

PAM BONDI'S DOJ GETS ADMONISHED A SECOND TIME FOR INDICT[ING] FIRST, INVESTIGAT[ING] SECOND

Remember how, 72-hours ago, I wrote an interminable post about how this Comey case may be about more than just two charges filed back in September?

I argued, among other things, that Comey may have asked for grand jury transcripts not (just) because getting them in December would help him win a vindictive prosecution claim that'll be heard a month earlier, but because one of the now-three judges involved in the case might see the validity of his argument, and order the government to provide him those transcripts now.

[W]hat 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 grand 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.

Today, William Fitzpatrick did just that. (ABC; Politico; CNN; WaPo)

By Politico's description, loaner AUSA Tyler Lemons' explanation of the potential spill in September appears to have been no more convincing today than it was in his reply brief, which I wrote about here.

Tyler Lemons, an assistant U.S. attorney brought in from North Carolina to assist Halligan with the case, responded to the judge. He said investigators reviewing the search warrant materials anew just days before Comey's indictment halted the process after stumbling upon information they thought might have been subject to Comey's attorney-client privilege with Richman. He said the materials are now "isolated on a desk in FBI headquarters."

Lemons added, "We're not going to touch this evidence until the court approves it."

The magistrate judge said prosecutors are not permitted to look at the material themselves until the court has resolved any potential privilege claims. He said that prosecutors could continue to use evidence it believes is not privileged in court filings, but that they do so "at their own risk." If they inadvertently use privileged material in their filings, he said, it could lead to consequences for the entire case.

ABC's story suggests more concerns over the access itself being a Fourth Amendment violation, regardless of whether it was privileged or not. That seems to be why he ordered the government to share – by close of business tomorrow – not just the grand jury transcripts, but the material seized from Dan Richman five years ago, which the government has inexplicably not yet turned over.

But Comey's attorneys raised separate concerns that by using those materials at all, the government may have violated Comey's rights – not just by reviewing potentially privileged information, but also by revisiting evidence obtained by warrants that would now be considered stale.

Judge Fitzpatrick appeared to agree with those concerns during Wednesday's hearing, as he repeatedly pressed Assistant U.S. Attorney Tyler Lemons over what materials the government had reviewed and why the disputes over privilege were not settled during the more than five years that the government had those communications in its possession

Fitzpatrick, citing what he described as "unusual" behavior by the Justice Department and the quickly approaching January trial date, ordered the government to hand over "all grand jury materials" related to its investigations of Comey by Thursday at 5 p.m. ET – an urgent deadline that reflected Fitzpatrick's concern over the government's conduct.

The big underlying issue though – the request that first precipitated this proceeding – was their demand for quick review of potentially privileged material that likely dates from the period after Donald Trump fired Jim Comey. DOJ has had this material for years, at least six months of which came when Bill Barr was aggressively pushing this investigation, yet they've never asked to breach these privilege claims before.

Which elicited the comment from Fitzpatrick that has made all the coverage, here, from ABC.

"We're in a bit of a feeling of indict first, investigate second," Magistrate Judge William Fitzpatrick said in a motions hearing in Alexandria, Virginia.

It's not dissimilar to what a different Magistrate Judge, André Espionosa, said less than six months ago, when dismissing the charges against Newark Mayor Ras Baraka.

The hasty arrest of Newark Mayor Ras

Baraka , followed swiftly by the dismissal of these trespassing charges a mere 13 days later, suggests a worrisome misstep by your Office . An arrest , particularly of a public figure , is not a preliminary investigative tool . It is a severe action, carrying significant reputational and personal consequences, and it should only be undertaken after a thorough , dispassionate evaluation of credible evidence .

It's precisely that commitment to rigorous investigation and thoughtful prosecution that has 20 characterized the distinguished history of your Office, Mr. Demanovich [the AUSA whom Alina Habba sent in her stead], particularly over the last two decades. The bench and the bar have witnessed in that period, the diligence and care demonstrated by prior U.S. attorneys in New Jersey, whose leadership has consistently upheld the highest standards of prosecutorial ethics and professionalism Their legacy is one of careful deliberate action where charges were brought only after exhaustive evidence gathering and a thorough consideration of all facts That bedrock principle, consistently honored by your predecessors, is the foundation upon which the credibility and effectiveness of your Office rests.

So let this incident serve as an inflection point and a reminder to uphold your solemn oath to the people of this District and to your client, Justice itself, and ensure that every charge brought is the product of rigorous investigation and earned confidence in its merit, mirroring the exemplary conduct that has long defined your Office.

The apparent rush in this case,

culminating today in the embarrassing retraction of charges, suggests a failure to adequately investigate, to carefully gather facts, and to thoughtfully consider the implications of your actions before wielding your immense power. Your Office must operate with higher standard than that.

To be sure, I don't think they were reconsidering charging Comey.

Rather, I suspect they were hoping for a better theory of charges. I suspect they hope to bring follow-on charges to build their fever dream.

But they've been caught once again not doing the work of prosecutors.

Update: Holy hell. Per NYT, prosecutors hadn't even turned over the stuff released in their Opposition to Comey's vindictive and selective prosecution motion.

The judge grilled one of Ms. Halligan's deputies, Nathaniel Lemons, over prosecutors' release of material in recent days, including private text exchanges intended to cast Mr. Richman and Mr. Comey in unflattering light in an otherwise quotidian court filing. He asked whether prosecutors had given Mr. Comey an opportunity to review such material first to challenge their release.

When Mr. Lemons said he had not offered Mr. Comey's lawyers access to the material, obtained in several search warrants as part of an internal investigation of leaks in the Russia case during the first Trump administration, the judge chided him for placing an "unfair" burden on the defense.

That would undoubtedly be a violation of the

discovery order, which required everything material to be turned over by October 13.

Update: The timeline on this gets more damning.

September 22: Lindsey Halligan appointed.

Days before Comey's indictment:
Investigators review the materials anew.

September 25: Miles Starr presents to the grand jury and then files notice of exposure to Attorney-Client material.

October 7: Lemons files notice of appearance, but refuses to tell Comey who the people referred to in indictment are.

October 10: Lemons starts pressuring Comey to access privileged material.

October 13: Lemons files for access to privileged material.

October 15: Lemons finally tells Comey who the people in the indictment are.

October 19: In bid to accelerate access to privileged material, Lemons accuses *Patrick Fitzgerald* of being part of classified leak – a slanderous attempt to criminalize sharing details of Trump's misconduct.

November 3: Lemons files response relying on discovery Comey hasn't yet received.