

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

UNITED STATES OF AMERICA)
) No. 08 CR 846
vs.)
) Judge Joan Humphrey Lefkow
JON BURGE)

DEFENDANT'S MOTION FOR RECUSAL

Defendant Jon Burge, by his attorneys, pursuant to 28 U.S.C. 455, respectfully moves this Honorable Court for the entry of a recusal order. In support thereof, the following is offered:

1. The United States Attorney's Office indicted Jon Burge on October 16, 2008.
2. On October 27, 2008, the defendant appeared before the Honorable Joan Lefkow for arraignment. Jeffery Cramer, Barry Miller and Betsy Biffl appeared for the government and Richard Beuke and William Gamboney appeared for the defendant, who was also in court.
3. Attorney Marc Martin filed his appearance as co-counsel for Mr. Burge on December 3, 2008.
4. In November of 2009 the defense team learned that AUSA's Cramer and Miller had plans to leave the U.S. Attorney's office for private practice. The U.S. Attorney's office was required to designate new prosecutors to take over the case.
5. On February 10, 2010, Assistant United States Attorneys David Weisman and April Perry filed designations replacing AUSA's Cramer and Miller.¹
6. At no time prior to trial was the fact that AUSA David Weisman had also acted as the lead prosecutor in the criminal case of United States of America v. Matthew

¹ Jury selection in this case commenced on May 6 and May 24, 2010.

Hale, 03 CR 00011-1, disclosed to Defendant Burge. *Cf. United States v. Aimco*, 486 F.3d 764 (2nd Cir. 2007) (prior mortgage applicant/procurer relationship between judge and cooperating government witness disclosed prior to trial); *United States v. Mavroules*, 798 F. Supp.61, 61-62 (D. Mass. 1992) (“Immediately following Congressman Mavroukes’ arraignment on August 28, 1992, I convened an open-court conference with counsel for the government and the defendant. My purpose was to acquaint them with the associations I have had over the years with the persons connected with both sides of the case.”).

7. Matthew Hale was convicted after a jury trial on two counts of obstructing justice, 18 U.S.C. §1503, and one count of soliciting a crime of violence, id § 373, in connection with his resistance to a judgment entered against his white supremacist organization by United States District Judge Joan Humphrey Lefkow and his involvement in a plot to have Judge Lefkow murdered. Mr. Hale was sentenced to 480 months imprisonment on April 16, 2005. The defendant believes that Judge Lefkow was called and testified as a witness for the prosecution by AUSA Weisman.
8. Mr. Hale subsequently appealed that conviction and AUSA David Weisman also represented the United States in that appeal. *See United States v. Hale*, 448 F.3d 971 (7th Cir. 2006).
9. Mr. Hale’s appeal of his conviction was subsequently denied on May 30, 2006.
10. Since his conviction on June 28, 2010, Mr. Burge has learned of the prosecutor/witness/victim relationship between AUSA Weisman and Judge Lefkow.

11. Defendant respectfully suggests that this matter should have been placed on the record before trial and after AUSA Weisman assumed lead prosecutor duties. As stated by the Seventh Circuit:

Neither the close friendship between Kocoras and Webb nor either of the vacations was disclosed on the record. Yet the statute places on the judge personal duty to disclose on the record any circumstances that may give rise to a reasonable question about his impartiality. Although a judge may accept a waiver of disqualification under § 455(a), the “waiver may be accepted [only if] it is preceded by a full disclosure on the record of the basis of the disqualification.” 28 U.S.C. §455 (e)

Judges and counsel should keep in mind the need to disclose unusual degrees of social as well as professional affiliation.

United States v. Murphy, 768 F.2d 1518, 1537 & 1541 (7th Cir. 1985)

12. Defendant respectfully states that the aforementioned relationship is a circumstance requiring recusal pursuant to 18 U.S.C. § 455 (a). Defendant accordingly moves for recusal from future proceedings, including sentencing, which likely will require rulings on disputed issues of fact. See *In re Matter of Hatcher*, 150 F.3d 631 (7th Cir. 1998).
13. The prosecutor represents the interests of crime victims in court and we suspect that Mr. Weisman and Judge Lefkow met on occasion to prepare her testimony for trial. Defendant is not privy to those details and certainly does not wish to suggest that there is anything improper in that process. That having been said, the fact that Mr. Weisman was chosen from the pool of 160 available Assistant

United States Attorneys² to be the lead prosecutor in this very serious and sensitive case while also having represented Judge Lefkow as a crime victim in *United States v. Matthew Hale*, 03 CR 00011-1, is something that should have been placed on the record before trial and after AUSA Weisman assumed lead prosecutor duties.

14. Defendant grants that the circumstances in this case are unique. Nevertheless, the aforementioned prosecutor/judge relationship is of the type that reasonably calls the impartiality of the Court into question. While Defendant has raised the recusal point in his post-trial motion, also we expect that there will be contested issues of fact in future proceedings, i.e., at sentencing. The prosecution should not be the beneficiary of an edge, or a perceived edge. When the prosecutor is arguing that its witnesses are credible, there is no escaping the impact or perceived impact of the prosecutor's prior relationship with the judge. Indeed, "[a] defendant especially might perceived partiality on learning of such close ties between prosecutor and judge." *Murphy*, 768 F.2d at 1538. Under the circumstances of this case, recusal is necessary. *See Hatcher*, 150 F.3d 631.

Wherefore, based on the foregoing, Defendant, Jon Burge respectfully moves for the granting of a hearing and the relief requested above, or the granting or any other equitable and appropriate relief.

Respectfully submitted,

/s/ Richard Beuke

² <http://www.justice.gov/auso/iln/aboutus/index.html>.

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