JIM COMEY AND THE CROWN JEWELS OF THE FEVERED CONSPIRACY AGAINST RIGHTS CONSPIRACY

For a number of reasons, I'm not as convinced as others that right wing blowhard Mike Davis' insinuation that a grand jury scheduled to be seated in Fort Pierce, FL, in January would serve the purpose of stitching together all his feverish conspiracy theories into a conspiracy against Trump's rights case.

What if Mike Davis is telling the truth, for once?

But this post assumes that his comments *do* reflect inside knowledge.

That is, this post considers the likelihood that someone — Jack Eckenrode would be part of that team, possibly Deputy FBI Director Andrew Bailey, who was installed in September but has been unseen aside from comments on public corruption a few days ago — has a plan to pull together the investigative work done in various places, to present it to a grand jury in Trump's current residence, under a theory that some group of meanies have been conspiring against Trump for a decade.

For example, the 302 reports of interviews tied to a WDVA investigation, conducted in attorneys' offices, might be presented in January to the SDFL grand jury.

> [A] host of former F.B.I. officials voluntarily sat for interviews, according to people familiar with the matter.

> Witnesses in the case were questioned by a combination of civil lawyers — not criminal prosecutors — from the Western District of Virginia, as well as criminal prosecutors from the neighboring Eastern District of Virginia and F.B.I. agents. To reassure witnesses that they were not targets of the investigation, witnesses were allowed to be interviewed at their lawyers' offices, rather than at government buildings.

The specious referral of John Brennan for lying? Sent to Florida as part of a claim it was a conspiracy to harm poor Donald Trump. Tulsi Gabbard's inability to distinguish the DNC server from voting machines? Off to Florida, as if it were credible.

And, importantly, whatever material prosecutors obtained by using the frivolous EDVA Jim Comey prosecution as a pretext? Sent to Florida to be presented to a *different* grand jury in January to support a conspiracy indictment.

The attorney-client breach hints that the risk goes beyond this indictment

The need to assume that something like that is happening (wherever it might be located) is, I think, a better explanation for some of the motions Jim Comey filed than Ben Wittes' theory that Comey is just stacking up ways to get this indictment dismissed.

It's certainly possible that when Lindsey Halligan first rolled out one failed and one successful indictment, Comey and Patrick Fitzgerald thought this would be easy to defeat. This particular indictment, obtained by someone playacting as US Attorney, should be.

But almost immediately, the loaner AUSAs started trying to dick around, first trying to buy an extra week on discovery because Comey planned to submit two rounds of pretrial motions, then demanding that Comey have sharply limited access to the discovery.

More alarming still, on October 10, before handing over *any* discovery, prosecutors started pressuring Comey to adopt a filter protocol so they could access content seized from Dan Richman in 2020. When they submitted a request for such a filter team on October 13, they did not disclose — not publicly, at least — that the primary investigators on the team had already peeked at the privileged material. When they tried to accelerate that request for a filter team on October 19, they falsely claimed that Comey's decision to share a memo about Donald Trump's misconduct in 2017 implicated Fitzgerald in leaking classified information: "the defendant used current lead defense counsel to improperly disclose classified information."

It's not clear *when* prosecutors first told Comey that investigators had accessed his attorney-client privileged content, but the first time Comey's team mentioned it (in redacted form) was in their response to that bid to accelerate the process of a filter team on October 20, almost a month after the indictment. Judge Nachmanoff's order denying the government's request to accelerate the process revealed some of what Comey had described under seal (making at least the first Comey filing a judicial record under Fourth Circuit law that someone could petition to liberate).

> He also states that the underlying warrants were "obtained by prosecutors in a different district more than five years ago[,] in an investigation that closed without criminal charges[,] and [] authorized the seizure of evidence related to separate offenses that are not charged here." Id. at 2. And, there is "reason to believe that the two

> principal FBI investigators may already have been tainted by exposure" to privileged information. Id. at 3.

When prosecutors filed that bid to accelerate getting access to Comey's privileged communications, when they claimed that *Fitzgerald* committed a crime by receiving unclassified CYA memos documenting Trump's misconduct from Comey (hinting that they want to access Comey's privileged material by invoking a crime-fraud exception), it became clear this prosecution was just one prong of the larger witch hunt. And whenever it was that prosecutors first alerted Comey that they had snooped in his privileged communications, the claim that sharing *unclassified* memos documenting Trump's misconduct was criminal was also the first hint that this "spill" was not an accident.

