JUDGE MARYELLEN NOREIKA PREPARES FOR A HUNTER BIDEN TRIAL … WITHOUT BATES STAMPS

A series of decisions came down today in the Hunter Biden gun case that tee up the case for trial starting on June 3.

Those were:

- A Third Circuit order denying his bid for an interlocutory appeal
- A scheduling order hewing to the previous schedule to start trial on June 3
- Judge Maryellen Noreika's order denying Hunter's motion to dismiss on Second Amendment grounds
- Noreika's order denying all Hunter's requests for discovery
- Two oral orders scheduling a status conference to deal with major issues on which the deadline has already passed:

> ORAL ORDER: Defendant's counsel has represented that he is unavailable to appear at the in-person May 10, 2024 status conference set in the Court's Scheduling Order (112). Although the government objects to moving the conference, IT IS HEREBY ORDERED that the status conference is rescheduled for

> Tuesday May 14, 2024 at 11:00 am in Courtroom 4B. Defendant is not required to attend.

Virtually all of these should be regarded as expected to presumed. For example, while it wasn't clear whether Noreika would rule on the 2A challenge before trial (Abbe Lowell had invited her not to), she relied on a recent 8th Circuit appeal to deny his motion, which made it far easier.

The Third Circuit appeal was unsurprising, and involved two Democratic appointees, including a judge — Cindy Chung — appointed by Hunter's father. I think Hunter has a very good argument on a number of these points on appeal, but little basis to argue for interlocutory appeal.

Parts of the discovery order, however, are different. To be sure, many of these were expected. Having denied Hunter's selective prosecution (while relying on evidence from Rudy Giuliani and falsely attributing it to Hunter's memoir!!), it's unsurprising that Noreika denied his discovery requests about Rudy's role in the side channel that led to the Alexander Smirnov tip and therefore the collapse of the plea deal. It is nearly impossible to get discovery on grand jury proceedings, not even in a courthouse where a key staffer has it out for a defendant's dad (which Abbe Lowell didn't mention and may not know), so it's unsurprising it failed here. Judges generally rely, as Noreika did, on prosecutors' assurances they have complied with Brady, even in cases where it's clear that AUSAs have been sheep-dipped so they don't learn about Brady.

The degree to which David Weiss sat in a courtroom watching prosecutors make claims he knew to be false will all be ripe on appeal. But it's not now.

Noreika's order that prosecutors can sandbag Hunter with 404(b) material (describing otherwise incriminating details, which I expect

will include an account from a sex worker in California about Hunter having a gun there, and probably other things from his memoir) a week before trial is churlish, but the kind of thing you might expect after you've threatened to *mandamus* a judge. It is totally within her purview, which is why it so risky to attempt to mandamus a judge before trial.

The one decision that surprises me is Noreika's decision not to order prosecutors to tell Hunter where they've gotten evidence from the laptop.

> Defendant closes his motion with a request that the government be ordered to "generally point defense counsel" to where, on a forensic image of Defendant's "Apple MacBook Pro," certain text and photographs can be located. (D.I. 83 at 18). That forensic image was produced to Defendant in October 2023 without an index, without any Bates stamps and without any indication of what will be used at trial. (Id. at 17). Although the government produced the laptop in the specific format requested by Defendant (D.I. 86 at 19), he complains that he has been unable to locate on the image certain text and photographs relied upon by the government (D.I. 83 at 17-18). In its opposition, the government provides an exhibit with images and annotations that appears to identify where the information resides on the laptop. (See D.I. 86 at Ex. 1). As best the Court can tell, this response satisfied Defendant, and there are no further outstanding requests with respect to the laptop. (See D.I. 89 at 19-20 (recognizing that the government has no index and expressing appreciation for the government's disclosure of location of information)). Therefore, Defendant's request as applied to the Apple MacBook Pro appears moot.

Given that Noreika has relied on laptop-derived evidence while ruling that Rudy didn't have any influence in this case, this alarms me.

For reasons I don't understand, after threatening to file a motion to suppress the laptop, Abbe Lowell has not done so. But the admissions Derek Hines made so far make it clear he has already relied on material that may violate US v. Riley not to mention material that will be ripe for other evidentiary challenges. And that came before the Robert Savage lawsuit made it clear this investigation has been tainted by fabricated evidence.

The decision not to move to suppress laptop evidence is Abbe Lowell's. I can't pretend to understand that choice.

Nevertheless, if prosecutors try to rely on laptop-based evidence, as they did extensively in defeating Hunter's motion to dismiss, the decision to let prosecutors proceed without Bates stamps seems wildly ill-considered — all the more so given that they relied on evidence that arguably should have been treated as privileged and claimed sawdust was cocaine.

At the very least, it'll dramatically raise the import of expert disclosure, which hasn't even started, because someone from Hunter's team and from the government team are going to have to argue at trial about whether every bit of evidence is reliable or is, instead, potentially the result of hacking. And it risks bogging down the trial. Thus far, the government hasn't committed — at all!! — to have someone testify about why someone allegedly called John Paul Mac Issac to find out how to break into the machine before they had a warrant, about why they never took basic forensic steps with the laptop. If they intend to rely on laptop based evidence without Bates stamps, it will dramatically intensify any effort to admit this evidence.

Like I said, almost all of these decisions could be expected. They tee up a trial that will be enormously damaging to the President's son.

But they also lay out decisions that I believe are incredibly ripe for appeal … after trial.

Update: Judge Mark Scarsi has denied David Weiss' demand that Scarsi make Hunter adhere to the existing pretrial schedule. Hunter's bid for interlocutory appeal is slightly less of a longshot in the 9th Circuit, though threatens to hold Hunter to existing deadlines.

> To be clear, the Court has not vacated the pretrial schedule, and absent a request for relief, Mr. Biden ignores the Court's orders at his own peril. If the Ninth Circuit dismisses the interlocutory appeal for lack of jurisdiction, the Court intends to proceed to trial without significant delay.