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6 COMMITTEE ON WAYS AND MEANS,

7 U.S. HOUSE OF REPRESENTATIVES,

8 WASHINGTON, D.C.

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13 INTERVIEW OF: DARRELL WALDON

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Friday, September 8, 2023

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Washington, D.C.

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The interview in the above matter was held in room 5480, O'Neill House Office

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Building, commencing at 10:02 a.m.

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Appearances:

For the COMMITTEE ON WAYS AND MEANS:

- SEAN CLERGET, CHIEF OVERSIGHT COUNSEL
- STEVE CASTOR, COUNSEL
- MOLLY FROMM, GENERAL COUNSEL AND PARLIAMENTARIAN
- BRITTANY HAVENS, SENIOR PROFESSIONAL STAFF MEMBER, OVERSIGHT
- CAROLINE JONES, DEPUTY PARLIAMENTARIAN AND PROFESSIONALSTAFF MEMBER, OVERSIGHT
- JAMES MANDOLFO, COUNSEL
- [REDACTED], MINORITY COUNSEL
- [REDACTED], MINORITY COUNSEL
- [REDACTED], MINORITY - COUNSEL

For the INTERNAL REVENUE SERVICE:

- JOSEPH RILLOTTA, COUNSELOR TO IRS COMMISSIONER, OFFICE OF CHIEF COUNSEL
- PAUL T. BUTLER, DEPUTY DIVISION COUNSEL (STRATEGIC LITIGATION), OFFICE OF CHIEF COUNSEL

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2 For DARRELL WALDON:

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4 CHRISTOPHER LANDRIGAN, ESQ.

5 Brownell Landrigan, PLLC

6 1818 N Street NW, Suite 520

7 Washington, D.C. 20036

1           Mr. Clerget. Good morning. This is a transcribed interview of Internal Revenue  
2 Service Criminal Investigation, or CI, Special Agent in Charge Darrell Waldon.

3           Chairman Smith has requested this interview as part of the committee's oversight  
4 of the IRS.

5           Would the witness please state your name for the record?

6           Mr. Waldon. Darrell Waldon.

7           Mr. Clerget. Thank you.

8           Could agency counsel please state your names for the record?

9           Mr. Butler. It's Paul Butler.

10          Mr. Rillotta. Joseph Rillotta, for the IRS.

11          Mr. Clerget. And could the witness's personal counsel please state your name  
12 for the record?

13          Mr. Landrigan. It's Christopher Landrigan.

14          Mr. Clerget. And, Mr. Waldon, you understand that agency counsel has a  
15 primary fiduciary duty to the IRS and not to you individually?

16          Mr. Waldon. Yes.

17          Mr. Clerget. Okay.

18          On behalf of the committee, I want to thank you for appearing here today to  
19 answer our questions. The chairman appreciates your willingness to appear voluntarily.

20          Chairman Smith did initially issue a deposition subpoena to secure your testimony,  
21 but we are withdrawing that subpoena in light of the agreement to have you appear here  
22 today voluntarily. If the committee needs to in the future, we may have to reissue that  
23 subpoena depending on, you know, your ability to answer our questions, but we  
24 appreciate you agreeing to come in today.

25          My name is Sean Clerget. I'm with Chairman Smith's staff. And I'll now have

1 everyone else from the committee who is here at the table introduce themselves as well.

2 Mr. Mandolfo. James Mandolfo, Ways and Means.

3 Mr. Castor. Steve Castor, with the Ways and Means majority.

4 MINORITY COUNSEL 1\_ [REDACTED], Ways and Means minority.

5 MINORITY COUNSEL 2\_ [REDACTED], Ways and Means minority.

6 MINORITY COUNSEL 3\_ [REDACTED], Ways and Means minority.

7 Mr. Clerget. I'd now like to go over a few ground rules and guidelines that we'll  
8 follow during today's interview.

9 The questioning will proceed in rounds. The majority will ask questions first for 1  
10 hour, and then the minority will have the opportunity to ask questions for an equal period  
11 of time if they choose. We will alternate back and forth until there are no more  
12 questions and the interview is over.

13 Typically, we'll take a short break at the end of each hour, but if you'd like to take  
14 a break apart from that, please just let us know.

15 As you can see, there is an official court reporter taking down everything we say to  
16 make a written record of this interview, so we ask that you give verbal responses to all  
17 questions. Do you understand?

