

**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 FIRST RENEWED MOTION
FOR CHANGE OF VENUE**

Defendant JON BURGE, by his attorneys, pursuant to Rule 21(a) of the Federal Rules of Criminal Procedure, respectfully moves this Honorable Court to change the venue and/or issue an order enforcing Rule 3.6 of the Illinois Rules of Professional Conduct, and Local Rule 83.53.6, as it applies to any attorneys who have participated in the investigation of this case. In support thereof, the following is offered:

1. The Illinois Rules of Professional Conduct, governing the conduct of Illinois lawyers, provides, “A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it would pose a serious and imminent threat to the fairness of an adjudicative proceeding.” IRPC Rule 3.6(a); see also LR 83.53.6

2. The purpose of this prohibition – to protect the defendant’s right to a fair trial and avoid exposing potential jurors to prejudicial publicity – has been rendered illusory due to recent publicity campaign mounted by G. Flint Taylor, a plaintiff lawyer who has represented alleged “victims.”

3. On March 31, 2010, NBC broadcast a television news report, purporting to

break a story about a federal grand jury investigation of a so-called “Midnight Crew.” <http://www.nbcchicago.com/news/local-beat/burge-midnight-crew-grand-jury-89651152.html>. Featured in Reporter Carol Marin’s story was an interview of Taylor, who proclaimed that Burge’s men worked “under cover of darkness” to “torture” individuals in “case after case.” Taylor stated that “baggings,” electric-shocking and “mock executions” had been administered by a group of officers at the Area Two Chicago Police Station.

4. This story was also published in the *Chicago Sun-Times* and affiliated newspapers. <http://www.suntimes.com/news/24-7/2134797,burge-grand-jury-investigate-police-torture-040110.article>; Exhibit 1. In addition, the print media, national news outlets and Internet sites picked up the report. See Exhibit 2, first three pages of Google search results on April 2, 2010 for “Burge midnight crew.”

5. Fox News, too, jumped on the bandwagon, and ran a lead story on this case in its April 1, 2010 local television newscast. Taylor again made himself available for an interview in which he made statements similar to those voiced to Marin, and repeated the comparison of this case to Al Capone’s from the government’s highly prejudicial press conference announcing the indictment.

6. The recent media impinges the Defendant’s fair trial right because it comes on the heels of the jury qualification letter being sent out to prospective jurors. Further, leak of a grand jury investigation impinges the Defendant’s right to present a defense in that counsel for certain subpoenaed defense witnesses have recently informed the defense that their clients will not provide testimony.

7. This Court is guardian of the Defendant's fair trial right. We respectfully move this Honorable Court to enforce Rule 3.6(a) and Local Rule 83.53.6 against lawyers who participated in the investigation.

8. The government perhaps may assert it is insulated from rebuke on grounds that Taylor is not a government agent. While perhaps technically correct, Taylor has participated in this investigation. Taylor's meetings with federal prosecutors were reported in the press shortly after the indictment. The 3500 material also includes reports of Taylor meeting with the prosecutors and providing them with leads. In the recent television interview, he purported to have personal knowledge of a federal grand investigation of police officers.

WHEREFORE, based on the foregoing, Defendant Jon Burge respectfully moves this Honorable Court to change the venue, enforce professional conduct rules against attorneys who have participated in the investigation and/or decree equitable and appropriate relief.

Respectfully submitted,

/s/ Richard Beuke

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CERTIFICATE OF SERVICE

I, MARC W. MARTIN, an attorney for Defendant Jon Burge, hereby certify that on this, the 5th day of April, 2010, 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

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New federal grand jury eyes ex-police Cmdr. Jon Burge's 'Midnight Crew'

SUN-TIMES/NBC CHICAGO REPORT | Torture probe expands to cops under his command

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April 1, 2010

BY [CAROL MARIN](#) AND DON MOSELEY

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A new federal grand jury has been impaneled to expand the investigation of allegations of police torture under former Chicago Police Cmdr. Jon Burge, the Chicago Sun-Times and NBC5 News have learned.

The grand jury is investigating what was commonly referred to as the “Midnight Crew,” officers who worked for Burge, according to a source.

This comes as federal prosecutors ready their case against Burge. The aging detective commander is set to go on trial May 10, charged with perjury and obstruction of justice.

None of the officers under Burge’s command has ever been charged in connection with the torture allegations. The new grand jury may decide whether that time has finally come.

Burge and his detectives have always maintained they mistreated no one.

But according to attorney Flint Taylor, Burge was the ringleader of a band of seven or eight officers that operated out of Area 2 in the 1970s and ’80s.

They were called the “Midnight Crew” because of the hours they worked.

“Under the cover of darkness and the fact that there were relatively few of them, they could do what other detectives felt they couldn’t get away with, and that is torture people,” Taylor said. “And you just have case after case under them of baggings, of electric shock, of mock executions in the ’80s which was the heyday of the Midnight Crew.”

When Burge was indicted in October 2008, U.S. Attorney Patrick Fitzgerald was clear the government did not believe he acted alone.

“We have reason to believe other people may well have lied under oath about that torture abuse,” Fitzgerald declared at the time.

Investigations, including one by the city’s former Office of Professional Standards, have over the years uncovered more than 100 cases of police torture dating back three decades, including that of convicted cop killer Andrew Wilson.

Burge was fired by the city in 1993 for his part in the Wilson case. He moved to Florida.

Special Cook County Prosecutors Robert Boyle and Edward Egan were hired to investigate in 2002, and after interviewing more than 700 people said there was evidence to support charges of police abuse in at least 70 cases, but either the statute of limitations had expired or evidence was insufficient to charge.

In later video depositions for civil lawsuits, Burge exercised his Fifth Amendment right and declined to answer questions. But federal prosecutors said Burge, in a written statement, maintained he never tortured a single suspect.

Prosecutors said Burge lied, and that led to his indictment.

“According to these charges Jon Burge shamed his uniform and shamed his badge,” Fitzgerald said in 2008. The U.S. attorney’s office had no comment regarding a new grand jury.

But Taylor said he is not surprised. "Everything that I know and have heard is that they are doing a serious investigation of other henchmen of Jon Burge," Taylor said.

Former Chicago Police lieutenant John Byrne, who worked under Burge, said he was unaware of any new grand jury and that he has not been called to testify. Byrne has always maintained he did not torture any suspect.

Burge's attorney, Richard Beuke, when asked if he knew of the new grand jury replied, "That I can't say."

Burge is reported to be in the advanced stages of prostate cancer. Regardless, Beuke said he and his client are ready to go to trial. Both sides will appear in federal court today for a status hearing in which the Burge team will try to exclude some of the government's evidence.

Taylor, who has represented numerous victims who claim they were tortured, said the case of Burge and those who served under him needs to be brought to a conclusion.

"There will not be any real justice until those who worked for him and with him are also indicted," he said.

Don Moseley is a producer for NBC-owned WMAQ Channel 5.

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