

**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)	

**MOTION TO ADMIT PRIOR TESTIMONY
OF FRED HILL**

Defendant JON BURGE, by his attorneys, pursuant to Rule 807 of the Federal Rules of Evidence and the Fifth and Sixth Amendments to the United States Constitution, respectfully moves this Honorable Court to enter an order allowing the admission of Fred Hill’s testimony before the Chicago Police Board. (Exhibit 1) In support of this motion, the following is offered:

1. In his testimony, Andrew Wilson prominently mentioned former Area Two Detective Fred Hill. Wilson claimed, *inter alia*, that Hill assisted Burge in strapping him across a radiator at Area Two. Wilson further maintained that Hill kicked him while Burge administered electro-shocks.

2. Hill testified before the police board in the 1992 termination cases of Jon Burge, Patrick O’Hara and John Yucaitis. Hill was questioned about, and denied, Wilson’s allegations. Hill related that he was in Wisconsin with his family on the morning of February 14, 1982. Hill explained that he returned to Chicago after learning of the arrests of the Wilson brothers, but did not arrive at Area Two until the afternoon hours, at which time Burge and Wilson were not at Area Two. Hill also testified that he went to Area One for the Wilson brothers’ lineup. Hill denied ever physically abusing Wilson.

3. Hill is alive, but unavailable to testify. His lawyer has informed us that he suffers from dementia, and provided a doctor's note as support. (This letter has been tendered to the government, as has the required Rule 807 notice, *e.g.*, Hill's address.)

4. Burge offers Hill's prior testimony. This testimony is admissible under Rule 807. It is trustworthy in that it was under oath and recorded. Moreover, others who were with Hill in Wisconsin corroborated his alibi. In addition, Wilson's lawyer (G. Flint Taylor) cross-examined Hill. Taylor had the same or similar motives in cross-examining Hill as would the government in this case. Hill's testimony goes to a critical point in this trial, *i.e.*, whether Burge and Hill burned Andrew Wilson on a radiator at Area Two. Hill's prior testimony is the most probative evidence on the point, as Wilson did not name anyone else as participating in the aforementioned incident. (While Burge may seek to call Hill's wife to corroborate that her husband was in Wisconsin on the morning of February 14, 1982, she was not a police officer and was not present at Areas One or Two on February 14, 1982.) It would be a miscarriage of justice to allow the government to present its case through Wilson's former testimony, while denying Burge a similar opportunity to supply the jury with direct rebuttal evidence in the form of Hill's prior testimony.

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
MARC MARTIN, LTD.
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 7th day of June, 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

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