

FOR ALMOST A YEAR, “JIM JORDAN” HAS BEEN SAYING HUNTER BIDEN DIDN'T NEED TO TESTIFY

I came to the Hunter Biden beat a bit late – only after I read Gary Shapley’s testimony. And so when Democrats mentioned that Abbe Lowell had sent Congress six letters in last week’s circus hearing – only two of which were cited in the contempt referral – I realized I hadn’t read them all.

I posted them all below.

It turns out, the two earliest ones – the ones I hadn’t read, ones which were sent to James Comer but not Jim Jordan – Abbe Lowell cited Jordan to lay out the impropriety of the requests for information from Hunter.

We know, from the Steve Bannon prosecution, that were the House to refer Hunter Biden for contempt, the first thing DOJ would do is ask for paperwork from both sides. On the January 6 Committee side, that all went through senior staffers. On Bannon’s side, Robert Costello claimed to have certain representations from Trump, but when asked, he admitted he didn’t have anything to backup that claim (Peter Navarro had still less since he didn’t lawyer up until after being charged). DOJ went so far as to get Costello’s call records to make sure there weren’t communications they didn’t know about.

Here, the first thing Abbe Lowell would do if Hunter were referred to contempt would be to share the six letters he had sent, documenting the authority on which he was relying for asking for further accommodations. The Oversight contempt referral – and even the letter issued Sunday moving toward setting up a deposition – made no mention of the earlier letters. As I noted, when DOJ asked the staffers in charge of

the contempt referral what had happened, that hapless person would have to explain why the Committee withheld relevant documents from its contempt referral.

But as I also noted, even when relying on just the more recent letter, Jordan has said enough about the authority of subpoenas that he risked being a witness in any contempt investigation and then trial, something Bennie Thompson studiously avoided by letting staffers manage the guts of the legal issues.

That may explain why Jordan, whose chief counsel Steve Castor is bad faith but a good lawyer, saw the wisdom of issuing a new subpoena.

There's still a conflict here. Lowell suggested hybrid accommodation in his letter from last week.

You have not explained why you are not interested in transparency and having the American people witness the full and complete testimony of Mr. Biden at a public hearing. If you issue a new proper subpoena, now that there is a duly authorized impeachment inquiry, Mr. Biden will comply for a hearing or deposition. ³³ We will accept such a subpoena on Mr. Biden's behalf.

³³ During the January 10, 2024, Judiciary Committee markup, Representative Glenn Ivey suggested a procedure for a hybrid process—a public deposition/hearing with alternating rounds of questions for Republicans and Democrats, and with similar rules (e.g., role of counsel in questioning), as is done in a closed-door deposition. Four Republicans actually voted in committee in support of this process. Perhaps that could be the basis for our discussion.

In Sunday's letter, Jordan and Comer rejected that, falsely claiming that the rules prohibit it (and ignoring Comer's offer of public

testimony in the past, something that came up in the contempt hearing).

While we welcome Mr. Biden's public testimony at the appropriate time, he must appear for a deposition that conforms to the House Rules and the rules and practices of the Committees, just like every other witness before the Committees.²⁶

²⁶ For this reason, the Committees cannot accept the so-called "hybrid process" you propose. See January 12 Letter, *supra* note 1, at 8 n.33

I would not be surprised if Lowell did what Jim Comey did back in 2018, when House Republicans were conducting a similarly politicized non-public investigation into the Russian investigation. He sued to quash the subpoena, largely in an attempt to get some means of preventing Members from making false claims while hiding the transcript. That ended with an agreement that the House would release the transcript a day after the testimony.

The letter Lowell sent Mike Johnson on November 8 already extensively documented the false claims that Republicans had made about Hunter. There are some interesting false claims in the HJC report on the Hunter investigation that would not only further substantiate the need for transparency, but would also bolster Hunter's claim – made in a motion to dismiss – that the House is unconstitutionally trying to conduct a prosecution of him.

