the eve of trial, Taylor even gave an interview about an ongoing investigation of Area 2 “midnight crew” detectives. None of this was remedied. Before trial, the Court did not take action on Burge’s motions directed at prejudicial statements emanating from lawyers, and the government suddenly deemed itself a big believer in the First Amendment (at the expense of the Fifth and Sixth). It is unexplainable how the U.S. Attorney, Taylor and PLO lawyers are not bound by Rule 3.6 of the Illinois Rules of Professional Conduct, and Local Rule 83.53.6.

The Court also rejected Burge’s request to question the jury *regularly* on the subject of exposure to publicity. (Even the government stated that in a case such as this it would be customary to question the jury each morning.) Given the barrage of trial publicity, and the lack of assurance that jurors would volunteer their media encounters, that ruling was error. See *United States v. Accardo*, 298 F.2d 133, 136 (7th Cir. 1962).

The scales of justice between the government and the accused are supposed to be balanced evenly. Cf. *Wardius v. Oregon*, 412 U.S. 470, 474 (1973). In this case, they were not. The absence of parity commenced early on. The government moved to admit the former testimony of Andrew Wilson, who died in 2007. R. 21. That testimony came in civil proceedings and an administrative hearing. For the reasons set forth in Burge’s pleadings on the subject, R. 25, the former testimony should not have been admitted under the Sixth Amendment or the Rules of Evidence. There was no way to replicate Wilson’s demeanor at this trial. In fact, the exact opposite occurred: the testimony was read by a young, Anglo, clean-cut FBI agent under orders to “just read the written words.” There was no way for the jury to have gauged and evaluated Wilson’s

supplied the government with “leads” for witnesses, including Diane Panos and Larry Suffredin. The PLO represented Andrew Wilson in his lawsuit against Burge.

demeanor, especially given the length of the testimony, without seeing and hearing him in-person.

Not only did Burge's present lawyers have different motives in cross-examining Wilson (we, *inter alia*, only represented Burge, not additional officers, and were not defending against policy claims or police rules violations), we did not get full benefit of the cross-examination actually performed by Burge's former lawyer because the Seventh Circuit deemed parts of it improper. The admitted portions of the cross in this case thus made no sense.⁴ The striking of large portions of prior counsel's cross-examination left the jury in this case without the full foundation for the defense theory, *i.e.*, that Wilson was facing a mountain of evidence for the capital killings of two Chicago police officers and fabricated a story to get out from under his confessions.

Wilson's repeated invocation of the Fifth Amendment also rendered his former testimony inadmissible. A fair "opportunity for cross-examination," Fed.R.Evid. 804(b)(1), was denied as a result of Wilson refusing to answer cross-examination questions. Burge was denied confrontation. Period.

In pretrial filings, Burge noted a profound circumstance relating to Wilson's character for truthfulness: he allowed Alton Logan to rot in prison for a murder he had committed. R. 25. Because Wilson's attorneys sat on this information, Wilson was not

⁴ Why the focus on Wilson's boots -- unless it was known that Wilson had worn them when he robbed Lavidia Downs of a pistol? That Wilson secured admission into Downs' home under false pretenses rendered the excluded portions of the cross-examination admissible under Rule 608(b). Why the focus on exonerating Detectives Patrick O'Hara and John Yucaitis? We did not have motive to exonerate them because we did not represent them and they were not on trial. Motive to shoulder responsibility for alleged abuse, absent Burge knowing about it, was wholly absent from the prior examination. This unpursued strategy was not implausible given Wilson's confusion of Yucaitis and Burge, and testimony that Yucaitis, outside the presence of Burge, shocked him; Detective Fred Hill's non-presence at Area 2 when the shocking supposedly occurred; and Burge's attendance of a press conference at 11th and State.

confronted with it in the prior cross-examinations. In its pre-trial reply, the government granted that it would consider admission of the Logan matter, and did not raise any objection to it. R. 27. The Court repeated this in its written ruling. R. 31. When it came time to step up to the plate at trial, the government objected. The Court ruled in the government's favor. This ruling was incorrect in view of Rule 608(b) (not fully read by the government in open court), as well the unique circumstances of this case.⁵

