

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. :
 :
 :
THOMAS P. GORDON, :
SHERRY L. FREEBERY, :
JANET K. SMITH :

CRIMINAL NO. 05-cr-00541-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

May 15, 2007

The defendant Sherry L. Freebery has filed a "Motion for Discovery of Evidence Relevant to Political Motivations for Prosecution and for Leave to Serve Subpoenas Requiring Production of Documents Before Trial." The document is accompanied by some 36 exhibits, and was apparently triggered by the recent furor over the removal from office of several United States Attorneys, allegedly for political reasons. There is an ongoing congressional investigation into the matter; congressional subpoenas have been issued to various high government officials, including the Attorney General; and, according to press accounts, much of the information sought by Congress is being withheld. Ms. Freebery's motion seeks leave to subpoena the Attorney General, and requests production of much of the information which Congress has not yet succeeded in obtaining.

The government has filed a lengthy response, opposing Ms. Freebery's motion. I have carefully reviewed all of the

materials submitted by both sides, and have concluded that the motion must be denied.

Ms. Freebery and her co-defendant, Thomas P. Gordon, were high officials in the government of New Castle County, and had long been prominent political figures. They are Democrats, whereas the prosecutor (and, presumably, his superiors in the Department of Justice) are of the Republican persuasion. The materials submitted by both sides of the present controversy disclose, not surprisingly, that the pending prosecution of Ms. Freebery and Mr. Gordon for improprieties allegedly committed in the course of carrying out their official duties in New Castle County is fraught with political ramifications. But the issue to be resolved by the trial of the pending indictment is whether the evidence establishes that Ms. Freebery is indeed guilty of some or all of the criminal charges brought against her - not whether the prosecutor or other officials in the Justice Department would or would not be especially pleased by a verdict of guilty. The most that can be said is that political considerations might motivate some witnesses to falsify or exaggerate their testimony. But such matters can best be explored at trial. I am confident that the jury will properly evaluate the pros and cons of such arguments.

The further discovery being sought by the present motion seems particularly unlikely to provide any useful

information. The indictment was returned in May 2004, long before Mr. Gonzales became Attorney General. I have no reason to doubt the prosecutor's assurances that the present case is being pursued because of his firm belief that the defendants are guilty as charged, and that no political influence was involved in the decision to prosecute.

It is particularly important to note that this case has been pending for nearly three years, and that a firm trial date of June 11, 2007 was agreed upon by all concerned two months ago. Further delay would serve no useful purpose. The motion for further discovery comes too late in the day.

An Order follows.

