

IN BID FOR A TRUMP SUBPOENA, ABBE LOWELL CITES TRUMP'S COMPLAINTS ABOUT POLITICIZATION

Abbe Lowell just asked for subpoenas to serve on Donald Trump, Bill Barr, Jeffrey Rosen, and Richard Donoghue so he can see if they have personal records of improper politicization of the case against Hunter Biden.

Lowell describes that he has specifically asked for such records in discovery, yet received nothing, even though some of it likely is (in fact – I would say – abundant records show it is) at DOJ.

To date, the defense has not received such material in discovery from the prosecution or elsewhere, notwithstanding specific discovery requests and that some of this information likely resides with the DOJ.

To support a claim that would be immediately rejected in almost any other situation and likely will still be rejected here, Lowell made two arguments.

First, an argument for the political press: Donald Trump has recently argued that his own case should be dismissed if he can prove political retaliation.

Subpoena recipient President Trump knows full well that improper pressure on prosecutors to bring criminal charges against an individual for political reasons is grounds for seeking to dismiss an indictment because President Trump recently filed a motion to dismiss on this very basis in one of his

criminal cases. See *United States v. Trump*, No. 1:23-cr00257-TSC, D.E. 116 (D.D.C. Oct. 23, 2023).¹⁶ Similarly, subpoena recipient Attorney General Barr has explained precisely why the concern Mr. Biden raises here is problematic for this Indictment:

The essence of the rule of law is that whatever rule you apply in one case must be the same rule you would apply to similar cases. Treating each person equally before the law includes how the Department enforces the law. We should not prosecute someone for wire fraud in Manhattan using a legal theory we would not equally pursue in Madison or in Montgomery, or allow prosecutors in one division to bring charges using a theory that a group of prosecutors in the division down the hall would not deploy against someone who engaged in indistinguishable conduct.¹⁷

[snip]

¹⁶ Demonstrating hypocrisy and a lack of principles, just last week, Mr. Trump insisted that the weaponization of the judicial process is wrong (and it is), but Mr. Trump claims that he would be justified in weaponizing the judicial process against his political enemies because he believes that he has been a victim of such weaponization. See Kathryn Watson, *Trump Suggests He Or Another Republican President Could Use Justice Department To Indict Opponents*, CBS News (Nov. 10, 2023), <https://www.cbsnews.com/news/donald-trump-weaponization-justice-department-political-opponents/>. This claim certainly undercuts any notion that Mr. Trump is above such misconduct.

¹⁷ Remarks by Att’y Gen. William P. Barr

at Hillsdale College Constitution Day Event (Sept. 16, 2020) (emphasis added), <https://www.justice.gov/opa/speech/remarks-attorney-general-william-p-barr-hillsdale-college-constitutionday-event>.

Lowell doesn't note what I did: Trump invoked his own attacks on Hunter Biden *by name* in that filing, arguing that he is only being prosecuted because he has demanded that Hunter be prosecuted. Indeed, Trump went so far as claiming a document released *after* he was indicted in DC on August 1 was the reason why he was indicted in DC.

Without question, this is a "high-profile prosecution with international ramifications no less," which has a "far greater potential to give rise to a vindictive motive." *United States v. Slatten*, 865 F.3d 767, 799-800 (D.C. Cir. 2017). That motive is manifest. President Trump criticized the process and results of the 2020 election. He criticized Biden and his family before, during, and after that election, including with respect to misconduct and malfeasance in connection with the Ukrainian oil and gas company known as Burisma,⁴ China's State Energy HK Limited,⁵ and Russian oligarchs such as Yelena Baturina.⁶

⁴ See Hunter Biden, Burisma, and Corruption: The Impact on U.S. Government Policy and Related Concerns, U.S. Senate Comm. on Homeland Security and Government Affairs and U.S. Senate Comm. on Finance (Sept. 22, 2020), https://www.hsgac.senate.gov/wpcontent/uploads/imo/media/doc/HSGAC_Finance_Report_FINAL.pdf, at 3.

⁵ See Second Bank Records Memorandum from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes,

House of Rep. Comm. on Oversight and Accountability (May 10, 2023), <https://oversight.house.gov/wpcontent/uploads/2023/05/Bank-Memorandum-5.10.23.pdf>, at 5, 9.

6 See Third Bank Records Memorandum from the Oversight Committee’s Investigation into the Biden Family’s Influence Peddling and Business Schemes, House of Rep. Comm. on Oversight and Accountability (**Aug. 9, 2023**), https://oversight.house.gov/wpcontent/uploads/2023/08/Third-Bank-Records-Memorandum_Redacted.pdf, at 2. [my emphasis]

That political argument won’t work.

His argument that he’s asking for known documents *probably* won’t either – but Lowell is right that the public record that such documents exist distinguishes the claim from most other similar requests.