The absence of a fair trial is underscored by the evidence the jury did not hear. For starters, O'Hara and Yucaitis both testified at the *Wilson* civil trials, and the police board hearing. As detailed in their testimony appended to Burge motion to admit, R. 79, both repeatedly denied Wilson's allegations, explained the events at Area 2 on February 14, 1982, including the fact that, yes, Wilson did confess to capital murder around 7:00 a.m. They also were subjected to rigorous cross-examination by Burge's nemesis, the PLO. Given the admission of Wilson's former testimony, fundamental fairness dictated the admission of the former testimony of O'Hara and Yucaitis. But the Court, at the government's urging, steadfastly refused admission. R. 156, 186. In so doing, the Court made factual findings that the officers had motive to fabricate because they faced damage claims in *Wilson*, and job loss at the police board hearing. These features, however, went to the weight of the evidence, not its admissibility. Cf. *In re United States of America*, 2010 WL 2977455, *3 (7th Cir., July 27, 2010). Further, there was no question about the reliability of the testimony in terms of what was actually stated, given that it was transcribed by a court-reporter. And didn't Wilson have motive to fabricate? After all,

⁵ The error was exacerbated by Wilson's public defender, Dale Coventry. Not only was he permitted to put in hearsay statements of a witness who could not be cross-examined, he offered unqualified medical opinions, and was groundlessly evasive during cross-examination.

each time he testified, his criminal murder convictions were on appeal. He also sued Burge and the City for millions.

The Court also got the facts wrong in barring the former testimony of Yucaitis and O'Hara. Character is a factor to be considered, but was excluded by the Court. The Court disregarded the fact that the officers not only were decorated police veterans but had actually presented good character evidence at the police board hearing. Furthermore, O'Hara and Yucaitis were exonerated at the first *Wilson* trial. Thus, they lacked personal financial motives when they testified at the second civil trial. In addition, the notion that Burge could call other witnesses as a substitute for O'Hara and Yucaitis was not reality. O'Hara was the one who stood guard of Wilson all day. Yucaitis was the one who, in the presence of no others or unknown officer[s], supposedly shocked Wilson and thus was the only person who could have denied the accusation. Finally, the supposed availability of other witnesses was illusory: most refused to testify on Fifth Amendment grounds.

The Court repeated the error with the offered former testimony of Fred Hill. He was not a defendant in the civil cases. Nor was he brought up on police board charges. He had a corroborated alibi for the time Wilson said he and Burge were abusing him. The Court again made factual findings regarding trustworthiness. Not only were these findings unsupported by the evidence, they were for the jury. The same is true of the Court's rulings denying Burge's request to admit the former testimony of Detective McKenna, Lawrence Hyman and Paul Nealis, all who claimed the Fifth despite having previously testified absent hinting at any self-incrimination.

The Fifth Amendment took a different turn when it came time for the defense case -- more evidence the jury did not get to hear. This time, witnesses subpoenaed by the

defense -- former police officers who had participated in the cases forming the basis of the government's proof, and the ASA who had taken Wilson's confession -- all represented that they would invoke the Fifth Amendment if called. The government agreed with the defense that the defense witnesses did not possess valid grounds to invoke the Fifth Amendment. Indeed, the statute of limitations had expired, *Brown v. Walker*, 161 U.S. 591, 598 (1896), and witness discomfort *etc.* is not a valid basis for the privilege, *e.g.*, *United States v. Allmon*, 594 F.3d 981, 986 (8th Cir. 2010). The witnesses' attorneys were allowed to explain the witnesses' positions *in camera*. While we do not have access to the transcripts, the Court erroneously sustained the invocations, issuing a sealed opinion on the subject.

That was not all the jury did not get to hear. The Court, with the exception of Banks⁶, steadfastly refused to permit the defense to admit the details of government witness confessions, see Exhibits 1-5, and circumscribed proof relating to police investigations. According to the Court, again at the government's urging, the confessions were "irrelevant" and too prejudicial. But *Burge* was the person on trial -- not the witnesses. The confessions were a part of the totality of the circumstances surrounding the interrogations. Certainly, their contents gave rise to an inference that the witnesses had confessed not because they were "tortured" by police, but for other reasons, including because they were guilty of the offenses.⁷ Furthermore, government witnesses denied making the confessions.⁸ Admission of the confessions directly impeached the

⁶ The Court, however, refused Burge's request to recall Banks to testify that he had hired (as an attorney) the police officer who supposedly beat him.

