

**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 MOTION *IN LIMINE*
TO PRECLUDE TESTIMONY OF ALFONZO PINEX**

Defendant JON BURGE, by his attorneys, pursuant to Rule 401-403 of the Federal Rules of Evidence, respectfully moves this Honorable Court to exclude the testimony of Alfonzo Pinex. In support thereof, the following is offered:

1. The government included the name “Alfonzo Pinex” on its witness list. At the pretrial conference, the government indicated it desires to call Pinex to corroborate the prior testimony of Andrew Wilson, *e.g.*, to show the atmosphere among Chicago Police Officers regarding the murder of two of their own.
2. Defendant raised the peculiarity of adding Pinex (since he is also a person alleged to have been physically abused by a government witness/officer in relation to a murder case wholly unrelated to, and occurring after, the killings of Officers Fahey and O’Brien). While the alleged beating of Pinex by the government’s witness has been on the government’s list of “relevant” cases, the government responded to the defense concerns by noting that Pinex should come as no surprise since he had testified in *Wilson v. City of Chicago*, 86 C 2360.
3. In *Wilson*, Pinex testified that, on February 9, 1982, Chicago police officers “snatched” him from his home, located about a mile away from where Officers Fahey and O’Brien had been slain. See Ex. 1. Pinex was unsure of the police station to

which he was taken. He thought it could have been the one at 111th and Michigan. Pinex admitted that he “didn’t testify” that he had been taken to Area Two. Tr. 1216. (Pinex’s mother indicated that she had picked her son up from the police station located at 85th and Green. Tr. 1215.) Pinex claimed that he was roughed up by police officers, resulting in a “hickey” on his forehead. Tr. 1213-14. Pinex also indicated that officers had searched his home, leaving a mess.

4. Pinex did not identify Burge in his testimony. Tr. 1216-17.

5. Without a connection to Burge, Pinex’s testimony is irrelevant and should be excluded. Fed. R. Evid. 401. While Pinex arguably provided testimony regarding police department “policy” in the *Wilson* civil suit (in which the Chicago Police Department was a defendant), his putative testimony that certain officers were upset, if not outraged, by the killings of their brother officers, is irrelevant to *this* case. Burge is not responsible for the emotions, or actions, of officers about which he had no knowledge, participation or connection. Nothing in Pinex’s testimony provides linkage to Burge. Absent an adequate nexus, his testimony ought to be excluded as lacking in probative value, and/or being outweighed by potential for undue prejudice. Fed.R.Evid. 402, 403; see also *United States v. Paladino*, 401 F.3d 471, 475 (7th Cir. 2005).

Respectfully submitted,

/s/ Marc W. Martin

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