

ABBE LOWELL'S EIGHT CHESSBOARDS

The developments in two Hunter Biden lawsuits – his Privacy Act claim against the IRS and his hacking claim against Garrett Ziegler – made me think about how many moving parts Abbe Lowell is juggling, and the degree to which he may be staging them all to work together.

First, on January 22, Lowell successfully requested to move the hearing for Garrett Ziegler's motion to dismiss Hunter's hacking lawsuit to coincide with Rudy's (in which Robert Costello is the one defendant, on account of Rudy's bankruptcy).

IT IS HEREBY ORDERED that the hearing on Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(2), 12(b)(3), and Cal. Civ. Proc. Code Section 425.16 is continued from February 22, 2024, at 10:00 a.m. to March 21, 2024, at 10:00 a.m.

I *think* this will have the result of delaying Lowell's disclosure of his theory of venue in California and of hacking, so (for example) Costello – the far better lawyered of the two defendants – now won't have time to respond to what Lowell unveils against Ziegler. It will likewise delay this reveal until after Hunter testifies in a deposition before Congress.

Meanwhile, on January 16, DOJ filed a motion to dismiss *just part* of Hunter's IRS lawsuit based on all the documents released public via Joseph Ziegler and Gary Shapley. Hunter's lawsuit alleged two counts:

1. Grossly negligent unauthorized disclosure on behalf of both the IRS agents *and* their attorneys
2. Privacy Act violation, based

on IRS' inadequate protections against such disclosures

DOJ moved to dismiss the part of count 1 that included the IRS agents' lawyers but *not the IRS agents themselves*, and moved to dismiss the Privacy Act claim for several reasons, two technical, but also a third that Hunter did not adequately allege that IRS had not taken proper safeguards against the disclosures. Yesterday, both sides in that lawsuit asked to delay Hunter's response to February 20, giving this explanation.

Rule 6(b)(1)(A) of the Federal Rules of Civil Procedure permits the Court to extend the time for answering, moving, or otherwise responding to the complaint for good cause shown. Good cause exists to extend Mr. Biden's deadline to respond to the partial motion to dismiss to February 20, 2024. Mr. Biden's counsel is in the process of reviewing the Defendants' partial motion to dismiss and assessing the appropriate response to the motion. In addition, Mr. Biden's counsel has a number of filing deadlines in his two criminal cases and several of his pending civil cases in the next few weeks.

Notably, DOJ *did not move* to dismiss the claim that Ziegler and Shapley were grossly negligent in their treatment of Hunter's tax information. At the very least, that means Hunter can get discovery on their actions, and it likely means the same DOJ that is prosecuting Hunter Biden for tax crimes agrees that it is plausible that the two agents who were primary investigators for years treated his tax information improperly.

Consider the timing of this extension, though – the claimed basis for it. In the criminal suits, Lowell has to reply to his motions to dismiss in

the Delaware case by January 30, then file his initial motions to dismiss – which will significantly overlap with what he already filed in Delaware, but under an order from Judge Scarsi will be a fraction of the length of those in Delaware – on February 20.

Notably, Lowell is *not* asking for an extension until *after* he submits his MTDs in Los Angeles. Rather, he asked for an extension to the day those MTDs are due, meaning his response would *coincide* with the Los Angeles MTDs.

As it stands, then, the reveal of his hacking and venue theories in the two hacking lawsuits will coincide, and the reveal of his plans in the tax case and the IRS lawsuit will coincide.

Looking at the timeline below, some of what Lowell is doing becomes clear.

John Paul Mac Isaac decided to sue Hunter based on a single statement the President's son made in 2021, one that did not even mention JPMI. That statement was:

There could be a laptop out there that was stolen from me. It could be that I was hacked. It could be that it was the – that it was Russian intelligence. It could be that it was stolen from me. Or that there was a laptop stolen from me.

The statement provided Hunter the opportunity to countersue for something that wouldn't involve discovery into his entire life.

