

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
 v.) No. 08 CR 846
)
 JON BURGE) Judge Lefkow

NOTICE OF EMERGENCY MOTION

TO: Richard M. Beuke William G. Gamboney, Jr Marc W. Martin
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PLEASE TAKE NOTICE that on Friday, November 6, 2009, at 9:30 a.m., the undersigned will present to Judge Lefkow, in the Courtroom usually occupied by her at the U.S. District Court, 219 S. Dearborn, Chicago, the “*Government’s Emergency Motion to Reconsider its Request to Advance Trial Date.*” A copy is served upon you herewith.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: /s Barry A. Miller
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Certificate of Service

The undersigned Assistant U.S. Attorney hereby certifies that the aforesaid document was served on November 5, 2009, in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court’s system as to ECF filers.

/s Barry A. Miller

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

UNITED STATES OF AMERICA)
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**GOVERNMENT’S EMERGENCY MOTION TO RECONSIDER
ITS REQUEST TO ADVANCE TRIAL DATE**

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD, U.S. Attorney for the Northern District of Illinois, requests that the Court reconsider its ruling of today, November 5, 2009, in which the Court granted defendant’s motion to vacate the trial date and set a new trial date of May 10, 2010. In support of this Motion, the government states:

Factual Background.

1. This matter was indicted on October 16, 2008, charging perjury and obstruction of justice (Dkt#1), and the defendant was arrested on October 17, 2008 (Dkt#8).
2. On October 27, 2008, the Court set this matter for trial on May 11, 2009. (Dkt#5)
3. At the request of defendant, the Court on March 5, 2009, vacated the May trial date and reset the trial date for October 26, 2009. (Dkt #28)
4. On May 6, 2009, defendant filed a Motion to Reset Trial Date (Dkt #68), asking for a continuance to February 2010. Defense counsel represented to the Court that they needed the additional time to review the documents turned over by the government.
5. On May 13, 2009, the government filed a Response, objecting to the continuance, and explaining why, in the government’s view, trial could proceed. (Dkt#69)
6. On May 26, 2009, defendant filed a Reply in support of the motion for a continuance, stating that they needed the additional time to prepare for trial. (Dkt#76)

7. On June 18, 2009, the Court ruled that “Defendant’s motion to continue trial date [68] is granted. Trial date of 10/26/2009 is vacated and trial is reset to 1/11/2010 at 9:30 a.m. This is the final extension of trial date that will be granted.” (Dkt#103).

8. In October, defense counsel advised the government that a question involving the defendant’s health could affect the trial date. On October 19, defendant filed a motion for leave to file under seal (Dkt#132), and then submitted certain medical records concerning the health of the defendant. The Court heard the matter on October 21, and continued it to November 4. (Dkt#135)

9. On November 4, defense counsel provided additional information to the Court about defendant’s health, and said it had a one-page document of new information. The Court continued the status hearing until this morning, November 5, 2009. (Dkt#140)

10. The government received copies of medical information from defense counsel in the late afternoon on November 4, along with a Supplement to Motion to Vacate Trial Date (Dkt #142). The information provided yesterday made it clear that defendant would have a window to participate in trial preparation and trial before January 11, 2010, and would then likely not be available until April 2010.

11. At the status hearing before the Court this morning, the government requested that the Court, in the exercise of its discretion, set the trial date for November 30, 2009. The government represented that it would attempt to line up its witnesses for such a trial date, and that it would endeavor to complete its filings by next Monday, November 9. The government noted the important public interest in completing the trial of this matter promptly. In addition, the government noted that any future trial date could be speculative, because of the uncertainties involving defendant’s health.

The government argued that while a November 30 trial date would be inconvenient for all concerned, it was the best solution in light of the changed circumstances, and was within the Court's discretion.

12. The Court noted that it had another criminal trial set for the week of November 30, but thought that it might be possible to make alternate arrangements for that trial. The Court then indicated that it was considering granting the government's request.

13. Defense counsel objected on the grounds that counsel had scheduled other matters between now and mid-January, including murder and narcotics conspiracy trials cited by Mr. Beuke (apparently in state court), and a Seventh Circuit brief in the "Family Secrets" case due on January 10, according to Mr. Martin. Defense counsel also stated that disclosure twenty-one days before trial was less than the thirty-day dates the Court sent for disclosure of certain materials in recent rulings. The Court denied the government's request, granted defendant's motion to vacate, and set a new trial date of May 10, 2010.

