

THE DAVID WEISS AND LEO WISE INCONSISTENCIES LEFT OUT OF HUNTER BIDEN ARRAIGNMENT COVERAGE

In testimony given to the House Judiciary Committee on November 7, 2023, David Weiss told Steve Castor and then Jim Jordan that the investigation into Hunter Biden was continuing, even after the plea deal filed on June 20 (here's Politico's coverage).

Q One of the big questions I think a lot of our members have is that, as of last July, you know, heading into July 26th, you know, we saw the plea agreement and the pre-trial diversion agreement; you know, we thought this matter was coming to a close, and then it didn't.

How do you address the fact that this was on the verge of being completely over and wrapped up on July 26th and then, boom, in August, you have to request Special Counsel status, now you're standing up a whole new office, and we've got an investigation that could go on for some time?

A Yeah. I understand the question and the members' curiosity.

Q Uh-huh.

A Because I've got ongoing litigation in Delaware, I'm not at liberty to discuss it. But —

Q Uh-huh.

A — I can say that at no time was it coming to a close. I think, as I stated

in the one statement I made at the time
—

Q Uh-huh.

A — the investigation was continuing. So it wasn't ending there in any event.

Chairman Jordan. When the judge would've accepted the agreement, it wasn't over?

Mr. Weiss. Our efforts were not concluded; that's correct.

According to a declaration, made under penalty of perjury, submitted last month by former Hunter Biden attorney Chris Clark, that Weiss claim — made under penalty of prosecution — conflicts with what Weiss' First AUSA Shannon Hanson told him on June 19, 2023.

35. On June 19, 2023, at 2:53 PM EST, after I had a phone call with AUSA Hanson indicating I would do so, I emailed AUSA Hanson a proposed press statement to accompany the public release of both Informations that read, in part, "I can *confirm* that the five-year long, extensive federal investigation into my client, Hunter Biden, *has been concluded* through agreements with the United States Attorney's Office for the District of Delaware." (Emphases added.) A true and correct copy of Chris Clark's June 19, 2023, email to AUSA Hanson is attached hereto as Exhibit P.

36. Shortly after that email, I had another phone call with AUSA Hanson, during which AUSA Hanson requested that the language of Mr. Biden's press statement be slightly revised. She proposed saying that the investigation would be "resolved" rather than "concluded." **I then asked her directly whether there was any other open or pending investigation of Mr. Biden**

overseen by the Delaware U.S. Attorney's Office, and she responded there was not another open or pending investigation. Thereafter, at 4:18 PM EST that day, I sent AUSA Hanson a revised statement that read: "With the announcement of two agreements between my client, Hunter Biden, and the United States Attorney's Office for the District of Delaware, it is *my understanding* that the five-year investigation into Hunter *is resolved*." (Emphases added.) The new statement revised the language from "concluded" to "resolved," a stylistic change that meant the same thing. A true and correct copy of Chris Clark's June 19, 2023, email to AUSA Hanson is attached hereto as Exhibit Q [Clark's italics, my bold]

I've seen no coverage of Hunter Biden's arraignment from yesterday – not the decent stories from NYT and ABC and not the typically shoddy story from WaPo – that mentions this discrepancy. And yet even though most stories on the arraignment described that the plea deal fell apart last July, none reported that Clark claims Weiss' office assured Hunter there was no ongoing investigation on June 19 but then claimed on June 20 that there was an ongoing investigation.

This is absolutely crucial background to ABC's report of how the plea deal was discussed yesterday.

The parties also again discussed the failed plea deal that led to the tax indictment last month. At one point during the 30-minute hearing, an attorney for Hunter Biden stood to express frustration with the plea deal falling apart, saying "we had a resolution of this case in 2023 and then things happened."

The government pushed back, saying:

“pleas fall apart all the time.”

Plea deals fall apart all the time. But government lawyers do not tell defendants one thing in June and then tell members of Congress something entirely different in November, as Hunter’s team alleges occurred.

And there’s another discrepancy in what prosecutors are saying, something that underscores the ethical problem with the tax indictment against Hunter (and the shoddy reporting of many outlets, including WaPo).