More importantly, the countersuit gave Hunter a way to obtain JPMI's copy of Hunter's data, which is undoubtedly one of the things that gave him the opportunity to sue Ziegler and Rudy (and subpoena Apple), which will – if those lawsuits survive motions to dismiss – provide a way to obtain discovery *about the laptop caper* from them. Based on that laptop, Hunter has now publicly alleged that his data – the data shared with the FBI and Congress – was stolen.

The competing claims for summary judgment are

briefed and ready for a hearing in Delaware.

Even as he was collecting data from JPMI, Hunter also started getting discovery in his criminal cases. Thus far, at least, there's a great deal that's in the public record that David Weiss is refusing to officially give Hunter (note, the language covering the three discovery productions below doesn't claim to have provided discovery on the FARA prongs of the investigation, the prongs that implicate Donald Trump's crimes).

Then there's the Dick Pic Sniffing investigation by James Comer and Jim Jordan. I and virtually everyone else you ask says it is insane for Hunter Biden to sit for a deposition before two hostile committees. But I'm ... intrigued by the fact that, by using Comer and Jordan's ineptitude to win a delay, Lowell has ensured that Hunter will have not only have visibility on what JPMI did by the time of the deposition (possibly, though unlikely, even a judgment against him), including on the hard drive the blind computer repairman gave exclusively to Republicans, but he also will have a great deal of visibility not just into the scope of the two charged cases against him, but also the FBI's provably inadequate treatment of the laptop.

Finally, consider the challenges added by David Weiss' decision to charge Hunter in two venues, Delaware and Los Angeles. Yes, Hunter is facing two Trump appointees, Maryellen Noreika and Mark Scarsi. But for several of Hunter's motions to dismiss, if a motion works in one venue, it'll do real damage to the case in the other one. Lowell already argued that if Judge Noreika rules that the diversion agreement was in effect, it would *also* bar any but the misdemeanor tax charges in Los Angeles.

Although the only charges now before the Court are the gun charges in the prosecution's lone Indictment of Mr. Biden in this District, Mr. Biden notes that the sweeping immunity of the Diversion Agreement would seem to bar

any plausible charge that could be brought against him (including the recently filed tax charges in California). The only charges that are not be barred by the immunity provision are those filed in the pre-existing Informations filed against him in this District. The Diversion Agreement called for the eventual dismissal of the gun charge Information upon the conclusion of the diversion period, but the prosecution already has dismissed it. Although the Plea Agreement was not accepted on the misdemeanor tax charge Information, the prosecution has dismissed that Information as well. Consequently, the Diversion Agreement's immunity for gun and tax-related charges would bar any similar charge from now being filed. This sweeping immunity may make it difficult for the prosecutors to appease Mr. Trump and the Republican congressmen who have criticized them, but this is the deal that the prosecutors made and it reflects their choice to place the immunity provision in the Diversion Agreement.

When Lowell argues a selective and vindictive prosecution claim in Los Angeles, he might integrate more information on how the manufactured uproar created by the IRS agents, Comer and Jordan, and Trump led to threats against prosecutors, including David Weiss personally (and also, notably, Los Angeles US Attorney Martin Estrada). More importantly, he'll already have the DOJ decision that his claim that Ziegler and Shapley were grossly negligent in the way they released Hunter's tax information (and spoiled the jury pool) has some merit. Perhaps that even gives Lowell cause to ask to delay the prosecution. Also since Lowell first filed a challenge to Weiss' appointment as a Special Counsel, the degree to which he has *never* been adequately supervised by a political appointee has become clear, perhaps inviting a

Morison v. Olson challenge that might have more merit than the existing challenge.

There are a lot of moving parts here. And while DOJ is still withholding data that is relevant, Lowell actually has information that DOJ likely does not.

I'm really not arguing this is 8-dimensional chess. Hunter is still in a world of hurt.

But Abbe Lowell may well have some dramatic reveals prepared, dramatic reveals that make Hunter's twin appearances in DC just a preview of coming attractions.

Updated Tax lawsuit below to reflect that Judge Kelly approved the delay.

