

WHAT MIGHT HAPPEN IF HUNTER BIDEN REFUSES TO TESTIFY (BEHIND CLOSED DOORS)

Update: Hunter did, as I supposed here, show up in DC only to make a public statement.

Because a dumbass Congressman from Kentucky has not told Hill journalists what was in Hunter Biden's motions to dismiss the other day, at least some of them have no conceivable way of knowing what's in there, much less the specifics.

As I noted, along with the selective prosecution claim that Katy Tur was sure was the totality of it and the vindictive prosecution that was also obvious, Abbe Lowell also argued that the House GOP has usurped DOJ's prosecutorial authority and effectively forced David Weiss to charge Hunter Biden with 6 felonies.

No one appears to know whether Hunter Biden will show up for his scheduled 9:30 deposition today, and if he does, whether he'll do the thing virtually all defense attorneys would advise – to simply invoke the Fifth – or whether he'll just refuse to answer questions unless a live camera is rolling. But if he does anything *but* invoke the Fifth, that separation of powers claim is going to take on vastly new significance.

Before I explain why, let me first talk about some wild coincidences. First, Hunter filed the motions to dismiss on Monday, two days before this subpoena, based off a requested schedule change Abbe Lowell made on October 13 and Judge Maryanne Noreika approved on October 19. James Comer sent Hunter the subpoena, setting today's date and time, back on November 8. According to reports, only in recent weeks have Comer and Jim Jordan and Speaker Mike Johnson decided they'll hold the vote to authorize the impeachment

inquiry that is one of two bases on which Comer issued the subpoena to Hunter this afternoon – *after* the scheduled time for the deposition that has been scheduled for over a month. And the suit that resulted, yesterday, in NY's top court issuing an order for redistricting by February was first filed on June 28, 2022; Dave Wasserman says the decision could endanger the seats of five GOP Congressmen, as well as flipping the seat recently vacated by George Santos.

Abbe Lowell didn't mastermind those coincidences. In fact, Speaker Mike was the one who made the only recent decision: to schedule the impeachment inquiry vote that would give more legal authority for the subpoena issued to Hunter on November 8, for after the scheduled Hunter deposition. On December 6 – the day *after* Speaker Mike decided to schedule an impeachment inquiry vote – Comer and Jordan sent a letter threatening to initiate contempt proceedings, "If Mr. Biden does not appear for his deposition on December 13." But Congress is scheduled to leave town tomorrow and this Congress claims to have a rule that members get notice before any votes.

Republicans say they have the votes to approve the inquiry. Maybe they do! Maybe they still do after the redistricting decision! If that's right, it'll be one of the only votes the GOP has managed to pass in the entire year of their majority without Democratic votes. Quite literally, the only thing the GOP would have accomplished in a year would be to start an impeachment inquiry that virtually all sentient beings admit is based on no evidence of wrongdoing by Joe Biden.

But if Hunter Biden does anything but plead the Fifth (or testify), that impeachment vote will have been cast after Comer refused what he offered a few weeks ago: an offer for Hunter to testify publicly.

Similarly, a contempt vote – a second contentious vote for those five NY Congressmen and others in Biden districts – would be held

after Comer refused what he has boisterously said was sufficient: public testimony. It'll come from Jim Jordan, not exactly the model for principled use of contempt to enforce Congressional subpoenas. Even so, Trump will exert a great deal of pressure to pass a contempt vote, even on those five NY Congressmen facing an even tougher reelection battle. Let's assume it passes! All that would make still more clear that this Congress only exists to serve the beck and call of Donald Trump, not Members' constituents.

If the House held Hunter Biden in contempt, Merrick Garland's DOJ would likely do what he always does: give it to a Special Counsel. And there's already a Special Counsel prosecuting closely related issues. Doing anything but giving it to David Weiss would signal all sorts of confidence or legitimacy problems with his authority, even if they're merited.

If David Weiss were to receive a contempt referral from the House, he'd be looking at what might be a clearcut case of contempt (particularly if Hunter simply doesn't show up). Based on the Steve Bannon precedent, there'd be a great deal of pressure to charge Hunter Biden with contempt. But that would result in Weiss doing precisely what Hunter's motion to dismiss accuses him of already: prosecuting him because Congress demanded he do so, prosecuting him to show up for an inquiry that has, over and over, made claims – mostly unsubstantiated – about crimes Hunter allegedly committed. As the motion to dismiss described it,

Many members of Congress, including the last Speaker of the House, Chairman of the House Oversight Committee, Chairman of the House Judiciary Committee, and the Chairman of the Ways & Means Committee are actively interfering with DOJ's investigation, using their authority to pressure and malign DOJ, and using congressional committees limited to investigating government

agencies to conduct a criminal investigation of private conduct by a private citizen— one they are conducting based on a publicly stated presumption of guilt.

On its face, contempt would be justified. Except Congress has not hidden their belief that they are pursuing — this deposition was meant to investigate — crimes they imagine Hunter Biden committed.

Venue would be in DC. And while blowing off a subpoena might be an easy question for a DC jury (it was in the Bannon and Peter Navarro cases), in his communications with Congress, Lowell has established that:

- He offered to cooperate starting in February
- He repeatedly raised false claims Congress had made about Hunter
- Hunter offered to testify in public, which Comer offered then retracted

And that's before you consider that the subpoena was issued prior to an impeachment resolution, but any contempt trial would happen after an impeachment resolution would have made it clear that this always was about impeachment.

I don't know how this turns out today. But there's a distinct possibility that it will result in demonstrating precisely what Abbe Lowell has laid out in one of his motions to dismiss. There's a distinct possibility that the actions Comer and Jordan take today will provide yet more evidence Hunter will use to argue that the entire case must be dismissed.

I'm not saying it'll work! I am laying out the dynamic exacerbated by a bunch of coincidences that even Abbe Lowell couldn't have planned.