

Abbe Lowell Claims Versus Reality
August 15, 2023

Lowell claim:

- “After five years of what has to be one of the most thorough investigations that office has ever done...using an experienced career set of prosecutors, thought that the only charges that were appropriate would be two misdemeanor failure to file charges and a diverted gun charge... And that was after five years of painstaking investigation. So, whatever his title is, and whatever happens next, we're confident that that should be the same conclusion. And if it's not, then something other than the facts, and the law has come into play.” — The Source with Kaitlan Collins (CNN), 8/11/23
- “Who could say that they have been the subject of such a painstaking investigation, looking at every nook and cranny, in which a conclusion was two tax misdemeanors, and a diverted gun case, to turn into anything else?” — The Source with Kaitlan Collins (CNN), 8/11/23
- “You have five years, painstaking investigation, looking at every possible transaction that Mr. Biden was involved in, concluding that the only appropriate charges were two misdemeanors, and a diverted gun charge.” — The Source with Kaitlan Collins (CNN), 8/11/23
- “The prosecuting office...after five years believed the proper charges were what happened on July 26th.” — The Source with Kaitlan Collins (CNN), 8/11/23
- “So, why after grand jury proceedings, search warrants, interviews, and proceedings that came up with two tax misdemeanors, and one diverted gun charge...should there be a conclusion...that should not be the case?” — The Source with Kaitlan Collins (CNN), 8/11/23
- “The report will be a terrific vehicle, to point out that all the crazy allegations, made by people with a partisan bent are not the case, that the facts only supported the charge of failure to file that Mr. Biden himself was prepared to concede.” — The Source with Kaitlan Collins (CNN), 8/11/23
- “I can assure you that five years concluded that the only two charges that made sense were two misdemeanors for failing to file like millions of Americans do, and a diverted gun charge.” — Face the Nation (CBS), 8/13/23
- “Whether it was tax or the gun, or possible any other charge, if anything changes from his conclusion, which was two tax misdemeanors, and a diverted gun charge, the question should be asked: what infected the process that was not the facts and the law?” — Face the Nation (CBS), 8/13/23

Reality: Plea agreements frequently involve lesser charges than the government would seek to prove if it went to trial. In this case, the investigation referred to the Department of Justice in early 2019 was for felony tax evasion. As a result of the investigation, the U.S. Attorney’s Office for the District of Delaware concurred in the IRS on February 25, 2022 recommending to the Justice Department Tax Division charging felony violations of 26 U.S.C. § 7201 (“Attempt to evade or defeat tax”) and § 7206(1) (“Fraud and false statements—Declarations under penalties of perjury”) for 2014, 2018, and 2019, as well as misdemeanor violations of 26 U.S.C. § 7203 (“Willful failure to file return, supply information, or pay tax”) for 2015, 2016, 2017, 2018, and 2019.

For 2014, key felony actions included Biden’s attempt to conceal approximately \$400,000 in income from Burisma as a loan to himself through Rosemont Seneca Bohai, the nominee to which he diverted the income. Biden’s own advisor Eric Schwerin emailed him on January 16, 2017: “In 2014 you joined the Burisma board and we still need to amend your 2014 returns to reflect the unreported Burisma income.” Yet an amended return was not filed and, to this day, the over \$124,845 in tax loss has not been repaid to the government (including payments attorney Kevin Patrick Morris would later make on his behalf).

For 2018, key felony actions included falsely claiming as business expenses prostitutes and their travel expenses; a payment to a sex club; and payroll payments to “no-show” employees including Lunden Roberts, the soon-to-be-mother of one of his children.

For 2019, key felony actions related to tax issues with withdrawing money from a 529 college savings plan and failing to report the withdrawal or pay relevant penalties.

Because proper venue for the 2014 and 2015 tax charges was the District of Columbia and for the 2016-2019 charges was the Central District of California, U.S. Attorney David Weiss was unable to bring the charges on his own without the partnership of Justice Department headquarters or the relevant U.S. attorneys in those districts, or special authority granted by the Attorney General.