1) Delaware gun case

[RECAP docket]

September 14: Indictment

October 3: Arraignment

October 12: First Discovery Production (350 pages focused on gun case), including iCloud data and "a copy of data from the defendant's laptop"

October 13: Motion to Continue

October 19: Order resetting deadlines

November 1: Second Discovery Production (700,000 pages on tax charges – no mention of FARA investigations)

November 15: Hunter subpoena request

December 4: Weiss subpoena response

December 11: Motions due

- Selective and vindictive
- Immunity from Diversion
- Constitutional
- Special Counsel Appointment

- **Discovery**

December 12: Hunter subpoena reply

January 9: Third Discovery Production (500,000 pages focused on tax case)

January 16: Responses due

- **Selective and Vindictive**
- **Immunity from Diversion**
- **Constitutional**
- **Special Counsel Appointment**
- **Discovery**

January 30: Replies due

2) Los Angeles tax case

[RECAP docket]

Hunter was indicted on December 7 and made a combined arraignment/first appearance on January 11. At that hearing, Judge Mark Scarsi set an aggressive (and, from the sounds of things, strict) schedule as follows:

February 20, 2024: Motions due

March 11: Response due

March 18: Replies due

March 27 at 1:00 p.m.: Pretrial motion hearing

April 17: Orders resolving pretrial motions.

June 3 at 1:00 p.m.: Status conference

June 20: Trial

3) House Dick Pic Sniffing Investigation

November 8: James Comer sends a pre-impeachment vote subpoena

November 28: Lowell accepts Comer's offer for Hunter to testify publicly

December 6: Comer and Jordan threaten contempt

December 13: Pre-impeachment deposition scheduled; Hunter gives a press conference and states his data has been “stolen” from him

December 13: Impeachment vote authorizing subpoena

January 10: Oversight and Judiciary refer Hunter for contempt

January 12: Lowell invites Comer and Jordan to send another subpoena, now that they have the authority to enforce it

January 14: Jordan and Comer take Lowell up on his invitation

February 28 (tentative): Deposition

4) IRS lawsuit

[RECAP docket]

September 18: Privacy Act lawsuit

November 13: DOJ asks for extension to January 16

January 16: DOJ files motion for *partial* dismissal

January 23: Joint motion to continue

January 30: Original deadline for Hunter response

February 20: New deadline for Hunter response

March 12: New reply deadline for DOJ response

5) John Paul Mac Isaac's Suit and Countersuit

Last summer, John Paul Mac Isaac and Hunter both sat for depositions, on May 31 and June 29, respectively.

Last fall, Hunter Biden subpoenaed people Rudy Giuliani, Robert Costello, Steve Bannon, Yaacov Apelbaum (who made a copy of the contents of the laptop), Tore Maras (who has described adding things to the laptop). In November, Hunter also served a subpoena on Apple.

On January 4, the parties to John Paul Mac Isaac's suit and countersuit filed to have their pending motions decided by a judge. The media defendants – CNN and Politico – are filing to dismiss. Hunter and JPMI filed competing motions for summary judgment.

And Hunter is filing to quash a bunch of subpoenas, initially 14, to Hunter's parents, uncle, ex-wife, former business partners, and several people with his father, like Ron Klain and Mike Morell. Though after that, JPMI attempted to subpoena Hunter's daughters.

6 and 7) Garrett Ziegler and Rudy Giuliani hacking suits

[RECAP Ziegler docket; RECAP Rudy docket]

September 13: Complaint against Ziegler

September 26: Complaint against Rudy and Costello; noticing Ziegler suit as related case

November 15: Ziegler gets 30 day extension

December 1: Costello gets 30 day extension

December 7: After swapping attorneys, Ziegler gets extension to December 21

December 21: Ziegler motion to dismiss and request for judicial notice (heavily reliant on JPMI suit)

January 17: Costello motion to dismiss with Rudy declaration that makes no notice of his fruit and nuts payments relating to Hunter Biden

January 22: Lowell successfully requests to

harmonize MTD hearing for both hacking lawsuits

February 8: Rescheduled date for hearing on motion to dismiss

February 22: Rescheduled date for hearing on motion to dismiss

March 21: Joined date for hearing on motion to dismiss

8) Patrick Byrne defamation suit

November 8: Complaint

January 16: After swapping attorneys, Byrne asks for 30 day extension

February 6: Rescheduled response date