

LEO WISE KEEPS DIGGING THROUGH DIFFICULTIES CAUSED BY A DUMB PROSECUTORIAL DECISION

Because I want this language to be available for some other posts, I wanted to look at a ploy Leo Wise pulled in Alexander Smirnov's Nevada detention hearing (Smirnov has another in Los Angeles later today).

In response to Smirnov's attorneys describing the document fabrication charge as, "makeweight and politically-motivated; they do not involve espionage or theft and are thus not serious'," Wise tried to use Hunter Biden's claims of selective prosecution to rebut it.

MR. WISE: Now/ in addressing the 3142(g) factors, specifically the nature and seriousness of the offense, the defendants argues that "These allegations are make-weight and politically motivated. They do not involve espionage or theft and are, thus, not serious."

I didn't know what make-weight meant so I looked it up. According to Miriam Webster, the meaning of make-weight is something thrown into a scale to bring the weight to a desired value. I have no idea what that means in this context. Maybe Your Honor does.

And politically motivated, by whom? If Defense counsel is referring to his client's allegations, then we agree. His client's messages that are quoted in the indictment show political bias on his client's part.

Or is the – is Defense counsel referring to us, the Government in this case? And that would certainly be curious. We're prosecuting Hunter Biden on tax and gun charges, and his lawyers make the unfounded claim that we're working at the direction of former President Trump and Congressional Republicans, although they can never explain why or how.

So then I guess what Defense counsel in this case is arguing is we're working at the direction –

THE COURT: Are you saying Mr. Chesnoff and Mr. Schonfeld said that in their pleadings?

MR. WISE: That's what they wrote. They wrote the charges in this case are make-weight and politically motivated.

THE COURT: So – but where do they – okay. But I – you've taken that quite a bit beyond that they're saying – what did you just say was . . .

MR. WISE: Well, I'm trying to figure out – it sounds like they're saying we're working at the direction of the White House and the Biden campaign. And the other cases –

THE COURT: Is that a leap?

MR. WISE: And the other cases –

MR. WISE: – the Defense counsels are making the opposite argument.

THE COURT: Well –

MR. WISE: So we're sort of curious which it is.

THE COURT: Well, and I'm not getting into the politics of this. I have to make a determination under the Bail Reform Act whether he's a flight risk or a danger and whether, if he is, there are conditions or a combination of

conditions to address that.

MR. WISE: Right.

THE COURT: So I have no time for the politics of this case. I understand the underlying charges. There's a component to that. But I'm not going to spend a lot of time here talking about the politics.

MR. WISE: Good. Because when we saw that, we were shocked that he would make the accusations –

THE COURT: So go on and continue with your argument.

MR. WISE: Now, the Defense counsel calls the charges not serious, which begs the question is he serious. The defendant's lies have captured –

THE COURT: All right. I'm not going to get personal with the attacks on counsel. All right? Let's keep it to the facts and the law. You don't need to make snide remarks about "is he serious." And I'm not going to tolerate that from either side .

MR. WISE: Understood, Your Honor. The defendant's lies in this case have captured the national imagination. And while the – while the filing says they do not involve espionage, of course the charges do involve foreign intelligence services.

He lashed out again later in the hearing.

MR. WISE: You know, while counsel claims, I guess – I mean, in addition – and I hear him say now that the "serious" comment was about the – the sentence, but that's – that's not actually what he wrote. He wrote: "These allegations are make-weight and politically motivated. They do not

involve espionage or theft and are, thus, not serious.” That’s – that’s his words. And he – he actually ascribes bad motives to us. He says the only reason we want to keep him in is so that he can’t defend himself, and he mentioned improper motives of the Bureau. I wasn’t quite following what he meant.

MR. CHESNOFF: Your Honor, could you ask him to stop? Like, suggest – enough is enough.

I wouldn’t call these “makeweight.”

It’s likely that close scrutiny of Smirnov’s ties to Russia in the conjunction of involvement in two information operations, to say nothing of his possible retroactive reporting to cover it up, made the charges necessary.

But it is also absolutely certain they would not have been charged if Wise had not used the FD-1023 to reopen the case against Hunter Biden and charge him with a bunch of felonies.

Wise seems to have believed, then, that he could bully his way through charges. And he seems to believe, here, that he can continue to do so.

But ultimately both problems stem from a stupid prosecutorial decision, one that didn’t take the difficulties of this case into consideration.

Update: Smirnov’s attorneys have posted a pretty reasonable release proposal, including a Special Master to prevent spending his millions and assurances from the Israeli consulate that they won’t reissue his Israeli passport.

Update: Judge Otis Wright granted the prosecution request for detention.