Indeed, the repeated invocation by the loaner prosecutors of Fed. R. Evid. 502(d) to suggest that a waiver of privilege here, in the EDVA case, would not waive privilege somewhere else (which is the opposite of how they're treating material seized from Dan Richman — they're treating his successful invocation of privilege five years ago as waiver here)…

> Fed. R. Evid. 502(d) (providing that a court may "order that [a] privilege or protection is not waived by disclosure connected with the litigation pending before the court — in which event the disclosure is also not a waiver in any other federal or state proceeding.")

…. May be a confession in the opposite world of Trump's DOJ that they've already gotten access via a claim of crime-fraud exception *somewhere else* and need a waiver *here* to introduce it at trial.

Someone helped themselves to this content (possibly with the assistance of a Trump-installed judge), and that someone seems to

imagine it was a crime for Jim Comey to reveal Trump's misconduct in 2017, an act that is not directly implicated in either the existing charges or the no-billed one but would be foundational to the fever dreams of a conspiracy against rights case.

The intersecting investigations

This is probably a good time to review all the investigations Republicans are drawing on here, which I've summarized in this table (I'm just including DOJ and DOJ IG investigations; there are also some Congressional investigations that generally were riddled with logical and evidentiary problems).

	Material	Question	Richman NYT article?	Richman	Prior Investigation	Crime
A	Andrew McCabe rebuttal	Ted Cruz 2020 Question		Unknown	2018 DOJ IG Investigation into McCabe	18 USC 1001
B	SVR memos on Loretta Lynch (and Comey)	? Chuck Grassley's 2017 Question	Comey Tried to Shield the F.B.I. From Politics. Then He Shaped an Election.	Overt	2018 DOJ IG Investigation into Hillary	18 USC 793 (in 2017 and 2020) 18 USC 1001 (in 2025)
C	SVR fabrication on "Clinton Plan"	Lindsey Graham's 2020 Question		Unknown	Durham Investigation	Failed attempt at 18 USC 1001 (in 2025) 18 USC 241
D	Jim Comey memo on Trump's abuse		Comey Memo Says Trump Asked Him to End Flynn Investigation	Covert	Mueller Investigation 2019 DOJ IG Investigation into Comey memos 2020 DC USAO Investigation into Comey leak	18 USC 1512 (for Trump) 18 USC 793 (for Comey) 18 USC 241

There are three Senate exchanges with Comey at issue in his prosecution.

First, there's the questions Chuck Grassley asked on May 3, 2017 that Ted Cruz invoked when he asked the questions at issue in the indictment.

> SEN. GRASSLEY: Director Comey, have you ever been an anonymous source in news reports about matters relating to the Trump investigation or the Clinton investigation?
>
> MR. COMEY: Never.
>
> SEN. GRASSLEY: Question two on [sic] relatively related, have you ever authorized someone else at the FBI to be an anonymous source in news reports about the Trump investigation or the Clinton investigation?
>
> MR. COMEY: No.

By context, this was a general question (and as such it *could* include Item B in the table). Grassley probably imagined it included questions like, Did Comey (or anyone he authorized) leak details of his briefing to Trump about the Steele dossier? Did Comey (or anyone he authorized) leak details on the intercepts capturing Mike Flynn undermining sanctions? Did Comey (or anyone he authorized) leak details about the Clinton investigation, possibly including the Russian disinformation that led him to make the prosecutorial decision on it.

One thing Chuck Grassley's question *could not* have referred to were the memos documenting Trump's misconduct, Item D, because Comey only shared them with Dan Richman after Trump fired Comey on May 9, six days later. Even if Comey did authorize Richman to share them (he did, but the terms on which he did so are likely contested), he had not shared them *yet*, when he answered this question. Per the IG Report on this topic, Comey shared the memos first with Fitzgerald on May 14, 11 days after Grassley's question, then shared just one memo with Richman on May 16, two days later, the NYT story on the memo came out that day, May 16.

Then there's Andrew McCabe's rebuttal of details about the Clinton Foundation, which was the explicit topic of Ted Cruz' questions on September 30, 2020 and the alleged lie charged (but miscited) in the indictment.