⁷ The Court erred in sustaining the government's objections during opening to the defense statement that suspects confess for a variety of reasons.

⁸ For example, Holmes denied making a statement to ASA Paul Kayman, Burge and Yucaitis. Holmes also denied having previously seen copies of his court-reported confessions

witnesses' sworn claims.⁹ By refusing admission of confession content, the jury was not given the complete story relevant to the charges, and was even led to believe, in some circumstances, that the witnesses did not commit the crimes.

Likewise, Burge should not have been precluded from going into the facts of Shadeed Mumin attempt murder/armed robbery investigation, as well as the contents of the handwritten statement Mumin made to then Assistant States Attorney Wilbur Crooks. These facts supported the defense, *i.e.*, that Burge was attempting to secure Mumin's cooperation and locate fugitives.¹⁰

Limitations on the "details of the offenses," or the results of cases, did not matter when the government needed them. The government pressed that Holmes' confessions were not "corroborated." How could the jury make that determination if it did not see the confessions? In the instance of Melvin Jones, the government even went as far as to elicit that Jones was acquitted of the Geoffrey Mayfield's homicide!¹¹

Throughout the trial, the Court's rulings were lopsided, probably running over 90% in the government's favor. (A prior prosecutor/witness relationship between the government attorney and the Court was not something ever presented to, or waived by,

(there were two) even though the first confession was admitted into evidence against him in his murder bench trial. The government endorsed Holmes' claim that his statements were "made up." If the jury had heard the details of the confession, it would have realized that the details could only have been supplied only by the offender. The jury also would have gotten to see that Holmes really did set up Joe Murphy's murder, and really did rat on his fellow gang members in a host of other offenses about which he had complicity.

⁹ Wilson even went as far as declaring (in his former testimony) that he did not know who Officers Fahey and O'Brien were when shown their pictures.

¹⁰ Likewise, the conversations Mumin had with his wife (in which he urged her to lie to the police allegedly) were not excludable hearsay since they were not offered for truth and reflected on Mumin's truthfulness. The errors regarding Mumin were compounded when the Court refused to permit questioning about alleged false statements Mumin had made under oath at an extradition hearing.

¹¹ While the government got away with this, it successfully interceded in precluding the admission of Burge's testimony about Jones on completeness grounds.

Burge. Cf. *Matter of Hatcher*, 150 F.3d 631, 638 (7th Cir. 1998).) In any event, cross-examination of government witnesses on topics favorable to the defense was precluded just about every time the government asked.¹² The reverse for defense objections.

The Court precluded Burge from fully putting on his defense, *i.e.* that Chicago street gang members conspired to fabricate allegations against Area 2 detectives and Burge to get out from under criminal charges and extract money from the City.¹³ The government moved to preclude this defense on grounds that the persons who were in on the conspiracy were not government witnesses, or were El Rukns, as opposed to Gangster Disciples. Evidence that there was a conspiracy against Burge on the south side of Chicago and within the walls of the CCJ and the IDOC plainly was relevant and admissible, irrespective of the formal gang allegiances of the government's witnesses.

Prior to trial, the government had information that *Hobley v. Burge* was a bogus lawsuit. R.235. Darryl Simms had informed government investigators that Madison Hobley had confessed to the arson/murder, and obtained a pardon on false pretenses. The government did not tender this evidence until mid-trial, and *after* Hobley's lawyer had testified. The Court erred in denying Burge's mistrial motion based on the *Brady/Giglio*

¹² For example, Burge was prohibited from fully delving into Holmes' street gang activity; gang leadership; and commission of armed robberies, including with others who ultimately pled guilty. This evidence was admissible to establish that Holmes needed a cover story (*i.e.*, that police tortured him) for his cooperation against fellow gang members. Furthermore, Holmes' direct examination opened the door. How can the government be allowed to bring out that Holmes received his nickname – Satan – because he had played in mud as a youngster, and had had a “wild youth,” when the defendant possessed evidence that he was gang leader/murderer/armed robber?

