

PROSECUTORS SUCKING LEMONS IN THEIR VINDICTIVE PROSECUTION OF JIM COMEY

In this post, I noted a paragraph of a recent ABC story that had escaped much notice: one reason prosecutors didn't think they would succeed in prosecuting Jim Comey was because there would be too much discovery.

Prosecutors further expressed concerns about the department's ability to take the case to trial quickly due to problems identifying all the relevant materials that would need to be handed over to Comey's lawyers, sources said.

I speculated that one reason the prosecutors borrowed from Raleigh – Tyler Lemons and Gabriel Diaz – claimed there would be extensive classified information was to stall for time.

Such efforts are already failing. At the arraignment, Judge Michael Nachmanoff ordered the two sides to come up with a discovery order by Friday or submit their competing sides Monday. Yesterday, Comey's lawyers submitted this filing, explaining that they had immediately signed the standard discovery order, but had yet to receive a signed copy back. As described, the two sides disagreed about one issue, what pretrial motion date would govern: the deadline for his Vindictive and Selective Prosecution claim (so five business days before October 20 – which is Monday), or the one ten days later for his other claims (October 23).

In the course of the parties' meet and confer, the government sent the defense the standard discovery order attached and the defense signed it with no

changes to the government's proposal and returned it for government signatures on Thursday afternoon, October 9, 2025. To-date, however, the government has not returned a signed copy. While the parties agree to the terms of the standard discovery order, the parties disagree as to an interpretation of one term of the order—specifically, which of the two pretrial motions deadlines prompts the government's Rule 16(a) production described in paragraph 1, requiring the government to produce certain discovery "no later than 5 business days before the deadline for pretrial motions." See Exhibit 1 at 1 (emphasis added).

Mr. Comey asserts that the first set of pretrial motions due on October 20, 2025, which the Court ordered at the arraignment hearing, **demands that discovery be produced on Monday, October 13, 2025**. Naturally, at least some of this discovery will inform the bases for the vindictive and selective prosecution motion that is to be filed on October 20, 2025. As of the date of this filing, the defense has received one page of discovery. The government contends that the term "deadline for pretrial motions" refers to the deadline for the second tranche of pretrial motions, October 30, 2025.

To be able to fully articulate all bases for the first tranche of pretrial motions including the vindictive and selective nature of this case; to be able to effectively defend Mr. Comey; and because it is the plain language of the standard discovery order, Mr. Comey respectfully requests that the Court enter the additional proposed order making clear that "the deadline for pretrial motions" referenced in the standard discovery order is the first

pretrial motions deadline of October 20, 2025. [my emphasis]

The part of this that is unmanageable is the requirement that prosecutors provide any statements the former FBI Director made about the matters at issue, which must be epic.

ORDERED that, pursuant to Fed. R. Crim. P. 16(a), no later than 5 business days before the deadline for pretrial motions, the government shall provide to the defense or make available for inspection and copying materials listed below that are in the possession of the U.S. Attorney's Office for the Eastern District of Virginia.

[snip]

any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known

But the real reason prosecutors attempted this ploy is the requirement that prosecutors provide everything material to Comey's defense (to say nothing of Brady obligations).

3. The government shall permit the defendant to inspect and copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of his defense

The rest of the ABC piece makes clear some of what that will include:

There's Dan Richman's testimony that, contrary

to the claim in the charges, Comey had specifically ordered him *not* to serve as an anonymous source for the press.

Daniel Richman – a law professor who prosecutors allege Comey authorized to leak information to the press – told investigators that the former FBI director instructed him not to engage with the media on at least two occasions and unequivocally said Comey never authorized him to provide information to a reporter anonymously ahead of the 2016 election, the sources said.

[snip]

When prosecutors met with Richman in September, he told them that he never served as an anonymous source for Comey or acted at Comey's direction while he was FBI director, sources familiar with his interview told ABC News. In at least two cases when Richman asked if he should speak with the press, Comey advised him not to do so, sources said.

As an earlier ABC story reported, it will also include John Durham's testimony that, in four years of trying, he never found evidence that Jim Comey lied.

John Durham, the former special counsel who spent nearly four years examining the origins of the FBI investigation into President Donald Trump's 2016 presidential campaign and its alleged ties to Russia, told federal prosecutors investigating James Comey that he was unable to uncover evidence that would support false statements or obstruction charges against the former FBI director, sources familiar with the matter told ABC News.

And it'll also include the testimony of other prosecutors who spent years investigating Comey

that they also did not find any evidence he committed a crime.

The prosecutors also met with a team of lawyers at the U.S. Attorney's Office in Washington, D.C., who had investigated Comey for years – including calling him to testify before a grand jury in 2021 – but were unable to identify any chargeable offenses committed by Comey, sources familiar with the meeting said.

It might even include the declination recommendation submitted to Erik Siebert just days before Trump started demanding prosecutions anyway.

Whether or not Comey's Vindictive and Selective Prosecution succeeds (as Lawfare has laid out, the legal standard for those is a bit inapt for his case), this testimony would nevertheless provide an opportunity to lay out proof of something that right wingers and NYT reporters continue to deny: Donald Trump *did* investigate precisely the same people he demands be prosecuted now.

For years.

But some very determined prosecutors concluded that there was no probable cause to charge him.

Without waiting to hear from prosecutors, Nachmanoff filed the discovery order – signed by just Comey's attorneys – to the docket, and issued an order stating that the earlier deadline applies.

The first pretrial motions deadline in this matter is October 20, 2025. This is the pretrial motions deadline to which the discovery order refers and the date that prompts the government's Rule 16(a) discovery production.

By Monday, Lemons and Diaz are going to have to decide how badly they want to risk their own law license.

They could move to dismiss the prosecution, the ethical thing to do, but one that will get them fired. And even then, now there's a matter before Nachmanoff that could force the disclosure of all that anyway.

They could admit that Lindsey the Insurance Lawyer was not lawfully appointed (the one piece of discovery they did provide is likely her appointment order, which will be enough to prove that she was not lawfully appointed), and therefore the indictment is invalid.

They could turn over evidence to Jim Comey that shows prosecutors knew there was no probable cause to charge him but did anyway.

Or they could stall, putting their own careers at risk in a different way.

This dilemma makes it clear why Comey was all smiles last week. It makes it clear why Pat Fitzgerald, and not Lemons and Diaz, appeared to be the one directing a prosecution Wednesday.

It even makes his two-phase approach clear. Comey's case is inapt to existing Vindictive and Selective Prosecution precedents. But what Fitzgerald has done is force an immediate disclosure of this stuff, which he can then use to make arguments that effectively put Lindsey Halligan's – and through her, Trump's – behavior on trial, what Fitz described as "a grand jury abuse motion, and outrageous government conduct motion."

Unless prosecutors find a way to make this problem go away, in nine days, we'll get details (in the Vindictive and Selective Prosecution motion) of how badly Trump has tried to prosecute Jim Comey, and how those efforts failed, until the moment he unlawfully installed his own defense attorney as US Attorney at EDVA.

Update: The government has submitted a fairly contemptuous motion (because it does not recognize Nachmanoff's order), partly hiding behind protective orders.