

DOJ ATTEMPTS TO STAVE OFF MAY 24 TRUMP DEPOSITION IN PETER STRZOK LAWSUIT

Many of the details of the how and the why of DOJ's bid to get Judge Amy Berman Jackson to reverse her decision allowing Peter Strzok's lawyers to depose Christopher Wray and Donald Trump in whichever order they choose are redacted.

But several things are clear.

First, Strzok currently has a Trump deposition scheduled for May 24.

Following the Court's ruling, Defendants requested that Plaintiffs depose Director Wray before taking a deposition of the former President. See Exhibit A to Declaration of Christopher M. Lynch ("Lynch Decl."). Plaintiffs refused that request, and instead scheduled a deposition of the former President to take place on May 24, before any deposition of Mr. Wray had been scheduled.

And, today, Solicitor General Elizabeth Prelogar gave DOJ approval to pursue several means of forestalling the deposition, including filing for a writ of mandamus as well as a more conventional appeal.

DOJ has something called the apex doctrine, which says that in a suit you have to depose more junior and non-governmental people first, in case it's possible the lower level depositions will obviate the need for more senior ones.

In this case, DOJ hopes that Chris Wray will say he didn't pass on any of the political pressure he was getting from Trump to fire Strzok to

David Bowdich, who did the firing. If he does, DOJ claims, then there's no need to depose Trump, who will say he was demanding that Strzok be fired.

There is no dispute that former FBI Deputy Director David Bowdich made the decision to remove Mr. Strzok from the FBI. Mr. Strzok argued that he should be permitted to take the former President's deposition "about whether he met with and directly pressured FBI and DOJ officials to fire Plaintiff . . . and whether he directed any White House staff to engage in similar efforts." Opp'n Mot. Quash Trump Subpoena at 10, In re Subpoena Served on Donald J. Trump, No. 1:22- mc-27-ABJ (D.D.C. Mar. 9, 2022), ECF No. 11. But this line of inquiry is potentially relevant only if any such meeting or pressure (a) included Mr. Bowdich or (b) was reported to Mr. Bowdich by Director Wray, who also had authority to discipline Mr. Strzok. Mr. Bowdich has already testified that he made the decision himself, without any input from former President Trump. See Bowdich Dep. 360:4-362:1 (Sept. 9, 2022); id. at 149:9-11; see also Defs.' Suppl. Filing of Sept. 29, 2022, at 1, Strzok v. Garland, No. 1:19-cv-2367 (D.D.C.), ECF No. 90. And he has also testified that he "absolutely" did not recall Director Wray ever telling him about any meeting with President Trump in which "the President[] pressed the Director to fire Peter Strzok and Lisa Page[,] and that he was "trying to keep [Director Wray] removed from th[e] particular adjudication" of Mr. Strzok's misconduct. Bowdich Dep. at 200:17-204:2, 332:4-6; see also Defs.' Suppl. Filing of Sept. 29, 2022, at 1. If Director Wray's deposition establishes that Director Wray either did not receive the alleged pressure

from the former President or did not convey any such pressure to Deputy Director Bowdich, the recipients of any alleged “pressure” to discipline Mr. Strzok would have been limited to those who did not take any action to discipline Mr. Strzok.

Thus far, Trump has not done things he could have done to insulate himself from this lawsuit, including invoking Executive Privilege.

But he did consent to DOJ’s attempt to stall his May 24 deposition.

1 Pursuant to Local Civil Rule 7(m) the undersigned conferred on the substance of this motion with counsel for Mr. Strzok and former President Trump. Counsel for Mr. Strzok advised the undersigned that Mr. Strzok opposes this motion. Counsel for former President Trump advised that former President Trump consents to this motion.

Maybe the E Jean Carroll verdict helped him realize how damaging his surly depositions can be in civil suits.

Meanwhile, ABJ just assumed senior status on May 1. She’ll remain a diligent judge, but she’s got far less reason to care that DOJ wants to tell her she has been shirking her job.

Update: The backup that DOJ submitted reveals that DOJ had already floated moving for a writ of mandamus on March 30 – but may not have done so until Trump’s deposition was locked in.

Update: Judge ABJ has issued an order scolding both sides, noting that based on the Apex doctrine arguments DOJ made last year, Chris Wray’s deposition should go last, but nevertheless ordering that it go before Trump’s.

MINUTE ORDER denying as moot [110]
Motion for Reconsideration and Motion to Stay. On August 10, 2022, the Court

ruled, pursuant to the apex doctrine, that any request to depose FBI Director Christopher Wray or former President Donald J. Trump must await the completion of the depositions of former FBI Deputy Director Bowdich and former Deputy Attorney General Rod Rosenstein. Thereafter, on February 23, 2023, after full briefing by the parties as to what had transpired in those proceedings, the Court issued a lengthy oral ruling on the question of whether the depositions of Director Wray and former President Trump could proceed. It ordered in its discretion and in accordance with the applicable law that they could both go forward under very strict restrictions as to time and subject matter. The Court is somewhat surprised to learn that since then, the parties have done nothing more than wrangle over the order of the two depositions. The government seems chagrined that the Court did not order that the deposition of the FBI Director be completed first, but it may recall that it was the Court's view that it was Director Wray, the only current high-ranking public official in the group of proposed deponents, whose ongoing essential duties fell most squarely under the protection of the doctrine in question. The defendants' instant motion repeats arguments that were made and fully considered before, and it does not set forth grounds warranting reconsideration. The Court's ruling was appropriate in light of all of the facts, including the former President's own public statements concerning his role in the firing of the plaintiff. However, in order to get the parties – who apparently still cannot agree on anything – over this impasse, it is hereby ORDERED that the deposition of Christopher Wray proceed first, rendering the instant motion moot.