Plus, there are other details of Jordan's investigation – most notably the threats, which Becca Balint laid out during the contempt hearing last week. It is absolutely critical to Hunter Biden's legal case that US Attorneys David Weiss and Martin Estrada as well as FBI Special Agent in Charge Thomas Sobocinski testified that threats were made in conjunction with this investigation, threats that in

Delaware's case preceded a radical reversal on the prosecutorial decision. Yet Jordan is sitting on that testimony.

Most people, myself included, think it'd be insane for someone fighting two indictments to appear before a hostile committee, much less without some means of acquiring his own record. But at the same time, Jordan keeps providing Lowell more evidence that the House, not DOJ, is the branch of government driving that prosecution.

1. February 9, 2023: Re request for documents [Comer]

[T]hen Ranking Member Jim Jordan (who sat next to you at your February 8th hearing) stated that a subpoena of President Trump and his family's personal records was "an unprecedented abuse of the Committee's subpoena authority[.]"¹ Mr. Jordan described the subpoena for financial and business records as an "irresponsible and gravely dangerous course of conduct in a singular obsession of attacking President Trump and his family for political gain."² Mr. Jordan feared that Chairman Cummings would selectively release information gained from the subpoena "in a misleading fashion to create a false narrative for partisan political gain."³

[snip]

Representative Jordan, citing Watkins, even emphasized that private persons have a limited place in Committee investigations: "[t]he Supreme Court has cautioned that Congress does not have 'general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.'"⁴

2. June 14, 2023: Re records from art dealer
Georges Bergès [Comer]

I am sure you will remember that it was now Judiciary Chairman Jim Jordan, in his hollering about the subpoena issued to the Presidents' accounting firm, citing to the same Waikins case, who stated that private persons have a limited place in Committee investigations: "[t]he Supreme Court has cautioned that Congress does not have 'general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.™

[snip]

Let me remind you what then-Ranking Member Jim Jordan stated: that a subpoena of President Trump *and his family's* personal records was "an unprecedented abuse of the Committee's subpoena authority[.]"* (emphasis added). Mr. Jordan described the subpoena for financial and business records as an "irresponsible and gravely dangerous course of conduct in a singular obsession of attacking President Trump *and his family* for political gain." (emphasis added). 1 explained in February that Mr. Jordan stated he feared that Chairman Elijah Cummings 'would selectively release information gained from the subpoena "in a misleading fashion to create a false narrative for partisan political gain."

[snip]

No sooner did You obtain these financial records then, as admitted in you letter, you released them to the public in your "First Bank Records Memorandum." In so doing, you decided to ignore the warning of your colleague Chairman Jordan, who cautioned that Democrats would

selectively release information gained from the subpoena “in a misleading fashion to create a false narrative for partisan political gain.” Oh, what a difference a few years and a change in leadership has made.

3. September 13, 2023: Re Newsmax appearance [Comer]

I write on behalf of our client regarding your statement this morning, September 13, on Newsmax, in which you stated, “We’re headed to court, more than likely. We’ve requested bank records from Hunter Biden and Jim Biden early on, and obviously we never got a response back. We will re-request those this week; if they do not comply with our request, then we will subpoena and no doubt, undoubtedly head to court.”¹ Your statement was surprising as it ignores our prior exchanges.

[snip]

We ask that you correct what you said, but more importantly, we remain available to have the discussion that I suggested some seven months ago.

4. November 8, 2023, to Mike Johnson: On false claims made by Republicans [Comer, Jordan, and Smith]

Chairman Jordan, for his part, used his airtime on November 1 to spew false, recycled, and debunked claims about Hunter’s time serving on the board of directors of Burisma, wielding it as an excuse to justify his obsession with pursuing an “impeachment inquiry” into President Biden when he declared:
“Hunter Biden gets put on the Board of Burisma, fact number one. Fact number two, he’s not qualified to be on the Board of Burisma. Fact number three, the

head of Burisma asks Hunter Biden, 'can you help us relieve the pressure we are under from the Ukrainian prosecutor?' Fact number four, Joe Biden does just that." 9