18 Mr. Waldon. Yes.

19 Mr. Clerget. And so the court reporter can take down a clear record, we'll do our  
20 best to limit the number of people directing questions to you in a given hour just -- and  
21 limit that to just people on the staff whose turn it is.

22 Please try and speak clearly so the court reporter can understand and so folks at  
23 the end of the table can hear you. It's important that we don't talk over one another or  
24 interrupt each other so that we can get a clear transcript of the interview.

25 We want you to answer our questions in the most complete and truthful manner

1 as possible, so we will take our time. If you have any questions or you do not  
2 understand one of our questions, please let us know.

3 If you honestly don't know the answer to a question or do not remember, it's best  
4 not to guess. Please give us your best recollection. And it is okay to tell us if you  
5 learned information from someone else. Just indicate how you came to know the  
6 information. If there are things you don't know or can't remember, just say so, and then  
7 please inform us who, to the best of your knowledge, might be able to provide a more  
8 complete answer.

9 If for any reason you are not authorized to answer a specific question, please  
10 indicate that in your response.

11 And we ask these questions of everyone, but you should understand that, by law,  
12 you're required to answer questions from Congress truthfully. Do you understand that?

13 Mr. Waldon. Yes.

14 Mr. Clerget. And this also applies to questions posed by congressional staff in an  
15 interview. Do you understand this?

16 Mr. Waldon. Yes.

17 Mr. Clerget. Witnesses that knowingly provide false testimony could be subject  
18 to criminal prosecution for making false statements under 18 U.S.C. section 1001. Do  
19 you understand that?

20 Mr. Waldon. Yes.

21 Mr. Clerget. Is there any reason you are unable to provide truthful answers to  
22 today's questions?

23 Mr. Waldon. No.

24 Mr. Clerget. Okay.

25 And, finally, I'd like to make a note that what we discuss here is confidential. We

1 ask that you not speak about what we discuss in this interview to any outside individuals  
2 to preserve the integrity of our investigation. For the same reason, the marked exhibits  
3 we use will go to the court reporter but then we'll keep those at the end of the interview.

4 Okay. I think that's the end of my opening remarks. I'll see if my counterparts  
5 have anything to say.

6 MINORITY COUNSEL 1. We do not. We thank you for appearing today, and we  
7 look forward to your testimony.

8 Mr. Rillotta. Counsel, may I have a few moments on the record --

9 Mr. Clerget. Please.

10 Mr. Rillotta. -- before we begin in earnest?

11 So I do want to thank committee staff, both sides, for engaging with us to reach  
12 what I think is a sensible and workable accommodation regarding this interview.

13 As staff appreciates, this is a difficult proceeding to write rules of the road for,  
14 because the subject matters of the committee's inquiry overlap with those of an ongoing  
15 criminal investigation and potential future tax enforcement litigation.

16 From the IRS's perspective, as an agency, it is critical to our mission that the  
17 underlying investigation and potential litigation, like all aspects of tax administration,  
18 proceed with integrity and in accordance with relevant laws. At the same time, we  
19 recognize the committee's work is important, and we're trying to enable meaningful  
20 oversight. So I think we're getting at the right balance of all of these considerations.

21 To that end, with respect to testimony regarding the criminal investigation, we are  
22 drawing a distinction today, generally speaking, between procedural questions, as to  
23 which the witness may testify, and substantive questions, which we submit should be  
24 reserved, as appropriate, for proceedings before a court of law and as to which the  
25 witness is instructed not to testify.

1           This is reflected in detail in the witness's testimonial authorization. And this will  
2 be the basis for my instructions to the witness today, as necessary.

3           What this means as a practical matter is that the witness will be instructed not to  
4 testify in a manner that characterizes the evidence in the underlying investigation or that  
5 discloses in detail deliberations or strategic discussions among IRS or Department of  
6 Justice investigations.

7           On the other hand, the witness may testify as to processes and procedures  
8 relating to the underlying investigation, including regarding the respective roles and  
9 authorities of relevant IRS and DOJ personnel. The witness may also testify as to IRS  
10 personnel and employment matters.

11           The caveat to all of this is that in no events may the witness disclose matters, if  
12 any, which a U.S. district court has ordered him to keep secret, for instance, pursuant to  
13 Federal Rule of Criminal Procedure 6(e).

14           All of this said, I anticipate a broad ambit of testimony today. And to the extent  
15 we reach an impasse in real-time, I encourage staff to continue to work with us offline,  
16 where, at all possible, we want to find a way to give you what you need.