Lowell claim:

- “Millions of Americans file their taxes late... So, there have been commentators who have pointed out that wasn't for the fact that Hunter had the last name of Biden, he might, in fact, have been treated differently. But we understand that high-profile subjects of investigations get more scrutiny... Those who think that he got some sort of sweetheart deal should look at all the other people that have committed the same offense that he was willing to take responsibility for, and see what happened to them.”
— The Source with Kaitlan Collins (CNN), 8/11/23

Reality: The IRS handles civil enforcement surrounding late taxes very differently from its criminal investigations, which examine willful acts of evasion, material misstatements on falsely

filed tax returns, and knowledge that one is committing a crime. This case is not just a matter of “late” taxes. As described above, Biden has not paid all the taxes owed. His history of tax non-compliance dates back to the early 2000s. Furthermore, his returns were not just delinquent, but contained false deductions that have never been corrected, which as described above is a felony offense.

Investigators testified to Congress that the President’s son *was* treated differently because his last name was Biden, but only to his benefit. Against the objection of investigators, prosecutors removed Hunter Biden’s name from documents requests, court orders, and electronic search warrants, even while conceding this would result in them not obtaining all records. Search warrants for both Hunter Biden’s and his father’s residences were denied even though prosecutors acknowledged there was probable cause to obtain the warrants. Even an unintrusive search warrant for a storage unit was aborted when prosecutors tipped off defense counsel.

Regarding the plea agreement, the Justice Department’s Criminal Tax manual specifically addresses how the Department ensures the evenhanded treatment of taxpayers: “Cases involving individuals who fail to file tax returns or pay a tax but who also commit acts of evasion or obstruction should be charged as felonies under Section 7201 or Section 7212(a) to avoid inequitable treatment.” The initial plea agreement prosecutors drafted did not follow this guidance. Furthermore, during the July 26, 2023 plea hearing, prosecutors admitted three different times to Judge Maryellen Noreika that the manner in which they were seeking to grant immunity was without precedent.

Lowell claim:

- “There’s a very well-known case, here in the District of Columbia, of a partner, in a law firm, who did not file his taxes for, I think, 11 years, and owed almost \$8 million, and was able to resolve that, with a civil result, paying interest and penalties.” — The Source with Kaitlan Collins (CNN), 8/11/23

Reality: It is unclear to which case Lowell is referring. However, his own description is that the individual went through the civil enforcement process, whereas investigators started by finding felony intent to deceive in Biden’s case. Lowell also says that the individual paid the entirety of his back taxes with interest and penalties; Biden has not done so. The case referenced above may be similar to that of Roger Stone, who filed regular returns but failed to pay \$1.5 million in tax that those returns documented was owed. That case was also different from this one in that there was no allegation that Mr. Stone evaded filing the returns or filed false information in the returns.

A far better comparison is the case of Darryl De Sousa, a former Baltimore City police commissioner whose case was prosecuted by the exact same Assistant U.S. Attorneys as those who negotiated Biden’s plea deal, Leo Wise and Derek Hines. De Sousa was charged with misdemeanor violations of 26 U.S.C. § 7203 (“Willful failure to file return, supply information, or pay tax”) for a tax loss of \$67,587—approximately half of the tax loss in the Hunter Biden

case. Prosecutors recommended he be incarcerated for 12 months, and he was sentenced to 10 months of incarceration.

Lowell claim:

- “This group of prosecutors who are Republicans appointed by Donald Trump...” — Face the Nation (CBS), 8/13/23

Reality: U.S. Attorney David Weiss is the only prosecutor on the case nominated by former President Trump. However, according to the Delaware News Journal, “U.S. Senators Tom Carper and Chris Coons nominated Weiss as a candidate for the four-year position.” The support of Delaware’s two Democratic U.S. Senators was required under the longstanding Senate practice of deferring to “blue slips” from home state senators. Prior to their recommendation, Weiss had been the Acting U.S. Attorney during the Obama Administration (2009-2011) and the career First Assistant U.S. Attorney ever since (2011-2018).

The lead prosecutor for almost the entirety of the case, Assistant U.S. Attorney Lesley Wolf, donated to Democrats in 2020 and 2022. Her husband is a longtime Democratic donor, dating back to the 2008 and 2012 Obama/Biden campaigns. Additional reporting has noted that former Biden staffer and longtime friend of Hunter Biden Alexander Mackler served as another of Weiss’s Assistant U.S. Attorneys from 2016 until May 2019.