For example, on December 27, 2020, then Deputy Attorney General Donoghue took handwritten notes of a call with President Trump and Acting Attorney General Rosen, showing that Mr. Trump instructed Mr. Rosen and Mr. Donoghue to “figure out what to do with H[unter] Biden” and indicating Mr. Trump insisted that “people will criticize the DOJ if he’s not investigated for real.”⁶ (These notes were released by the House Oversight Committee as part of the January 6 investigation.)

[snip]

Before the government intones its stock phrase, this is no fishing expedition.

The statements described in this Motion actually occurred, and the events that transpired both before and after June 20, 2023 are well known to the Court. Mr. Biden seeks specific information

from three former DOJ officials and the former President that goes to the heart of his defense that this is, possibly, a vindictive or selective prosecution arising from an unrelenting pressure campaign beginning in the last administration, in violation of Mr. Biden's Fifth Amendment rights under the Constitution. Moreover, each of the former DOJ officials had known contacts with then President Trump concerning Mr. Biden, and according to recently released IRS investigative case files, each had a hand in one way or another in the still ongoing investigation of Mr. Biden, either in Delaware or elsewhere. Lastly, as reflected by both the handwritten notes taken contemporaneously by Mr. Donoghue (involving Mr. Rosen and Mr. Trump) and Mr. Barr's vignette in his recent book, these individuals are in fact likely to have relevant materials in their possession that are responsive to Mr. Biden's document requests. [my emphasis]

There is abundant proof that Trump was intervening with DOJ in this case. Lowell claims he hasn't gotten that proof from DOJ. So he's asking for it from DOJ officials directly.

To be fair, only Barr (and Trump) are likely to have documents in their personal possession, because only Barr and Trump have continued to engage in this case since leaving government.

One I'm most interested in is, after Joseph Ziegler testified that Barr, personally, made the decision to put Delaware in charge of the investigation in 2020 (at a time when Rudy Giuliani was already seeking dirt on Hunter Biden and Burisma), whether Barr reached out to someone to get Ziegler to correct his testimony and claim he wasn't certain that Barr was personally involved.

Again, these requests almost never work. But not

even Peter Strzok was able to point to known documentation tying Trump directly to efforts to retaliate against him. Probably, David Weiss will argue and Judge Maryanne Noreika will agree that Trump's intervention didn't pertain to the gun investigation, but instead related to the tax and influence peddling investigation which is probably being pursued in Los Angeles right now. Probably, this is an issue Lowell would have to revisit if and when Hunter is charged in such a case. I have suspected that Weiss has delayed any action on related cases to force Lowell to try this selective prosecution claim in Delaware, where it is less relevant, leaving Hunter on the hook for three felony charges, before Lowell tries such a claim where it might work in some other venue.

But it is, nevertheless, the almost unheard of case where a defendant can point to Trump's personal involvement.

Update: Lowell referenced something I didn't realize. This passage from Richard Donoghue's notes shows Trump interjecting a complaint about Hunter Biden (and tying it directly with the Mueller investigation) into his demands that DOJ get involved in overturning the vote on December 27, 2020.

- also report

FBI - I made some bad decisions on leadership there, but it was being used in an illegal investigation - special ops should never have been commended

- You figure out what to do w/ Biden - people will criticize the DOJ if they not investigated for real.

Here's how Donoghue described that passage to the January 6 Committee.

A Then he went back to Detroit. He said in Detroit they "threw the poll watchers out." He was complaining, saying they're not allowed to do that, it's a violation of the law, they had violated the law

all over the county.

He said, you “don’t even need to look at the illegal aliens voting – don’t need to.

It’s so obvious.”

Then he was talking about the FBI. He said, the “FBI will always say there’s nothing there. The leaders there oppose me; As,” which means special agents, “support me.” He didn’t use the term “special agents,” but he said, “the agents” or “the line guys,” something like that, “support me.” I just wrote that down as “SAs.”

Q Yeah. He’s claiming that the FBI leadership somehow is against him or isn’t taking these claims seriously because they dislike him or they oppose him?

A Correct.

Q Was that consistent with your impression of Director Wray and the FBI leadership?

A No a okay.

Then the next page, this is him continuing about the FBI. He says, “I made some bad decisions on leadership there, but I was laboring under an illegal investigation.

The special prosecutor should never have been commenced.”

Then he says he was complaining about the appointment of the special prosecutor, and he says, “You,” meaning DAG Rosen and I, “figure out what to do with Hunter Biden.” That’s up to you guys. But “people will criticize the DOJ if Hunter’s not investigated for real.”

That was sort of an aside. That’s all he said about it. It was a very brief

comment. But it was off-topic, and I wrote it down.

Of course, the topic *wasn't* off topic. It came in the same conversation where Trump first raised replacing Rosen with Jeffrey Clark and around the time he was talking about replacing Chris Wray with Kash Patel. That is, the Hunter Biden investigation was, along with stealing the vote, one of the things that Trump would install Clark to do for him.