Holmes was not the only witness for whom the Court limited cross-examination. Coventry is another example. The Court's sustaining of the government's “foundation,” “hearsay,” and bar of inquiry into the details of the investigation into the murders of Officers Fahey and O'Brien, including the issuance of arrest warrants on February 13, 1982 were error.

¹³ This defense would have been supportable by materials in the government's possession (the El Rukn wiretaps), which, to this day, the government has failed to disclose.

violation, and in finding the evidence irrelevant. Defendant should have been allowed to call Simms as a witness.

One witness that Burge was allowed to call was Ricky Shaw. But even here the defense was barred from introducing testimony about the “D.C. effect.” The government, however, was not likewise precluded. It was given free reign to cross-examine Shaw about whether he had made unsubstantiated allegations to prison authorities. The government was even allowed to introduce the *results* of prison investigations. Although the government did not prove up these allegations, it was permitted to argue (over objection in closing arguments) that Shaw was a “serial liar.”

While the government successfully blocked defense efforts to admit certain evidence and lines of cross-examination, it did not encounter like hurdles. For example, during Dr. Raba’s testimony, the government was allowed to go into the contents of a letter Dr. Raba wrote to then-Superintendent Brzeczek. The letter was hearsay, irrelevant to Burge and unduly prejudicial. Not only was the government allowed to go into the letter, it also was allowed to elicit a conversation Dr. Raba had with Cook County Board President George Dunn, who has been deceased for many years.¹⁴ This conversation was irrelevant, hearsay and unduly prejudicial. Because Dunn is dead and Dr. Raba had not previously disclosed the conversation, Burge had no way of investigating or rebutting it.

What occurred during Darlene Lopez’s testimony was equally untenable. Before trial, the government sought to admit evidence of Burge’s supposed racial animus through *circa* 1970s social conversations with a former girlfriend’s estranged sister.

Burge objected. At the hearing, and in a written order, the Court ruled that the

¹⁴ In that supposed conversation, which Dr. Raba never mentioned in five prior trips to the witness stand in Burge-related matters, Dunn questioned what Dr. Raba was doing in complaining about Wilson.

conversations could be admitted only if they were tethered to a particular case about which the government was to introduce proof. At least that is what Burge's counsel's understood the Court to say and write. When Lopez testified, the government sought to rid itself of this restraint, and elicit testimony about unlinked cases. The Court ultimately agreed with the government. Consequently, the government was permitted to elicit a series of "admissions" Burge had made (in the late 1970s) about police brutality by unknown officers in unknown cases.¹⁵ In all events, Lopez' testimony should not have been admitted. It was irrelevant, unduly prejudicial and vague. It was flipside of evidence the Court wrongly precluded, *e.g.*, evidence of lawful practices at Area 2.

The rules were different when defense witnesses did testify. Take Dr. Baden's testimony as an example. On cross-examination, the government was permitted to probe about income reported on his previous year's tax return. This lacked probative value and was unduly prejudicial. The Court, however, deemed it relevant. The government was also permitted to adduce that other experts disagreed with Dr. Baden's opinions. On redirect examination, Burge attempted to elicit that Dr. Baden's opinions conformed with those of Dr. Werner Spitz. The Court sustained the government's objections. This ruling was error. Another expert's opinion is something an expert may properly consider and rely upon under Rule 703 and 705 of the Federal Rules of Evidence.¹⁶

At strategic points during the trial, the government made improper comments and pursued inappropriate lines of inquiry. For example, Michael McDermott said words to the effect of: "this was all public record 20 years ago and you guys did nothing." The

¹⁵ Lopez, an alcoholic in the day, even went so far as to testify that Burge said that the purpose of the abuse was to obtain a confession – as if she could really remember this.

¹⁶ There is more. When the defense sought to admit the Banks/Bates supplemental police report it was deemed objectionable. When the government sought to admit it for *its* purposes, the objections disappeared.

prosecutor retorted that the reason why nothing had happened was because nobody came forward. This was not true.¹⁷ Sustaining Burge's objection to the prosecutor's declaration was insufficient. The incorrect data could only filter into the jury room. The Court erred in denying mistrial.