Special Agent Joseph Ziegler testified that when the Justice Department determined jurisdiction in 2019, he sought to have it assigned to the District of Columbia, where Hunter Biden had lived in 2014 and 2015. Not only did it appear there was unlikely to be venue in Delaware, he testified he was concerned about how well-known the Biden family was in the very small state, including by investigators and prosecutors assigned to the case. An inappropriate comment made by a Delaware magistrate judge signing the first electronic search warrant even led to that judge’s recusal, which cost the investigative team 4 months to seek new warrants.

Lowell claim:

- “What did they have as a motive to turn the other way to anything that they found that would have indicated wrongdoing against Hunter Biden? There was none. And that's what's missing in the equation.” — Face the Nation (CBS), 8/13/23
- “No one has come up with a reason why anybody who was on the prosecution team would have gone easy on Hunter Biden.” — Face the Nation (CBS), 8/13/23

Reality: The special treatment Hunter Biden received is broadly attributable to both the U.S. Attorney’s Office for the District of Delaware *and* the fact that it had to obtain approvals from other U.S. Attorneys appointed by President Biden.

As Supervisory Special Agent Shapley and Special Agent Ziegler testified, from 2019 to 2021 prosecutors in the Delaware U.S. Attorney’s Office slow-walked the investigation and closed a

number of investigative leads, declining to let the agents follow the facts where they led. While the actions of prosecutors like Assistant U.S. Attorney Wolf sometimes appeared partisan, the agents have not claimed to know prosecutors' motivations for these moves.

Because U.S. Attorney Weiss did not have special charging authority, like special counsel or special attorney authority, he was unable to bring charges outside of his district without the support of DOJ's Tax Division or of the relevant U.S. Attorney's office. In 2022 DOJ's Tax Division granted "discretion" in the case, meaning it would not assign its own Assistant U.S. Attorneys to the case. That only left partnering with the relevant U.S. Attorneys, and both U.S. Attorney Matthew Graves (D.C.) and Martin Estrada (Central District of California) declined to do so.

Finally, it is hard to measure what impact Hunter Biden's own legal team had on the government's treatment of their client. As both Supervisory Special Agent Shapley and Special Agent Ziegler testified, in August 2022 they became aware Biden's attorney Christopher Clark told prosecutors they would be committing "career suicide" if they charged his client.

Lowell claim:

- "From money laundering, to foreign corruption, to foreign agent... It's not as if that wasn't looked into." — The Source with Kaitlan Collins (CNN), 8/11/23
- "After five years and what we know happened in the grand jury, of course that had to be part of what the prosecutor has already looked at, as well as every other false allegation made by the right wing media and others, whether it's corruption or FARA, or money laundering. That was part of what this prosecutor's office had to have been looking over for five years." — Face the Nation (CBS), 8/13/23
- "There's no new evidence to be found. Some of these transactions are years old. They've had people in the Grand Jury, they've had data that was provided to them." — Face the Nation (CBS), 8/13/23
- "Five years, thorough investigation, looking at the Chinese, the energy company, the other foreign businesses he did. That was not something that wasn't looked at."

Reality: Investigators were blocked by prosecutors on multiple occasions from looking into the entirety of these matters.

For example, Supervisory Special Agent Gary Shapley testified the Justice Department failed in September 2020 to approve an email search warrant for the lobbying firm Hunter Biden worked with on the Burisma matter, Blue Star Strategies. Its two top executives filed retroactive Foreign Agents Registration Act reports in 2022 for their work with Hunter Biden and Burisma in 2015 and 2016. Hunter Biden has never filed any such report.

Similarly, SSA Shapley testified that although he notified his chain of command in May 2021 that evidence showed possible criminal campaign finance violations, the Delaware U.S. Attorney's Office obstructed the IRS from pursuing the charges further.

Lowell claim:

- “What happened today, as a practical matter, is not much different than what was the case, yesterday, or three weeks from before. The Attorney General and Mr. Weiss both have said for weeks, months, that he had all the authority he needed, to bring any charge that was merited, at any time that was appropriate, in any place that made sense. And so, the power that a Special Counsel has is the power that he has had. So, from a practical point of view, nothing really changed.” — The Source with Kaitlan Collins (CNN), 8/11/23

Reality: Lowell is in fact correct that both Attorney General Garland and U.S. Attorney David Weiss have repeatedly made this claim. Nevertheless, as described above, U.S. Attorney Weiss had no ability to bring charges on his own in the proper venues of the District of Columbia and the Central District of California. Special counsel authority grants him the ability to do so.