

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

**UNITED STATES OF AMERICA**                    )  
  )  
  ) **No. 08 CR 846**  
  ) **Honorable Joan Lefkow**  
**JON BURGE**                                    )

**DEFENDANT BURGE’S POSITION PAPER REGARDING  
PUTATIVE EXPERT WITNESS**

In respect to putative expert witness Thomas O’Brien, this Honorable Court ruled, “in order to establish a foundation for the testimony he would have to have some record, such as transcripts or at least notes, that could establish sufficient facts or data that would permit cross-examination.” District Court Document (“R.”) 190 (Order, dated April 21, 2010, p. 10).

In addition to his memory of the El Rukn wiretap, former agent O’Brien relied upon informant interviews. Defense noted this in the expert disclosure. As part of its witness statements production on or about April 1, 2010, we tendered (to the government) interviews of two individuals who have direct personal knowledge of gang edicts for persons with Area Two cases to fabricate allegations against police officers. The persons (who are on the defense witness list) were incarcerated with some of the government’s witnesses, including Andrew Wilson, Melvin Jones (as well as inmates formerly on the government’s list of cases). (We will provide these reports to the Court if so requested.) In any event, the interviews provide, *inter alia*, O’Brien with a basis of knowledge that can be cross-examined. Accordingly, former agent O’Brien should be permitted to testify as an expert witness irrespective of the outcome of the matter discussed below.

Another ground for O'Brien's knowledge of gang operations and methods is the El Rukn wiretap conducted by government investigators in this district in the 1980s. Neither the defense nor O'Brien, however, is in possession of the underlying data (*e.g.*, Title III materials, including log entries made by agents contemporaneous to overheard conversations). That information is in the government's possession.

Early on in this case, we made a specific request for this information. In fact, the request was the first request made in Burge's *Brady/Giglio* motion. We repeat it in full here:

Individuals whom the government alleges were tortured were incarcerated with each other at various times in the 1980s, including Darryl Cannon, Aaron Patterson and Madison Hobley. It is Hobley's civil case that is at issue in the present indictment. Cannon is one of nine cases identified by the government as being the subject of its case-in-chief.

In the 1980s, federal prosecutors in this district instituted wiretaps on phones used by Chicago street gang members, including, phones used by the El Rukns. The government prosecuted El Rukn leader Jeff Fort, and, later, a large group of El Rukn gang members (in cases 89 CR 908 and 89 CR 909).

We believe that individuals were intercepted discussing plans to fabricate torture allegations against Chicago Police Officers. The rationale for the plan was: if enough persons continued to make the same allegations against police officers in criminal and civil cases, something might stick. Intereptees may have sometimes used code for the plan. One such code may have been "DC" or "the DC effect." "DC" stands for Darrell Cannon, a former El Rukn general who was arrested for murder on November 2, 1983, and detained at the County Jail along with Jeff Fort and others. Cannon employed allegations of torture as a "defense" to his murder indictment, and a basis for a federal lawsuit against Burge and other officers.

Based on the foregoing, Burge respectfully moves for production of the tape-recordings and any related material, including but not limited to, notes of the conversations, interpretations of the conversations, logs, line sheets and status reports, regarding any discussions of plans to fabricate allegations against police officers, "DC" or "the DC effect." These materials exist, are housed in government files and are unavailable to the defense.

R. 51.

The government opposed this request on relevancy grounds. R. 90.

In a minute order dated March 16, 2010, the Court denied the specific request quoted above. R. 157. The Court agreed that the requested evidence was irrelevant because the government had removed Darryl Cannon from its witness list. “Without a connection between any of the El Rukn defendants with a witness in this case, the evidence is too attenuated to reasonably make a fact in dispute more or less probable.”

Burge respectfully renews his *Brady/Giglio* request # 1. Notably, the government filed its response to Burge’s *Brady/Giglio* motion *before* the issuance of the January 10, 2010 “Ogden Memo,” which provides Department of Justice guidance for federal prosecutors in the area of criminal discovery. <http://www.justice.gov/dag/discovery-guidance.pdf>. Under the circumstances of this case, the El Rukn Title III documents, and, more specifically, logs regarding conversations about the “D.C. effect,” constitute material that should be reviewed by the prosecution in this case, and produced to the defense.

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 4th day of May, 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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