> SEN. CRUZ: On May 3, 2017 in this committee, Chairman Grassley asked you point blank "have you ever been an anonymous source in news reports about matters relating to the Trump investigation or the Clinton investigation?" You responded under oath "never." He then asked you "have you ever authorized someone else **at the FBI** to be **an anonymous source** in news reports about the Trump investigation or the Clinton administration." You responded again under oath, "no." Now,

> as you know, Mr. McCabe, who works for you, has publicly and repeatedly stated that he leaked information to The Wall Street Journal and that you were directly aware of it and that you directly authorized it. Now, what Mr. McCabe is saying and what you testified to this committee cannot both be true; one or the other is false. Who's telling the truth?
>
> MR. COMEY: I can only speak to my testimony. I stand by what, the testimony you summarized that I gave in May of 2017.
>
> SEN. CRUZ: So, your testimony is you've never authorized anyone to leak. And Mr. McCabe when if he says contrary is not telling the truth, is that correct?
>
> MR. COMEY: Again, I'm not going to characterize Andy's testimony, but mine is the same today. [my emphasis]

A footnote in Comey's literal truth motion describes the agreed-upon scope of the September 30, 2020 hearing, which included neither the Clinton email nor the Clinton Foundation investigation, so Cruz' question, to the extent it pertained to McCabe, was fundamentally out of scope for the hearing and therefore could not be claimed to be addressing material to the topics of the hearing.

> 1 Before the hearing, the committee agreed that it would be limited to four specific topics: (i) "Crossfire Hurricane," (ii) the December 2019 Department of Justice Inspector General report's "Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation," (iii) the Carter Page FISA applications, and (iv) Christopher Steele's source network and primary sub-source.

If this ever gets to trial there will be about fifty ways to prove that Comey's answer to this question could not be material to what the Senate imagined it was doing.

But to use Cruz' poorly worded questions to charge Comey, Halligan applied it to the Dan Richman stuff.

Since Halligan claims this about Hillary (which, again, was not material to the hearing), she must be applying it to Item B, the only one of these items known to include both Richman and Hillary, the SVR memos claiming that Loretta Lynch was helping Democrats deal with the Hillary investigation (and also claiming that Jim Comey was going to make the Hillary investigation right up until election day, which he in fact did).

Even then, there's a problem for both known stories attributed to Richman. For the earlier one — the one that could be included in the scope of Grassley's question and which is the most obvious story addressed in the indictment — Richman was not anonymous. Mike Schmidt quoted him three times in that story.

> "Jim sees his role as apolitical and independent," said Daniel C. Richman, a longtime confidant and friend of Mr. Comey's. "The F.B.I. director, even as he reports to the attorney general, often has to stand apart from his boss."
>
> [snip]
>
> Confidants like Mr. Richman say he was constrained by circumstance while "navigating waters in which every move has political consequences."
>
> [snip]
>
> Mr. Richman sees no conflict, but rather "a consistent pattern of someone trying to act with independence and integrity, but within established channels."
>
> "His approach to the Russia

> investigation fits this pattern," he added.

Richman *was* anonymous in the Comey memo story, but he was also no longer at the FBI when he shared it.

Finally, there's the question Lindsey Graham asked on September 30, 2020, which was the subject of the failed charge in the no-billed indictment, Item C.

> Lindsey: Do you recall getting an inquiry from the CI, excuse me, the intelligence community in September, 2016, about a concern that the Clinton campaign was going to create a scandal regarding Trump and Russia? Mr. Comey: I do not.
>
> Senator Graham: You don't remember getting a investigatory lead from the intelligence community, hang on a second … Let me find my document here.
>
> Speaker 3: There it is.
>
> Senator Graham: September the Seventh, 2016, the US intelligence officials forwarded an investigative referral to FBI Director James Comey and Assistant Director of Counterintelligence Peter Strzok regarding US presidential candidate Hillary Clinton's approval of a plan concerning US presidential candidate Donald Trump and Russian hackers hampering US elections as a means of distracting the public from her use of a private email server. You don't remember getting that or being talk, that doesn't …
>
> Mr. Comey: That doesn't ring any bells with me.
>
> [snip]
>
> Senator Graham: Did you have a duty to look at any allegations regarding

> Clinton in Russia?
>
> Mr. Comey: I don't know what you mean.
> Senator Graham: Well, you say you had a duty to look at allegations about the Trump campaign being involved with the Russians. You've got a letter now from Radcliffe saying that there was a, they intercepted information about an effort in July where Hillary Clinton approved an effort to link Trump to Russia or the mob. Did you have an investigation look and see if whether that was true?
>
> Mr. Comey: I can't answer that. I've read Mr. Radcliffe's letter, which frankly I have trouble understanding.

