

REMAINING EVIDENTIARY DISPUTES IN HUNTER BIDEN CASE

As I laid out, Judge Maryellen Noreika has prohibited Hunter Biden from showing the jury the physical form that is the basis of two of the three charges against him. Her ruling may also have the effect of prohibiting him from explaining circumstances of the purchase – the gun shop owner says he was trying to get Hunter out of his store and so didn't do the proper due diligence on the ID he showed *because of his father*, because she has prohibited *any* discussion of politics, even though by the gun shop owner's own description, his view about Biden affected how he conducted the sale.

Judge Noreika also ruled against Hunter's requested changes to the jury instructions and excluded the expert he wanted to call to testify about addiction, while deferring a decision on his forensic expert.

Abbe Lowell has submitted challenges to government exhibits (prosecutors will squeal that he did this late but this is a response to an updated exhibit list they provided on Friday).

Although Judge Noreika excluded lifestyle and spending claims from the trial, the government has listed all of Hunter's Wells Fargo exhibits for September, October, and November 2018. Lowell objects to these coming in as a whole.

He also objects to three photos from the phone of a woman named Zoe Kesten, who may be the third female witness against him.

Biden objects to three photos included in GTX-38 ("Photos from Zoe Kestan's iPhone") as having no probative value and no relevance under Rules 401 and 403. The screenshots with Ms. Kestan and one photo of Mr. Biden sleeping, in

which no drug paraphernalia is displayed or otherwise evidence, are not probative of drug use, drug purchasing, or drug-related activity and are more prejudicial than probative. Any testimony from Ms. Kesten about the nature of their interactions can be elicited on direct testimony, without introduction of these three photos.

Page 7: Photo of Mr. Biden sleeping on 6/18/2018 at 10:41 AM

Page 10: Photo of Mr. Biden on facetime with Ms. Kestan on 7/22/2018 at 7:13 PM

Page 11: Photo of Mr. Biden without clothing on and a tattoo on his back on 9/10/2018 at 5:09 PM

If she is the one who will testify that Hunter was smoking crack almost constantly when they were together, prosecutors probably want these photos to prove she was with him. The September photo would be particularly important as it is the single piece of evidence between one of Hunter's attempts at rehab and his purchase of the gun in October.

Lowell has submitted his request for additional parts of Hunter's memoir to come in under a rule of completeness; the government objects to all of them. Here's one example of the kinds of things (Hunter's requested inclusion is in red) the government is trying to exclude.

Crazy as it sounds, a substance abuser often feels like a smarter version of a non-abuser. I wasn't a sloppy or mean drunk; I wasn't an addled or dangerous crackhead. Whether it's genetic or physiological, I have the capacity and tenacity to use to excess, and a single-minded unwillingness to quit. That makes addiction easy rather than hard. I had figured out how not to feel bad while still going on about my business. I couldn't comprehend how people who weren't addicts didn't understand how great crack cocaine is. I mean, if you

This excerpt, in particular, is bound to be very hotly contested.

Finally, and of most obscure interest, Lowell is trying to exclude a significant number of communications – basically the things marked in blue (remember that prosecutors say Hallie will validate the pink files).

	Source	Date start	Date end	Lines
iCloud (04)	84	4/17/18	7/25/18	1-84
Laptop Messages	2	8/8/18	8/8/18	85-86
Laptop (Messages)	1	10/8/18	10/8/18	87
Laptop (iTunes)	7	10/13/18	10/27/18	88, 135, 136-137, 138, 150-151
Laptop (iTunes Hallie)	58	10/13/18	11/3/18	89-134; 139-149, 152
iCloud (03 Hallie)	26	11/8/18	12/3/18	153-163, 168, 181-194
iCloud (03)	35	11/21/18	12/29/18	164-167, 169-180, 195-213
Laptop (iTunes)	2	1/14/19	1/31/19	214, 216
iCloud (03 Hallie)	1	1/28/19		213
Laptop Messages	78	2/25/19	3/7/19	217-292
	294			

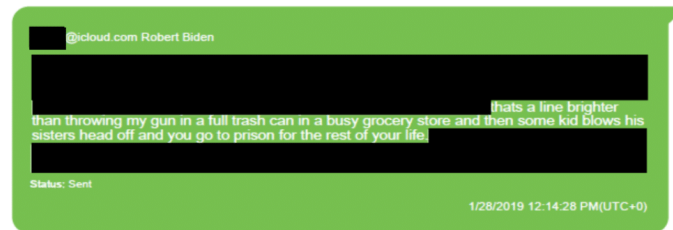
They include:

- All the laptop comms from the last two weeks it was in use
- A text sent to Hallie about the gun on January 28, 2019
- Two videos from late December 2018
- Two photos from January 2019 from when he was at Keith Ablow's

On paper this makes sense. The charges against Hunter pertain to his mindset on October 12, 2018, and his awareness of drug use and gun possession in the subsequent 11 days. His mindset in February 2019 is absolutely irrelevant to those charges (and, after all, prosecutors have just succeeded in arguing that the gun shop owner's bias against Joe Biden in 2020 is irrelevant to his actions in 2018).

But these are some of the files that the prosecutors have had a prurient obsession with, repeatedly and falsely claiming that Hunter's addiction in 2019 shows what his addiction in October 2018 was like.

The January 28, 2019 text to Hallie, however, is one that prosecutors will almost certainly argue goes to the heart of the case.



It describes him yelling at her for throwing away the gun the previous October (though there are related comms from that period that would put this one in context).

And the four visual files are among the sleaziest (and two are Murdoch favorites), several show Hunter nude.

The specific objections regarding those are of interest given questions about provenance. Lowell suggests that a late December video may record the voice of someone besides Hunter.

Pursuant to Federal Rules of Evidence 401 and 403, Biden objects to the use of this video dated 12/29/2018 because it is dated close to three months after the relevant period when Biden purchased a handgun and is more prejudicial and inflammatory than it is probative under Rule 403. GTX-18D is also cumulative of other documentary evidence the government will introduce. Furthermore, to the extent the government also intends to suggest the voice heard in the background is Biden's, we object to any suggestion this is Biden's voice.

And Lowell suggests that a January 31, 2019 photo doesn't establish whose "smoking device" was in a photo.

Biden objects to the use of this partially-redacted photo displaying alleged drug paraphernalia dated 1/31/2019 because it is dated almost

five months after the relevant period when Biden purchased a gun, does not establish where the photo was taken and, therefore, who might be the owner of the smoking device that is in the background, and is more prejudicial than it is probative under Rule 403. GTX18F is also cumulative of other documentary evidence the government will introduce

Several of these happen to be the communications whose authenticity are among the most suspect, and if Lowell excluded all the texts from February 25 and afterwards and the two January photos, it would have the effect of excluding all laptop communications not authenticated by Hallie. Which makes me wonder if Lowell is abandoning his plan to challenge the authenticity of any laptop communications.