

**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 Lefkow
JON BURGE)	

**DEFENDANT BURGE'S SUPPLEMENT TO MOTION TO DISMISS
FOR PRE-INDICTMENT DELAY AND NOTICE OF INTENT TO
OFFER FORMER TESTIMONY OF CHARLES GRUNHARD**

Defendant JON BURGE, by his attorneys, pursuant to Rule 12 of the Federal Rules of Criminal Procedure, the Fifth and Sixth Amendments to the United States Constitution and Rule 807 of the Federal Rules of Evidence hereby states as follows:

I.

Defendant previously filed a motion to dismiss for pre-indictment delay based on the list of cases about which the government announced intention to adduce evidence. In or around late March/early April of this year, the government augmented the list.

After some refinements, the list now includes:

People v. James Andrews

On April 21, 1983, Andrews (accompanied by a man named Fauntleroy) kidnapped Jenkins and stole his property and killed him. After being arrested, Andrews confessed to murdering and robbing Keith Lewis. Andrews was convicted of this murder and armed robbery, and sentenced to life imprisonment plus 60 years. Andrews' State appeals were denied, as were his habeas corpus petitions. *People v. Fauntleroy*, 224 Ill.

App. 3d 140 (1st Dist. 1992); *U.S. ex rel. Andrews v. Peters*, 89 C 4603 (N.D. Ill.); *U.S. ex rel Andrews v. Gilmore*, 97 C 3235 (N.D. Ill.).

Burge's involvement in this case is unknown. At his motion to suppress, Andrews testified that Detectives Madigan and McWeeney interrogated him.

People v. Banks and Bates

On October 28, 1983, Leon Barkan and Jethro Givens were executed after leaving an apartment. Givens survived long enough to give statements to the police, including one in which he stated that he had picked up codeine cough syrup before the ambush. Police investigation implicated Banks as the shooter, and Bates as an accomplice. Among other things, a person reported that Banks had admitted that he had "stuck up someone" and that he (Banks) had "shot the nigger and ... got all the juice."

Banks confessed, as did Bates, who implicated Banks as the shooter. Banks and Bates brought motions to suppress, alleging they had been beaten by police. Detectives Charles Grunhard, Leonard Bajenski¹ and Peter Dignan, and Sergeant John Byrne testified at the motion to suppress hearing. A doctor testified that he examined Banks on November 3, 1983, and found Banks' injuries to be consistent with his allegations of physical abuse.

Banks testified that Lt. "Berg" arrested him. Burge, however, was not alleged to have interrogated either Banks or Bates.

In 1984, the OPS conducted an investigation that did not result in the bringing of any charges.

¹ The defendants claimed that Bajenski had threatened them, but had not beat them.

At his jury trial, Banks testified that he and Bates were at the scene of the double homicide, but claimed his confession had been coerced. Banks admitted bringing a gun to the scene of a drug transaction (with Bates' knowledge), but claimed he had shot Barkan in a struggle, and had only fired into the ground to scare Givens. Both defendants were convicted of murder. The Illinois Appellate Court reversed Banks' conviction, and he was not retried. See *People v. Banks*, 192 Ill. App. 3d 986 (1st Dist. 1989). The Illinois Appellate Court remanded Bates' conviction for an attenuation hearing. On remand, the trial court found that Bates' confession was attenuated from his arrest. Bates again appealed. In a ruling that is the subject of controversy in the Illinois Appellate Court², the court reversed. See *People v. Bates*, 267 Ill. App. 3d 503 (1st Dist. 1994).

Banks, represented by the People's Law Office, filed a federal civil rights lawsuit. Thereafter, the OPS conducted a second investigation. Detectives Dignan and Dwyer were interviewed. The OPS investigator apparently did not interview Burge since there was no record of involvement in the case. The OPS investigation sustained charges against Byrne, Grunhard, Dignan and Dwyer. The charge that Burge knew about and encouraged the physical abuse was not sustained.

Defendant incorporates herein by reference his previously filed motion and reply on the pre-indictment delay issue. Defendant proffers the following matter as contributing to the prejudice resulting from the indictment delay in this case:

1. Chicago Police Department Attendance and Assignment sheets for dates pertinent to the relevant cases are no longer available. (The police department has a

² See, e.g., *People v. Austin*, 293 Ill. App. 3d 784 (1st Dist. 1997) (Quinn, J., specially concurring).

seven-year retention policy.) These records are important to establish and corroborate Burge's lack of participation in the cases.

2. The OPS file for the first investigation is incomplete and unclear. See Exhibit 1, Synopsis from Special Prosecutor's Report. This is important because the investigation did not result in charges against any officers.

3. The second OPS file for the Banks investigation is also incomplete. See Exhibit 1. This is important since the OPS charges against Burge were not sustained. In addition, charges relating to a racial slur by another officer (which the government apparently desires to introduce into evidence) were not sustained.

4. Charles Grunhard is deceased. Banks testified that Grunhard kicked him during interrogation at Area Two. Bates also claims that Grunhard had physically abused him. Grunhard, however, denied that Banks or Bates were struck by any police officer, including himself during sworn testimony at the State court motion to suppress. Grunhard thus is important to refute Banks' expected testimony at trial. Obviously, Burge cannot call him as a witness.

5. Unavailability of or illegibility of jail intake or paramedic records. This is important because Banks claimed he told jail paramedics (both at intake and on the tier) about his injuries. There was suggestion at Banks' suppression hearing that injuries were not noted by jail paramedics. See Exhibit 1.

6. Cook County Jail photographs of Bates' supposed injuries are unavailable.

7. Banks' memory is deficient. See Exhibit 1.

8. Banks and Bates have criminal convictions, some of which the government may *contend* are too old to be the subject of impeachment at trial. See Fed. R. Evid. 609(b).

II.

As an alternative request for relief, Burge provides notice that he would offer Grunhard's former testimony at Banks' motion to suppress under Rule 807 of the Federal Rule of Evidence. This testimony should be admitted. Unlike the situation with Yucaitis and O'Hara, Grunhard did not give testimony at a civil proceeding in which he was a defendant. Nor was his job on the line at a police board hearing. Accordingly, Grunhard's former testimony cannot be dismissed as non-trustworthy.

Respectfully submitted,

/s/ Marc W. Martin

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CERTIFICATE OF SERVICE

I, MARC W. MARTIN, an attorney for Defendant Jon Burge, hereby certify that on this, the 23rd 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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