This question was based off the redacted version of a CIA memo addressed to, but not provably sent to the FBI, in 2016. The redaction almost certainly hides critical details about the memo to say nothing of details that should have led everyone to realize they were based on an SVR fabrication. As such, Graham's question asked Comey not about the memo as it would have been perceived if it actually were received by FBI in 2016 (something John Durham was never able to prove), but a memo that Kash Patel retconned after the fact. Even if FBI did receive the memo, Comey would not recognize it as Graham described it.

This, along with Comey's decision to share his CYA memos, which led to the appointment of Robert Mueller as Special Counsel, are the crown jewels of the fevered conspiracy against rights conspiracy theory.

Right wingers claim to believe that the FBI had reason to know that Hillary wanted to frame Donald Trump in 2016, and so when "she" shared information with the FBI — the Steele dossier and the Alfa Bank anomalies, though Hillary didn't share the Steele dossier and affirmatively did not authorize sharing the Alfa Bank anomalies — the FBI should not have

investigated them (which, in the case of Alfa Bank, they barely did, because they assumed Hillary was trying to frame Trump!). Right wingers claim to believe that the Steele dossier was central to the investigation of Donald Trump and the claim that Russia wanted to help Trump get elected. And they claim to believe Comey broke the law by sharing his own CYA memo of Trump. None of that is true. But that's now become an object of faith in the cult of Donald Trump. And that's why this investigation into Comey is critical to any investigation going on somewhere else.

Lindsey Halligan did not, overtly, charge either one of those things — the inaccurately redacted reference to an SVR fabricated memo alleging a Clinton Plan or Richman's anonymous sharing of the Comey memos with Mike Schmidt. But that is why the vague language in Count Two of the existing indictment — and the loaner AUSAs' claim that sharing the memo was a crime — is such a problem.

> On or about September 30,2020, in the Eastern District ofVirginia, the defendant, JAMES B. COMEY JR. did corruptly endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which an investigation was being had before the Senate Judiciary Committee by making false and misleading statements before that committee.

Halligan couldn't get the jury to indict Comey for the Lindsey Graham question. But the Lindsey Graham question was material to the topic of the hearing, and central to the fever dream. So it's possible she used the charged alleged lie about Andy McCabe that Halligan is already overtly applying to Dan Richman as a way to get the grand jury to approve an obstruction case that would feed the fever dream.

That is, referring back to my table above, it's likely Halligan used an out-of-scope question

about Item A to charge Item B so as to create a prosecution for Items C and D.

Comey's motions are necessary to this case, but also serve to stave off more

All that makes clear why two of the motions Comey filed Thursday are necessary. One — a motion to dismiss based on literal truth — arises from the shoddiness of the questions Ted Cruz asked; it was the only one that Fitzgerald mentioned at the arraignment.

The two others — one asking to obtain grand jury transcripts and another asking for a Bill of Particulars — are necessary to pin down whether the charged lie (which by description should be Item B on the table, even though Richman was not anonymous in the story in question) are actually what she got a grand jury to indict, whether that is the basis for the obstruction charge, and whether what Halligan said in the grand jury matches what the loaner AUSAs (who took several days before they'd even tell Comey who the people referred to in the indictment were) imagine they'll present to a jury at trial.

Here's how Comey describes the possibility of head fakes at trial in the Bill of Particulars motion.

> Count Two charges Mr. Comey with "making false and misleading statements" at a four-hour hearing in which he was questioned on topics ranging from the FBI's Crossfire Hurricane investigation, to the investigation into Hillary Clinton's alleged mishandling of classified information, to white supremacist activities in the United States. Under the indictment as written, the government could wait until trial to specifically allege that any one, or

> several, of Mr. Comey's statements over a four-hour hearing forms the basis for its prosecution. The government could also wait until trial to select any topic of investigation covered at the hearing as the one Mr. Comey allegedly endeavored to obstruct, and unfairly surprise Mr. Comey.

And here's how he raised it in his bid to get grand jury transcripts.

> Disclosure of the grand jury materials is also required to ensure that the government does not seek to try Mr. Comey for alleged false or misleading statements that differ from those on which the grand jury was asked to indict. See Russell v. United States, 369 U.S. 749, 765 (1962).

