

ABBE LOWELL ALREADY ACCUSED DAVID WEISS OF A BRADY VIOLATION

There was something subtle but potentially important in Abbe Lowell's motion to compel discovery in Hunter Biden's gun case.

First, after discussing the discovery requests he sent in October and November, he described reminding prosecutors (this is actually in the October letter) that Leo Wise had assured Judge Maryellen Noreika on July 26 that prosecutors had provided all Brady materials.

Mr. Biden reminded the prosecution that this Court ordered the production of Brady materials on July 26 and October 3 and asked the prosecution to confirm whether further productions were forthcoming, or Mr. Biden would need to move to compel. *Id.* As the Court may recall, the prosecution told the Court *at the July 26 hearing* that it had already produced all Brady material. (7/26/23 Tr. at 7 (“THE COURT: Has all Brady material been produced? MR. WISE: Yes, Your Honor”).) Yet, the prosecution did not send the first production for almost three months, until October 12, 2023, with a cover letter noting its production was “in response” to Mr. Biden’s October 8 letter requesting discovery. [emphasis original]

Then, later in the motion, Lowell described that the Delaware case file prosecutors didn’t provide until October 12 – in response to the October 8 letter – included a declination decision.

Despite assuring the Court all Brady material had been produced on July 26, 2023, since then, the prosecution has

produced an October 2018 state police case file of the firearm incident that includes interview memoranda and deliberations among Delaware state prosecutors regarding whether to file charges—per the file, on October 30, 2018, after reviewing the facts, New Castle County prosecutors decided *not to prosecute* and closed the case. [emphasis original]

A decision not to charge for state crimes would be helpful but not definitive at a trial on federal charges. But it pretty clearly is helpful to Hunter Biden's defense.

And yet, prosecutors hadn't provided it to Chris Clark before, on July 26, Leo Wise assured Judge Noreika that prosecutors had provided all Brady.

I suspect the motion to compel is designed as much as a challenge – “is this your final answer?” – before Lowell makes further allegations that prosecutors withheld material helpful to Hunter's defense. That is, I suspect Lowell knows of certain things, perhaps the memos that Joseph Ziegler's original supervisor, Matthew Kutz, included in the case file documenting improper political influence, that also clearly count as Brady that he hasn't received yet.

That said, I suspect there was a pretty good reason prosecutors didn't bother to give Clark that Delaware case file before the hearing on July 26: because there was never any consideration of actually charging Hunter on the gun crimes. That is, whatever Brady they provided was likely focused on the tax case, not the gun one, because the gun charge was never going to be charged.

Until Leo Wise, who assured Judge Noreika that prosecutors had complied with Brady, decided that he was going to charge those gun crimes.

Particularly given DOJ's increased focus on such things in recent years after some really big

Brady violations, a serious Brady violation is one of the few things that would actually give Merrick Garland cause to shut down David Weiss as Special Counsel.

The declination decision, turned over a month after the indictment, isn't that, yet. For Leo Wise, who assured the judge in this case that all Brady had been turned over, however, it's a detail that might be more convenient if treated as proof they weren't going to charge gun crimes before they did.