17           That's all I have. Thank you very much.

18           Mr. Clerget. Thank you. We appreciate that.

19           I'd like to ask a follow up question on that point.

20           Mr. Rillotta. Sure.

21           Mr. Clerget. And I can engage the witness with this as well. But when you say  
22 "substantive questions," substantive with regard to the ongoing criminal investigation?  
23 Is that correct?

24           Mr. Rillotta. Yes, that's correct.

25           Mr. Clerget. Okay. Thank you.



1 Okay. Any other counsel have anything they'd like to say?

2 Mr. Landrigan. No. Thank you.

3 Mr. Clerget. All right. We'll start the clock for our first hour of questioning.

4 EXAMINATION

5 BY MR. CLERGET:

6 Q Thank you again for being here today. We really appreciate it.

7 I want to start with a few background questions.

8 Can you tell us about your educational background?

9 A I have a bachelor's of accounting and an MBA in accounting.

10 Q From where?

11 A University of North Texas and Kennesaw State University.

12 Q And when did you join the IRS?

13 A 2006.

14 Q And what is your current position at the IRS?

15 A I'm the executive director of advanced analytics and innovation.

16 Q Okay. I think we probably didn't have that title on our communications  
17 with you, so we apologize for that.

18 What are your roles and responsibilities in this position?

19 A So, really, just overseeing the strategic vision and operations of the  
20 advanced analytics and innovation organization. So setting strategy; you know,  
21 overseeing staff of approximately 200 people; and, you know, obtaining the resources we  
22 need to advance our mission.

23 Q Okay. And that position is within CI?

24 A That's correct.

25 Q Okay.

1 And what was your prior position at the IRS?

2 A Immediately prior to that, I was the special agent in charge of the  
3 Washington, D.C., Field Office.

4 Q And in what timeframe did you hold that position?

5 A So approximately April of 2021 through February of 2023.

6 Q And I'm not going to go all the way back through your history, but what was  
7 your position prior to that?

8 A Prior to that, I was the deputy director of refund and cyber crimes within  
9 Criminal Investigation.

10 Q Okay. And do you recall the timeframe you held that position?

11 A I think approximately February of 2019 until about April of 2021.

12 Q Okay.

13 A And I did do a detail in between it, so --

14 Q Okay.

15 A -- a temporary position.

16 Q Okay. Understood. And what was that position?

17 A So I was the initiative manager for research and applied analytics, what we  
18 call "RAAS."

19 Q Okay. So, as the director of -- or, sorry, what was the title again for the  
20 position from April '21 to February '23?

21 A Special agent in charge.

22 Q Special agent in charge, Washington Field Office?

23 A The Washington, D.C., Field Office.

24 Q Okay.

25 A Yes, sir.

1 Q And what were your roles and responsibilities in that position?

2 A So overseeing the operations of the overall office, which included overseeing  
3 all the criminal investigations; again, setting the strategic vision for the office; obtaining  
4 resources; building relationships with our partners. Really, just overseeing the  
5 operations of that particular field office.

6 Q Okay.

7 And I think most of our questions today are going to focus on that time period.

8 So, in that position, who did you report to?

9 A I reported to the director of field operations, which is Mr. Michael Batdorf.

10 Q And can you give us a general sense of, sort of, where you fell in the chain of  
11 command within the bigger picture of IRS CI?

12 A So, as special agent in charge, I'm one of 20 throughout the country. We all  
13 report up to what's called the director of field operations. There are three of them,  
14 separated by area.

15 Q Okay.

16 A The director of field operations reports to the deputy chief, who then  
17 reports to the chief.

18 Q Okay. That's all cool.

19 Okay. And about how many people reported to you when you were in that  
20 position?

21 A I would say, professional staff and 1811, anywhere between 125 to 150.

22 Q Okay. And were those all direct reports, or were they, sort of, under your

23 A They were under my --

24 Q -- section?

25 A Yeah.

1 Q Okay.

2 A Exactly. Sorry.

3 Q No, that's okay.

4 How many -- if there's a clear delineation in your structure, how many, sort of,  
5 direct reports did you have?

6 A I had three assistant special agents in charge who reported to me directly.  
7 Also, my secretary reported to me directly. So I believe approximately -- it might be one  
8 or more that I'm forgetting, but, substantively, that was my direct reports in that.