But there's also the possibility that to pull off this trick — using an out-of-scope question about Item A to charge Item B — Halligan relied on privileged content.

When DOJ investigated Richman from 2019 to 2021 as the source for Mike Schmidt, they never found proof that Comey authorized him to share that information, details of the SVR content making false claims about the investigation into Hillary Clinton. But when DOJ IG investigated Comey in 2019 about his memos, he told them that he authorized Richman to share the memo about Trump.

> May 14, 2017
>
> > Comey sends scanned copies of Memos 2, 4, 6, and 7 from his personal email account to the personal email account of one of his attorneys, Patrick Fitzgerald. Before sending, Comey redacts the second paragraph from Memo 7 involving foreign affairs because Comey deems it irrelevant. On May 17 Fitzgerald

> forwards these four Memos to Comey's other attorneys, David Kelley and Richman.
>
> May 16, 2017
>
> Comey sends a digital photograph of Memo 4 (describing the meeting in which Comey wrote that President Trump made the statement about "letting Flynn go") to Richman via text message from Comey's personal phone. Comey asks Richman to share the contents, but not the Memo itself, with a specific reporter for The New York Times. Comey's stated purpose is to cause the appointment of a Special Counsel to ensure that any tape recordings that may exist of his conversations with President Trump are not destroyed. Richman conveys the substance of Memo 4 to the reporter. The New York Times publishes an article entitled "Comey Memo Says Trump Asked Him to End Flynn Investigation."

So there are communications between Comey and Richman (and possibly Fitzgerald) from May 2017 authorizing him to share information with Mike Schmidt. They're almost certainly in the batch of stuff Richman said was privileged in 2020.

And that's the kind of thing that might lead a grand jury to believe that Comey authorized Richman's earlier conversations with Schmidt. Neither would match the details of Cruz' question. Richman was still at the FBI when he was the source for Item B, but not anonymous. Richman was anonymous when he was the source for Item D, but he was no longer at the FBI (in any case, Comey notes in his literal truth motion that Richman "was a Special Government Employee living fulltime in New York"). But you could see how grand jurors might get that confused. Or, you could see how someone already breaking every

rule of legal ethics would wildly conflate all of that.

And that's part of what Comey is pursuing with his bid to obtain the grand jury transcripts: he suggests that Special Agent Miles Starr may have accessed attorney-client information *before* presenting to the grand jury.

> [T]he agent who served as a witness in the proceedings may have been exposed to Mr. Comey's privileged communications with his attorneys and thus may have conveyed that information to the grand jury.

Redacted passages describe that that same day he likely presented to the grand jury, FBI Agent Miles Starr, "alerted the FBI Office of the General Counsel" something redacted "involving Mr. Comey and his attorneys," which suggests — Comey argues — that Starr was apparently aware "of his potential exposure to privileged material" when serving "as a witness presenting evidence to the grand jury in this case." Which, in turn, supports Comey's hypothesis that Starr used privileged information to get the indictment.

> Third, the record suggests that an FBI agent who testified before the grand jury was potentially tainted by privileged communications between Mr. Comey and his attorneys, one of whom was likely Mr. Richman, yet the agent still proceeded to testify in front of the grand jury. There is thus a serious concern that the grand jury may have improperly relied on privileged information.
>
> [snip]
>
> That information apparently related to certain attorneys for Mr. Comey, including Mr. Richman. See id. Nevertheless, the agent testified before the grand jury that same day, and given

> the content of the resulting indictment, it is clear that his testimony must have referenced Mr. Comey's interactions and communications with Mr. Richman. This created a high risk that privileged information was presented to the grand jury by a tainted case agent.

If that were true — if Starr relied on information obtained without a warrant specific to the crimes under investigation — then Comey would have a Fourth Amendment challenge to the entire thing.

Fighting a battle in December to win a fight in October

Comey has a clear need for more clarity about whether they're going to pull a headfake. But one reason I suspect this is not the only reason to seek that clarity has to do with timing.

Consider this comment in his request for grand jury materials, which argues he needs the grand jury materials to adjudicate his vindictive prosecution motion (just a page and a half of which asks for discovery).