[snip]

As to Chairman Jordan's made-up, nonsensical claim that "the head of Burisma ask[ed] Hunter Biden, 'can you help us relieve the pressure we are under from the Ukrainian prosecutor?,'" I simply would ask Chairman Jordan: what evidence do you have and when is it coming? The answer is "none" and "never." For all the hours, months, and years Chairman Jordan and others (e.g., Senators Grassley and Johnson) have spent trying to invent a scheme in which Hunter assisted Burisma in any illicit or inappropriate way to "relieve the pressure" stemming from a Ukrainian corruption investigation, while his father was Vice President, they have produced an alarmingly scant amount of proof to show for their claims. Opposite evidence abounds.

5. November 28, 2023: In response to Comer's Newsmax appearance [Comer and Jordan]

Mr. Chairman, we take you up on your offer. Accordingly, our client will get right to it by agreeing to answer any pertinent and relevant question you or your colleagues might have, but— rather than subscribing to your cloaked, one-sided process—he will appear at a public Oversight and Accountability Committee hearing. To quote your November 8, 2023, letter accompanying the subpoena, "Given your client's willingness to address this investigation publicly up to this point, we would expect him to be willing to testify before Congress."⁶ He is, Mr. Chairman. A public proceeding would

prevent selective leaks, manipulated transcripts, doctored exhibits, or one-sided press statements.

December 6, 2023: Public testimony [Comer and Jordan]

As indicated in my November 28, 2023, letter, Mr. Biden has offered to appear at a hearing on the December 13, 2023, date you have reserved, or another date this month, to answer any question pertinent and relevant to the subject matter stated in your November 8, 2023, letter. He is making this choice because the Committee has demonstrated time and again it uses closed-door sessions to manipulate, even distort, the facts and misinform the American public—a hearing would ensure transparency and truth in these proceeding

January 12, 2024: After contempt [Comer and Jordan]

And you, Chairman Jordan, during a House Republican leadership press conference immediately after the actual impeachment inquiry resolution vote finally occurred, stated: “I want you all to think about something. This morning, I was in an impeachment deposition, but then had to leave that to come to the floor for a vote on the rules for impeachment. That [] says it all about this entire process. And it is a sad day.” 11

[snip]

You noticed an impeachment deposition a month before an impeachment inquiry vote was held to authorize such a deposition. Astonishingly, the sequence of events was the same as 2019. Almost four years to the day that Speaker Pelosi made her statement authorizing impeachment-based

subpoenas before a House resolution authorized them, it was now Speaker Kevin McCarthy who, despite criticizing his predecessor for trying to do the same thing, *did the same thing*. On September 12, 2023, Speaker McCarthy said: "These are allegations of abuse of power, obstruction, and corruption. And they warrant further investigation by the House of Representatives. That's why today, *I am directing our House committee to open a formal impeachment inquiry into President Joe Biden.*"¹² Chairman Jordan, you should be similarly saddened by your own use of pre-impeachment inquiry subpoenas against Mr. Biden.

[snip]

Thus, "Resolution 660's direction, however, was entirely prospective. . . . Accordingly, the pre-October 31 subpoenas, which had not been authorized by the House, *continued to lack compulsory force.*"¹⁹ As Resolution 660 was ineffective in 2019, so is Resolution 917 now. To quote you, Chairman Jordan, during the first impeachment of former President Trump, "[c]odifying a sham process halfway through doesn't make it any less of a sham process."

[snip]

Still further, on December 13, 2023, you issued a joint statement directly tying Mr. Biden's subpoena to the still yet-to-be-authorized impeachment inquiry: "Today, the House *will vote on an impeachment inquiry* resolution to strengthen our legal case in the courts as we face obstruction from the White House and witnesses. Today's obstruction by Hunter Biden reinforces the need for a formal vote. President Biden and his family must be held accountable for

their corruption and obstruction. And we will provide that to the American people.”²⁷