9 Q Okay. And who were the ASACs during that time period, to the extent you  
10 can remember?

11 A Yeah. So, Harry Chavis, who went and took a detail into headquarters, and  
12 Cynthia Hearn filled in behind him.

13 When I initially got to the field office, over another branch, it was Bret Kressin.  
14 He took another position, and we had a couple of actors thereafter. David  
15 Meisenheimer filled in permanently behind Bret.

16 And Lola Watson was another one of the ASACs, but, again, before her, there  
17 were a couple actors.

18 Q Wonderful.

19 And, in your role, did you interact with individuals at the Tax Division at the  
20 Department of Justice?

21 A That's correct.

22 Q Okay. And did you have a main point of contact that you would typically  
23 interact with there?

24 A It depended on the section. For the southern area, which we were part of,  
25 it was Karen Kelly. And for the northern area, it was Jason Poole.

1 Q And was it Jason Poole for the whole time you held that job?

2 A Yes.

3 Q Okay.

4 And so those were your main points of contact. Did you have direct contact with  
5 others at DOJ Tax as well?

6 A Primarily, my recollection are the section chiefs.

7 Q Okay. Do you recall if you ever spoke to Mark Daly?

8 A Yes.

9 Q Okay. Did you speak to Jack Morgan?

10 A In a meeting or two, yes.

11 Q Okay. And for those individuals, did you speak to them about multiple  
12 cases? One case?

13 A Jack Morgan I think was just one investigation. I believe the same for  
14 Mark Daly.

15 Q Okay.

16 And when did you become aware of the Hunter Biden investigation?

17 A It was probably March or April of 2021, when I was found out I was going to  
18 transition into the role of the special agent in charge.

19 Q Okay. And who made you aware of the case?

20 A At that time, I believe it would've been Michael Batdorf. And the special  
21 agent in charge at the time, Kelly Jackson, could've also apprised me of that investigation.

22 Q Okay.

23 And do you know Supervisory Special Agent Gary Shapley?

24 A I do.

25 Q Okay. And where does he fall in the structure or chain of command in

1 relation to you?

2 A So supervisory special agents report to the ASACs, all right, so the assistant  
3 special agents in charge, who then report to me.

4 Q And do you recall which ASAC Mr. Shapley reported to?

5 A Primarily Lola Watson.

6 Q And do you know -- can you describe what Mr. Shapley's role was within IRS  
7 CI?

8 A He was a supervisory special agent who managed a group of special agents,  
9 overseeing all of their investigations.

10 Q Okay. And one of those investigations was the Hunter Biden matter?

11 A That is correct.

12 Q Okay. And was he the day-to-day lead on that matter for IRS CI?

13 A Yes.

14 Q Okay.

15 And do you know Special Agent Joseph Ziegler?

16 A Yes.

17 Q And, again, where does he fit in this organizational structure?

18 A So he was a special agent that reported to SSA Gary Shapley, who reported  
19 to the ASAC, who then reported to me.

20 Q Okay. And do you know what his role was on the Hunter Biden matter?

21 A Mr. Ziegler was one of the investigators.

22 Q And is it your understanding that the Hunter Biden investigation is ongoing?

23 A Yes, that is my understanding.

24 Q Okay. And are you involved in that investigation?

25 A No.

1 Q Okay. Were you previously involved in that investigation?

2 A From approximately April 2021 through February of 2023, I was the special  
3 agent in charge overseeing all of the investigations in the field office, in which Mr. Biden  
4 was one of them.

5 Q Okay. And so, with regard to that matter, what did your role look like?  
6 What kind of things did you do in relation to that matter?

7 A So, at a high level, just -- I oversaw the operation.

8 So, you know, there were certain approvals that had to be granted to travel to  
9 take certain investigative actions. I attended meetings. I, you know, occasionally got  
10 briefings on the matter. I briefed my supervisor occasionally on the matter.

11 But, generally speaking, it's really just overseeing the general operations and  
12 ensuring that they have the resources they need to conduct the investigation.

13 Q Okay.

14 And, as part of your role, did you have any communications with U.S. Attorney  
15 David Weiss?

16 A Yes.

17 Q Okay. How often did you speak to him?

18 A So, initially, not -- maybe once or twice. Then, towards the end of my  
19 tenure, maybe a bit more frequently, like, maybe once every other week, once a week. I  
20 can't necessarily quantify. It really depended on the matter that needed to be  
21 discussed.

22 Q Okay. And you discussed the Hunter Biden matter with him?

23 A That's correct.

24 Q And did you attend regular prosecution team meetings?

25 A I attended one prosecution team meeting via telephone, then a couple of

1 other meetings that were had. But they had regular meetings that I did not attend.