On July 26, 2023, Leo Wise stood as an officer of the court and made this representation to Judge Maryanne Noreika.

Approximately a year-and-a-half later, on or about October 18th, 2021, a third party paid the Internal Revenue Service \$955,800 to cover Biden’s self-assessed individual tax liability with interest and penalties for tax year 2017 and \$956,632 to cover Biden’s self-assessed individual tax liability with interest and penalties for tax year 2018.

In addition, in or around February of 2020, Biden’s California accountants discovered that Biden’s 2016 Form 1040 had not been filed. The return was originally prepared in or around October 2017 and showed \$15,520 in taxes due and owing. Though it was delivered to Biden at Biden’s office, this return was not filed with the Internal Revenue Service. After learning in 2020 that the Form 1040 for 2016 remained unfiled, Biden filed a Form 1040 on June 12, 2020. For tax year 2016, Biden reported \$1,580,283.12 in total income and self-assessed tax due of \$492,895, of which \$447,234 was timely paid, leaving a balance due and owing of \$45,661. Biden did not include a payment with this return. On or about October 18, 2021, this liability, plus

accrued interest and penalties, was also fully paid by a third party.

Finally, after seeking an extension, Biden timely filed his 2019 Form 1040 on or about October 15th, 2020. He did not, however, pay his estimated tax due when filing for an extension as required by law. For tax year 2019, Biden reported \$1,045,850 in total income and a self-assessed tax due and owing of \$197,372. On October 18, 2021, this liability, plus accrued interest and penalties, was also fully paid by the same third party

[snip]

THE COURT: All right. In Exhibit 1, there are references to taxes paid by a third party on Mr. Biden's behalf of \$955,800, and \$956,632, as well as \$492,000 in 2016 and \$197,000 for 2019. Just looking at 2017 and 2018 which are the subject of this case, those numbers add up to more than \$1.9 million. Can you help me square that with the relevant conduct.

MR. WISE: So the amount that was paid by the third party includes significant penalties and interests which we have not included in the loss stipulation that's in paragraph 5A. The paragraph 5A is the taxes and there is a dispute as to what the taxes were based on the business deductions and that's something that the parties will address in their sentencing memorandum, but this number is loss without inclusion of the penalties and interest.

Nevertheless, the indictment signed by Leo Wise obtained on December 7 doesn't mention that the taxes were paid.

DAVID WEISS
Special Counsel



LEO J. WISE
Principal Senior Assistant Special
Counsel

DEREK E. HINES
Senior Assistant Special Counsel

United States Department of Justice

Indeed, there's no record that the grand jury ever learned that, while there's still a dispute about 2018, the taxes have been paid, with penalties and interest.

This is what led dull-witted scribes like Devlin Barrett to state, as fact, that prosecutors alleged that Hunter failed to pay his taxes, even though their own stories claim to know what happened in July, when that very same prosecutor said Hunter did pay the taxes.

Federal prosecutors alleged in a 56-page indictment filed last month that Hunter Biden, who moved to Los Angeles in 2018, failed to pay at least \$1.4 million in federal taxes from 2016 through 2019. The charges include failing to file and pay taxes, tax evasion and filing false tax returns. Three of the charges are felonies and six are misdemeanors.

And it also lies at the core of the debate over whether anyone normally would be charged for such a fact set. Which is why the conflict between what Leo Wise said in July and what Leo Wise said in December should be a central part of the story.

In June, at least according to Chris Clark, David Weiss' top AUSA said there was no ongoing investigation. In November, under pressure from Congress, David Weiss said there was.

In July, Leo Wise said that (aside from the dispute about 2018), the taxes have been paid, with interest. In December, Leo Wise told a grand jury – along with credulous journalists – they had not been.

One cannot report, with certainty, on what has happened until you account for those two incompatible claims from Hunter Biden's prosecutors. One cannot make *any* claims about how this will end up until one determines whether David Weiss lied to Congress or Chris Clark lied in his sworn declaration.

And yet none of that appeared in the arraignment coverage yesterday.