During Burge's testimony, Burge initially successfully precluded examination about whether Burge had pointed a gun at a detective because he had reported the police department's street file policy. Undeterred, the government pressed for reconsideration on grounds that the evidence was somehow relevant "character" evidence. The Court relented and allowed the questions. The Court's first ruling was correct, and Burge's right to a fair trial was prejudiced by the questions.

Also during Burge's testimony the government got much mileage out of the name of Burge's boat, Vigilante. This line of inquiry was wholly inappropriate. It did not constitute 608(b) material. Surely, if admission of a defendant's nickname is a reversal-causing circumstance, see *United States v. Williams*, 739 F.2d 297 (7th Cir. 1984), then so too with the name of a boat in this case's circumstances.

Burge testified on a Thursday (the last day of the trial week). The Court broke a bit early that day, thereby allowing the government the weekend to rehash cross-examination. The following Monday, the prosecutor revisited the same lines of cross-examination pursued the previous trial day. The Court erred in overruling the multiple

¹⁷ A large part of the government's case derived from materials assimilated by plaintiff's counsel in *Wilson*. The *Wilson* civil trials were held in the late 1980s. Government witnesses also testified at the police board hearing, which was held in 1992. Criminal defendants also lodged allegations as part of their criminal cases and public hearings on suppression motions were held in the 1980s. The federal government even conducted a series of previous investigations of Burge, based on defendant complaints, but consistently declined prosecution.

“asked and answered” objections. A lawyer is not entitled to redo his examination as a result of the fortuity of an examination not being completed at the end of the day.

One area in which a defendant ostensibly is supposed to be free from court intervention is jury selection and decision. Even here, Burge was stymied. The government, which had largely struck minority jurors including an African-American female not struck by the defense, made a challenge to Burge’s exercise of peremptory challenges pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986). When the government’s challenge was presented, the Court’s reaction was that it would be unacceptable to have no African-Americans on the jury since this was a high profile case. But it is Burge’s right to a fair trial that was at stake – not other persons. What’s more, the unstruck jurors not only included minorities, they also included a woman who appeared to be of African-American descent (Juror RI, who regularly read the *Chicago Defender*).¹⁸

In any event, Burge provided race neutral reasons for his peremptory challenges, including Juror 19, whom the Court inserted into the petit jury. The juror, *inter alia*, had been a notary public and had connections to police officers – the credibility of police officers (*e.g.*, Doris Byrd, Sam Lacey and Michael McDermott) called by the government being an important issue. It also is amazing that when the government gives race-neutral reasons for striking jurors, they are accepted, *United States v. Stephens*, 514 F.3d 703 (7th Cir. 2008), but when the defendant does the same thing, the reasons are deemed incredible. The Court erred in denying Burge the jury of his choice, and denying his motion for mistrial.

¹⁸ Prior to jury selection, Burge had asked that jurors indicate their race in accordance with the Eighth Circuit’s jury questionnaire form. The Court refused this question.

During its deliberations, the jury asked a series of questions. It wanted to know whether Burge could have taken the Fifth Amendment in response to the interrogatories. It also wanted to know the effect of the objections contained in the interrogatory answers. In both instances, over Burge's objections, the Court supplied factual answers to the jury's questions. It is not the province of the Court to fill-in voids in the government's proof through answers to jury questions. The Court's answers amounted to impermissible factual findings by the Court. Cf. *United States v. Gaudin*, 515 U.S. 506 (1995); *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 348 (1979).

These were not the only questions returned by the jury. The jury wanted a magnifying glass. The Court answered this inquiry by supplying the jury with a magnifying glass – but without first notifying Burge or his counsel. Burge had a right to be present and weigh-in on answers to all jury questions. See *United States v. Pressley*, 100 F.3d 57, 59 (7th Cir. 1997).