> For similar reasons, disclosure of the grand jury materials is reasonably calculated to provide additional support for Mr. Comey's argument that he would not have been prosecuted but for President Trump's animus toward Mr. Comey, including because of his protected speech. See generally Mot. to Dismiss Indictment Based on Vindictive & Selective Prosecution, ECF No. 59. Objective evidence establishes that the President harbors such animus—he has spent the last eight years publicly attacking Mr. Comey's speech and character and calling for Mr. Comey to be prosecuted. See id. at 4-8. The

> record also shows that President Trump "prevailed upon [Ms. Halligan] to bring the charges . . . such that [she] could be considered a 'stalking horse.'" See id. at 21-22 (citing United States v. Sanders, 211 F.3d 711, 717 (2d Cir. 2000)). In turn, the government's manipulation of the prosecutorial process, including its repudiation of the views of every career prosecutor who assessed the case, makes clear that Mr. Comey would not have been prosecuted but for President Trump's animus. Id. at 22-26.
>
> Although dismissal of the indictment is warranted on the record as it stands, disclosure of the grand jury materials would bolster Mr. Comey's arguments. Having served as his personal attorney and as a White House Official, Ms. Halligan has a close, longstanding relationship with President Trump. Id. at 11-12. And even though Ms. Halligan lacks prosecutorial experience, President Trump appointed her for the specific purpose of bringing this prosecution against Mr. Comey and other perceived political opponents. Id. at 23-24. Accordingly, there is a substantial risk that during her presentation to the grand jury, Ms. Halligan made statements that would support Mr. Comey's motion to dismiss. Such "irregularities in the grand jury proceedings" would "create a basis for dismissal of the indictment" and thus warrant disclosure of the grand jury materials. Nguyen, 314 F. Supp. at 616 (citations omitted).

According to the current schedule, the hearing on this motion will be November 19. The request for grand jury transcripts won't be fully briefed until one day later, and the hearing for it will take place after a Thankgiving break, on

December 9.

This case could be — is likely to be, at least based on a disqualification of Lindsey Halligan — over by December 9.

Similarly, Comey asks for a Bill of Particulars to help wade through both the discovery he got and the stuff he did not get.

> The discovery produced to date does not "fairly apprise [Mr. Comey] of the charges against him so that he may adequately prepare a defense and avoid surprise at trial." Sampson, 448 F. Supp. 2d at 696 (cleaned up). The government produced voluminous discovery that includes some, but not all, documents from multiple different FBI investigations involving multiple districts.
>
> [snip]
>
> A bill of particulars can also be necessary to allow the defendant to request materials under, and the court to monitor the government's compliance with, Brady v. Maryland, 373 U.S. 83 (1963), and its progeny. See United States v. Trie, 21 F. Supp. 2d 7, 25 (D.D.C. 1998) (noting that the scope of the government's Brady obligations could be determined "once it has provided the bill of particulars").
>
> [snip]
>
> Accordingly, without knowing whether, and how, Mr. Richman allegedly acted as an anonymous source, Mr. Comey cannot ascertain whether the government has fulfilled its obligations under Brady. See Trie, 21 F. Supp. 2d at 26. For example, if the government contends that Mr. Richman acted as an anonymous source in the articles that were the subject of the "Arctic Haze" investigation, the defense would request that entire

> investigative file (which has not been produced), as well as information about all other individuals the government identified as possible sources of information (which has also not been produced). 5 Such materials would enable the defense to demonstrate—as government investigators previously found, see Mot. to Dismiss Indictment Based on Vindictive & Selective Prosecution, ECF No. 59 at 9-10—that there was insufficient evidence to believe that Mr. Richman was the source of that information. By contrast, if instead the government contends that Mr. Richman was authorized to act as a source in a different article, the defense could tailor both its Brady requests and trial defense accordingly. The defense should not be required to dig through tens of thousands of pages of incomplete discovery to guess at what it is defending against—only to be sandbagged by the government at trial.

Comey's point about the Arctic Haze investigation is of particular note, given that DOJ chose only to pursue potential sources who would protect Comey, not those who would not, and Richman claimed that Mike Schmidt, who wrote that article with several other journalists, already knew a bunch about the SVR documents before asking him about it.

> After discussing the status of investigative leads and resources available with the U.S. Attorney's Office and Department of Justice's National Security Division (DOJ NSD), the FBI investigative team was directed to interview only those officials who might have had a motive to protect Comey. Therefore, the FBI only interviewed eight of these officials who consisted mainly of former FBI officials.

Given a delay in Fitzgerald getting clearance, a Bill of Particulars might help him make the case to unseal classified information he won't delay until that time. But any Brady violations discovered after getting one, if this motion succeeds, would also come after this case might be over.