2 Q Did you attend the October 7, 2022, meeting?

3 A Yes.

4 Q Okay. Did you attend a meeting on June 15 --

5 A Yes.

6 Q -- 2022? Did you attend the June 15, 2022, meeting in person?

7 A Is this the meeting at the Department of Justice?

8 Q Yes, in Washington.

9 A Yes.

10 Q Do you recall who else was at that meeting?

11 A So it was myself, Special Agent Joseph Ziegler, Supervisory Special Agent  
12 Gary Shapley. Mr. Weiss, the U.S. attorney, attended. Steve Goldberg of Department  
13 of Justice Tax attended.

14 Mr. Rillotta. Stuart Goldberg?

15 Mr. Waldon. Stuart Goldberg. My apologies.

16 Jack Morgan. I believe John Kane was there as well. And Mark Daly was there.  
17 Tom Sobocinski, who's the FBI SAC. Ryeshia Holley, who's the FBI ASAC. And there  
18 were a couple other people from Mr. Weiss's team that were also in attendance.

19 BY MR. CLERGET:

20 Q You don't recall the names of the --

21 A I know Lesley Wolf was one of them.

22 Q Okay. Anybody else you can remember?

23 A Not that I can remember.

24 Q Okay.

25 And you mentioned Stuart Goldberg. We spoke earlier about contacts at DOJ



1 Tax. Did you ever speak outside of that meeting, did you ever speak directly with Stuart  
2 Goldberg?

3 A I don't think so.

4 Q Okay.

5 And you mentioned John -- was it John King?

6 A Yes. John Kane.

7 Q Okay. Who is that?

8 A I believe he was an employee of the Department of Justice Tax. My  
9 recollection is he was there to review the evidence of the investigation.

10 Q Okay. And did you ever speak with him outside of that meeting?

11 A I don't think so.

12 Q And what was the topic of that June 15th meeting?

13 Mr. Rillotta. At a general level, please, Agent Waldon.

14 Mr. Waldon. Generally, we were there just to discuss the investigation, the  
15 evidence, the allegations, and the years that were involved.

16 BY MR. CLERGET:

17 Q Okay. Did that meeting discuss tax years 2014 and 2015?

18 Mr. Rillotta. You can answer whether it did.

19 Mr. Waldon. Yes.

20 BY MR. CLERGET:

21 Q And was there a discussion at that meeting of whether or not to charge  
22 specific tax years?

23 Mr. Rillotta. You can answer whether there was such a discussion.

24 Mr. Waldon. I believe there was a discussion, yes.

25 BY MR. CLERGET:

1 Q Okay. And was there a decision made at that meeting?

2 A I do not believe a decision was made at that time, no.

3 Q During that meeting, was that meeting contentious at all?

4 A From my perspective, the meeting -- you had a difference of opinion from  
5 time to time. I wouldn't necessarily classify that as contentious, but certainly there were  
6 times where people disagreed, which is what you see anytime you're working a criminal  
7 investigation with the U.S. Attorney's Office. There's, you know, dissenting opinions and  
8 disagreements. But I wouldn't necessarily classify it as contentious.

9 Q Okay.

10 So you said that tax years 2014 and 2015 were discussed. Was there a discussion  
11 of the statute of limitations for those 2 years?

12 Mr. Rillotta. You can answer whether there was such a discussion.

13 Mr. Waldon. I don't explicitly recall if there was that discussion. But, generally  
14 speaking, if we're talking about years that are involved, you do talk about the statute of  
15 limitations.

16 BY MR. CLERGET:

17 Q Are you aware that the statute of limitations has expired for those 2 tax  
18 years?

19 Mr. Rillotta. I'm going to instruct the witness not to answer that question,  
20 because it calls for a characterization of the evidence.

21 BY MR. CLERGET:

22 Q Can you answer whether you were aware of whether or not the statute of  
23 limitations had expired?

24 A At that point, I don't believe the statute -- there was any statute that had  
25 expired.

1 Q Are you aware today whether the statute has expired?

2 Mr. Rillotta. I'm instructing the witness not to answer, for the same reason.

3 BY MR. CLERGET:

4 Q The disagreements that were had at that meeting, the differences of  
5 opinion, as you put it, were those generally disagreements between DOJ Tax and IRS CI or  
6 between specific individuals?