The *ex parte* answer was prejudicial because, on the heels of the request for a magnifying glass, the jury asked for alligator clips that had been used as demonstrative exhibit by the government during Dr. Baden's testimony. Burge wanted the jury to have clips, but, this time, the Court denied the jury's request. The magnifying glass and clip request were of the same nature – external objects to assist deliberations. If the jury's request for clips was going to be denied, the same result should have been reached for the magnifying glass. Because Burge was not notified about the magnifying glass request, he was precluded from taking a “both or nothing” position.

It is undisputed that “materiality” was an essential element of a perjury offense in Count 2. Here, the indictment specifically alleged that Burge's answers were material to

“the outcome” of *Hobley v. Burge*. In its original jury instruction submissions, the government submitted materiality instructions conforming to the indictment. On the eve of the final conference, the government changed its materiality stance. It expanded the definition to make more than “the outcome” of the civil the case the relevant decision for materiality purposes. The new instruction permitted the jury to convict on the perjury charge based on a finding that Hobley’s lawyer potentially was affected by the answer. This amended the indictment’s “materiality” element. The law is clear that a charging instrument cannot be amended/expanded through jury instructions. See *United States v. Stirone*, 361 U.S. 212 (1960); see also *United States v. Ross*, 412 F.3d 771, 774 (7th Cir. 2005); *United States v. Ramirez*, 182 F.3d 544 (7th Cir. 1999); *United States v. Leichtnam*, 948 F.2d 370 (7th Cir. 1991); *United States v. Pigeo*, 197 F.3d 879, 877 (7th Cir. 1999); *United States v. Willoughby*, 27 F.3d 263 (7th Cir. 1994); cf. *United States v. Miller*, 471 U.S. 130 (1985). But that is precisely what occurred in this case.¹⁹

The questions that Loevy propounded were globbly-gook. Despite their inherent ambiguity, the Court refused to dismiss the indictment. It compounded the error by refusing Burge’s unanimity instruction that would have required the jury to unanimously find on case[s] in the government’s proof. The failure to give this instruction denied Burge’s right to unanimity. *E.g.*, *Richardson v. United States*, 526 U.S. 813, 817-18 (1999); *Schad v. Arizona*, 501 U.S. 624, 631-32 (1991) (plurality). As instructed, the jury could have found guilt without a unanimous finding either on the cases presented by the government, or any particular point in the rambling interrogatory questions.

¹⁹ The error affects all counts, in that the obstruction charges were expressly predicated on the allegation that Burge had made materially false statements.

In a related vein, the Court erred in refusing Burge's instructions that certain events described in the interrogatory were "legally permissible" interrogation techniques. Absent instructions, the jury had no way of knowing what constituted permissible interrogation techniques. The Court required Burge to rely on defense witness testimony about permissible interrogation techniques. The jury, however, was free to reject that testimony.²⁰ The jury lacked any definitive pronouncements, in the form of instructions or expert testimony, on permissible interrogation techniques.

Finally, the passage of time prejudiced Burge's ability to defend. Unavailable or missing evidence *at trial* included: Holmes' Cermak Health and jail records; Attorney Suffredin's notes or file; Jones' Cermak Health and jail records; Banks' Polaroid statement photograph; and A&A records for Area 2. The passage of time also impacted memories of government witnesses, including James Sotos and Michael Condon, Darlene Lopez and Diane Panos. Lastly, Burge's ability to defend was prejudiced by the deaths/unavailability of critical witnesses, including: John Yucaitis; Dr. Geoffrey Korn; Mario Ferro; Officer Mulvaney; Patrick O'Hara; Charles Grunhard; and George Dunn.

Respectfully submitted,

/s/ Marc W. Martin
MARC W. MARTIN
MARC MARTIN, LTD.
53 W. Jackson blvd., Suite 1420
Chicago, IL 60604
(312) 408-1111

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

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

²⁰ In addition, although the government was permitted to call its legal expert, the Court barred Burge from calling former Judge Daniel Locallo as an expert witness on the subjects delineated in his proffer, including the defects in the interrogatory questions.

CERTIFICATE OF SERVICE

I, MARC W. MARTIN, an attorney for Defendant Jon Burge, hereby certify that on this, the 27th of August, 2010, I filed the Memorandum of Law in Support of the Motion for New Trial 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