

TUCKING IN ALEXANDER SMIRNOV: ABBE LOWELL ACCUSES DAVID WEISS OF DOING RUSSIA'S BIDDING

I was working on a complex post about a comment David Weiss' prosecutors made in their response to Hunter Biden's selective and vindictive prosecution claim in Los Angeles – bizarrely suggesting that because right wing claims had been debunked by David Weiss' further investigation of Alexander Smirnov, it was proof that they were operating in good faith (while still adhering to claims about Joe Biden's role in this investigation that are thoroughly debunked by the common sense implication that Biden was *targeted* by this investigation).

Tucked into a reply brief in Delaware, the defendant claimed that the Special Counsel's investigation and recent indictment in the case of United States v. Alexander Smirnov "infected this case." D. Del Dkt. 89 at p. 6. Anticipating he may make this claim in his reply here, the government notes the following. Ironically, in his recent congressional testimony before two House Committees, the defendant cited the indictment brought by the Special Counsel in the case of U.S. v. Alexander Smirnov as evidence that the Special Counsel had undermined the investigation by Republicans. He claimed, "Smirnov, who has made you dupes in carrying out a Russian disinformation campaign waged against my father, has been indicted for his lies."¹² While the defendant testified to Congress that the Special Counsel had undermined the impeachment inquiry conducted by House Republicans, to this Court he argues instead that the

Special Counsel is working at the behest of House Republicans. Motion at 13. Which is it? Indeed, the defendant has no evidence to support his shapeshifting claims because the Special Counsel continues to pursue the fair, evenhanded administration of the federal criminal laws.

It was an utterly obnoxious comment, not least because prosecutors have not provided discovery relating to this – including, about David Weiss' own role in the review of claims in 2020. These men enthusiastically chased Russian disinformation and now they're trying to be snide about it.

I need not have bothered. In advance of a Delaware status hearing Wednesday, Abbe Lowell just filed what he fashions as a notice of additional authority – invoking the Scott Brady transcript – describing that even though David Weiss claimed to start investigating Alexander Smirnov's allegation in July, he had already been briefed on Smirnov in 2020, but nevertheless chose to chase Russian disinformation again in July when House Republicans wailed loudly.

Although the Special Counsel claims that its investigation of Smirnov's fantastical claims about Mr. Biden and President Biden receiving millions of dollars in bribes began in July 2023, Mr. Weiss and his team became aware of Smirnov's claims years earlier. In October 2020, the FBI and then-U.S. Attorney Scott Brady (W.D.P.A.) passed Smirnov's allegations to then-U.S. Attorney Weiss, and the Delaware U.S. Attorney's Office was briefed on the claims contained in the now infamous FD-1023 alleging a fabricated foreign bribery scheme involving Mr. Biden and his father.¹ Again, the FBI and DOJ had closed this investigation in August 2020 because they found Smirnov's allegations

baseless, and Mr. Weiss apparently agreed because he took no action based on them for over three years.

Then, in May 2023, it is uncontradicted that extremist Republicans in the House of Representatives pushed for the FBI (even threatening to hold its Director in contempt of Congress) to release the FD-1023 in an effort to publicly air these sensational allegations against Mr. Biden and President Biden, despite those allegations being baseless. Against its wishes, the FBI relented in July 2023. ² With extremist Republicans and right-wing press outlets reviving interest in Smirnov's claims, the Special Counsel apparently reopened its investigation days or weeks later. By the end of that month (July), the then-U.S. Attorney's Office, instead of addressing with Mr. Biden's counsel the specific questions this Court asked on July 26, instead abruptly backed away from a Plea Agreement that it signed and proposed to this Court and reneged on the Diversion Agreement. The connection between the reopening of the Smirnov allegations and the then-U.S. Attorney's Office's total rejection of the Agreement it made has, at the least, the appearance of catering to the shouts of extremist Republicans to scuttle the deal and keep an investigation into Mr. Biden alive.

Effectively, Lowell argues, Weiss' decision to reopen the case against Hunter amounts to doing Russia's bidding.

From the filings in Smirnov and other disclosures, it turns out that a Russian intelligence operation has the same goal of spreading disinformation to influence the U.S. presidential election in Russia's favor. At a subsequent detention hearing in Smirnov's case, Mr.

Wise explained that Smirnov “met with Russian intelligence agencies on multiple occasions, and the U.S. intelligence community has concluded that Russian intelligence interfered in the 2020 election and continues to interfere in our elections by spreading misinformation.” *United States v. Smirnov*, No. 2:24- MJ-00166-DJA (D. Nev. Feb. 20, 2024) (Ex. 1 at 20). Mr. Wise explained that Smirnov’s “disinformation story” is part of a Russian intelligence operation “aimed at denigrating President Biden” and “supporting former President Trump.” *Id.* at 20–21, 33. Russia’s support of President Trump makes sense, as President Trump has praised the dictatorship of President Putin repeatedly and he continues to favor Russia over U.S. allies. See, e.g., Kate Sullivan, *Trump Says He Would Encourage Russia To ‘Do Whatever The Hell They Want’ To Any NATO Country That Doesn’t Pay Enough*, CNN (Feb. 11, 2024). The Special Counsel told the Nevada Court: “The effects of Smirnov’s false statements and fabricated information continue to be felt to this day.” *Smirnov*, DE 15 at 8 (Ex. 2 at 8); see also Govt’s Memo. in Support of App. for Review of Bail Order, *United States v. Smirnov*, No. 2:24-cr-00091-ODW, DE 11 (C.D. Cal. Feb. 21, 2024) (Ex. 3).

This case illustrates the very continuing harm identified by the Special Counsel. The Special Counsel tells us Russian intelligence sought to influence the U.S. presidential election by using allegations against Hunter Biden to hurt President Biden’s reelection. 3 And what did the now-Special Counsel do? The Office abandoned the Agreement it signed and filed felony gun and tax charges against Mr. Biden in two jurisdictions, which public records and DOJ policy indicate are not brought

against people with similar facts as Mr. Biden. In these actions, the Special Counsel has done exactly what the Russian intelligence operation desired by initiating prosecutions against Mr. Biden.

Read the whole thing – along with other additional authority posted, a Third Circuit case holding that prosecutors have to deliver on their promises.

Whatever else these two filings do, they'll force Weiss to explain his wildly conflicted role in this case.