Argument and Additional Information.

14. The setting of a trial date is within the sound discretion of the District Court, as long as defendant's constitutional rights are respected. *See generally Morris v. Slappy*, 461 U.S. 111-12 (1983),

Trial judges necessarily require a great deal of latitude in scheduling trials. Not the least of their problems is that of assembling the witnesses, lawyers, and jurors at the same place at the same time, and this burden counsels against continuances except for compelling reasons. Consequently, broad discretion must be granted trial courts on matters of continuances

See also United States v. Gonzalez-Lopez, 548 U.S. 140, 152 (2006)(citing with approval *Morris v. Slappy*, and noting the trial court's discretion to balance the right to counsel of choice against its own calendar and other fairness concerns).

15. This case involves charges of perjury and obstruction of justice relating to statements made by the defendant in 2003 concerning events that occurred many years ago. While the Court has ruled that there has been no violation of the defendant's trial rights from the delay in bringing the matter to trial, there is a strong public interest in having a prompt trial in this case.

16. Proceedings in at least one pending civil case in this district have been stayed pending the trial in this matter. *See Cannon v. Burge*, 05 C 2192 (Judge St. Eve.)

17. Defense counsel previously represented to the Court that they needed the time until early 2010 in order to adequately prepare the defense of this matter. Counsels' statements implied that defense counsel would be substantially engaged in working to review records and investigate the defense until the trial date.

18. Defense counsel today argued that they cannot try the matter on November 30 because they have booked much of the time in November and December, continuing into early January, to work on other matters.

19. For at least one of those matters, the "Family Secrets" appeal brief, the government has been advised that there is a significant possibility that defense counsel will be requesting an additional continuance before the Seventh Circuit.^{1/}

20. The undersigned has consulted with counsel for the government in the case set to begin trial before this Court on December 1. While we have not consulted with defense counsel in that case, the undersigned can advise the Court that the government would have no objection, if it

^{1/} The government notes that, prior to today, the trial date in this case was set for January 11, with the "Family Secrets" brief set to be due January 10.

is necessary, to requesting that the Court reassign the other trial to another Judge of this Court, if one is available, to try that matter on or about December 1.^{2/}

21. The new information about defendant's health provides a changed circumstance justifying advancing the trial date, in order to balance the government's and public's interest, while still upholding defendant's constitutional rights.^{3/}

22. The Court could perhaps mitigate any difficulties defense counsel may have in rescheduling other matters by offering to contact other judges before counsel are appearing and requesting that those judges cooperate in resetting dates in light of the unusual circumstances in this case.^{4/}

WHEREFORE, the United States respectfully requests that the Court reconsider its ruling today and advance the trial date to November 30, 2009.

^{2/} A November 30 trial date would also further continuity of counsel for the government. Jeffrey Cramer, a former Assistant U.S. Attorney assigned to this matter, left the U.S. Attorney's Office following the grant of the defendant's motion to continue trial until January 11, 2010. Assistant U.S. Attorney Barry Miller is leaving the U.S. Attorney's Office soon. Mr. Miller would likely be able to try the case should it proceed to trial on November 30. He would not be available for a May trial date. While Ms. Biffel has been working on this matter throughout, and Mr. Acosta has also been involved in this investigation, the government's interest in continuity of counsel would be furthered by granting this motion.

^{3/} The government attorneys will work as diligently as possible to complete all disclosures and filings at the earliest possible date, and will endeavor to provide them as early next week as possible. Under the circumstances, some materials may need to be supplemented at a later date, due to the accelerated trial preparation, but the government will act in good faith to expedite its preparation.

The government filed this pleading as an emergency motion because of the need for expedited preparation should it be granted.

^{4/} One of the defense counsel was quoted by a newspaper website as saying after Court today that "I would have loved a Christmas jury with a cancer patient," [a] Burge attorney [. . .] said after today's hearing. "That's a combination for an acquittal." See <http://www.suntimes.com/news/metro/1867276,jon-burge-chicago-cop-torture-trial-delay-110509.article>. If that quote is accurate, the government will seek a ruling *in limine* that the defendant's current health is not a proper matter to be placed before the jury.

Respectfully submitted,

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United States Attorney

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