But what these filings may do — especially the grand jury one — is affect several things going on, starting this week.

As noted, Judge Cameron McGowen Currie has ordered the government to give her the transcripts from both grand juries *by tomorrow*.

> The undersigned has been appointed to hear this motion and finds it necessary to determine the extent of the indictment signer's involvement in the gra.nd jury proceedings. Accordingly, the Government is directed to submit, no later than Monday, November 3, 2025, at 5:00 pm, for in camera review, all documents relating to the indictment signer's participation in the grand jury proceedings, along with complete grand jury transcripts.

It's genuinely unclear why she needs them, but it's possible that by laying out Comey's concern about privileged material in the grand jury, that will affect Judge Currie's review.

Comey noted that Currie had already asked for these transcripts (which Nachmanoff surely noticed, since she did so in his docket).

> Indeed, Judge Currie has already ordered the government to produce for in camera review "all documents relating to the indictment signer's participation in the grand jury proceedings, along with complete grand jury transcripts." ECF No. 95. Mr. Comey has argued that if Ms. Halligan alone secured and signed the indictment, dismissal would be required because she was unlawfully appointed.

Comey will not prevail on his motion for the grand jury transcripts until after the vindictive prosecution motion is briefed. But there's nothing to stop Nachmanoff from making the same request that Currie did, to receive the transcripts for in chambers review. Similarly, there's nothing to prevent William Fitzpatrick, the Magistrate Judge who'll hold a hearing on the privilege question this Wednesday, to do the same.

But there's one other way to think about this. *If* this prosecution continues as scheduled (as noted, Comey just asked for a delay in the CIPA schedule until Fitzgerald is cleared, which makes that a very big if), then the trial would happen — to much media attention — one week before this grand jury is seated in January.

Prosecutors are currently trying to preserve asymmetry in knowledge, withholding parts of these investigative files and remaining coy about how they snuck a peek in his privileged communications.

But on top of the necessary information these motions would give him to prepare for trial, they also erode that asymmetry, in ways that may help defeat not just this prosecution, but the larger fever dream one.

Relevant links

DOJ IG Investigation into McCabe

DOJ IG Investigation into Hillary's email and Classified Annex

DOJ IG Investigation into Comey's Memos

Durham Report and Classified Annex

Redacted memo about "Clinton Plan"

Arctic Haze Investigation Documents

NYT, April 22, 2017: Comey Tried to Shield the F.B.I. From Politics. Then He Shaped an Election.

NYT, May 2016: Comey Memo Says Trump Asked Him to End Flynn Investigation

Timeline

September 25: Indictment

September 29: Guidance from FBI OGC regarding those exposed to tainted information

October 8: Arraignment; Comey signs but government does not return discovery order

October 13: Government moves for a filter protocol

October 15: Government first informs Comey the false statements charge is about Dan Richman and Hillary Clinton

October 19: Request to accelerate privilege review

October 20:

- Motion to disqualify Lindsey Halligan
- Motion to dismiss for selective and vindictive prosecution
- Response to request to accelerate
- Order denying request to accelerate privilege review

October 27:

- Response to motion for filter protocol
- Fitzgerald gets a provisional clearance

October 28: Judge Cameron McGowan Currie orders prosecutors to submit: “all documents relating to the indictment signer’s participation in the grand jury proceedings, along with complete

grand jury transcripts”

October 29:

- Judge Nachmanoff orders Magistrate Judge William Fitzpatrick to preside over filter review questions
- Classified material delivered to SCIF; Fitzgerald can access just one-third of material

October 30:

- Motion for Bill of Particulars
- Motion for disclosure of Grand Jury Proceedings
- Motion to dismiss for literal truth

November 2: Reply to motion for filter protocol

November 3:

- Responses to first motions due
- Grand jury transcripts due to Judge Currie

November 5: Filter review hearing before Magistrate Judge Fitzpatrick

November 10: Reply to first motions due

November 13:

- Responses to second motions due
- Motion hearing on motion to disqualify

November 19: Motions hearing for first motions

November 20: Reply to second motions due

December 4: Fitzgerald to be fully cleared, permitting his first full review of classified evidence

December 9: Motion hearing for second motions

December 18: Proposed new CIPA deadline

January 5: Jury trial

January 12: Fort Pierce grand jury convenes