7 Mr. Rillotta. You can answer at a very high level, Agent Waldon.

8 Mr. Waldon. At a high level, it was the -- there were people from DOJ Tax that  
9 had a difference of opinion than some of us on the investigative team.

10 BY MR. CLERGET:

11 Q Okay. And that includes you?

12 A Yes.

13 Q Does that include the individuals from the FBI that were present?

14 Mr. Rillotta. I'm going to instruct him not to answer the question insofar as it  
15 calls for speculation.

16 BY MR. CLERGET:

17 Q Do you know whether individuals at the FBI disagreed with DOJ Tax during  
18 that meeting?

19 A I do not know.

20 Q Are you aware that U.S. Attorney David Weiss, now Special Counsel Weiss,  
21 announced a plea agreement in the Hunter Biden matter on June 20, 2023, and that the  
22 defendant appeared in court regarding that agreement on July 26, 2023?

23 A I am aware that there was a plea agreement. I'm not certain about the  
24 dates.

25 Q And how are you aware of that?

1 A Media reports.

2 Q And are you aware that the plea agreement involved tax charges?

3 A Yes.

4 Q And, in a typical case, if you're investigating potential tax crimes and a U.S.  
5 attorney presents a plea agreement to a judge on those tax crimes, would it be the case  
6 that that would mean that the IRS investigation of those tax crimes has concluded?

7 A I would say, for the years that were presented, yes.

8 Q In a typical case and in your experience, does a prosecutor, a U.S.  
9 attorney -- any prosecutor plead out some tax years while continuing to investigate other  
10 tax years? Or do prosecutors typically try to wrap up the full scope of the investigation  
11 at the same time?

12 A I really would say it really just depends on facts and circumstances of the  
13 case.

14 Q Moving back to the June 15, 2022, meeting, did that meeting discuss  
15 potential defenses?

16 Mr. Rillotta. You can answer whether it did or didn't.

17 Mr. Waldon. From my -- yes.

18 BY MR. CLERGET:

19 Q Did that meeting discuss the scope of U.S. Attorney Weiss's charging  
20 authority?

21 A I don't recall specifics about that being discussed.

22 Q Did that meeting discuss whether or not U.S. Attorney Weiss had presented  
23 the case in any district in the United States?

24 A I don't recall if that's the time in which I heard of that, no.

25 Q Okay.

1 A I don't recall.

2 Q When did you hear about that?

3 Mr. Rillotta. Can I ask a point of clarification? When did he hear about what?

4 BY MR. CLERGET:

5 Q When did you hear that U.S. Attorney Weiss had presented the case to  
6 another Federal district, outside Delaware?

7 A I don't recall the exact dates, but it was obviously during the investigation.

8 Q Okay. And what districts did you hear he had presented a case?

9 Mr. Rillotta. Counsel, can I just take a step back to make sure that we're not  
10 miscommunicating here?

11 You're asking whether he was aware that the case was presented to another  
12 U.S. Attorney's Office --

13 Mr. Clerget. Yes, that's correct.

14 Mr. Rillotta. -- as opposed to a grand jury or --

15 Mr. Clerget. Yes.

16 Mr. Rillotta. Okay.

17 Was that your understanding when you rendered those answers, Agent Waldon?

18 Mr. Waldon. Yes.

19 Mr. Rillotta. Okay.

20 Mr. Clerget. Thank you for that clarification.

21 Mr. Waldon. Can you repeat the question? I'm sorry.

22 BY MR. CLERGET:

23 Q Yeah. So what Federal districts did you learn that U.S. Attorney Weiss had  
24 presented the case to a U.S. attorney?

25 A I'm aware that it was presented to the District of Columbia and, at some

1 point, the Central District of California, I believe.

2 Q Do you know when it was presented to the District of Columbia  
3 U.S. Attorney's Office?

4 A I don't recall the exact dates, no.

5 Q And do you know the outcome of that presentation?

6 A I know what I was told.

7 Q What were you told?

8 Mr. Rillotta. At a general level, please.

9 Mr. Waldon. At a general level, that the District of Columbia did not agree to  
10 take the case on. That's all I remember.

11 BY MR. CLERGET:

12 Q Okay. Do you know who was involved in presenting the case to the District  
13 of Columbia?

14 A I don't know who was involved.

15 Q Do you know if anyone from IRS CI was involved?

16 A No, I don't believe anybody from CI was involved.

17 [Audio disruption.]

18 Mr. Clerget. Let's go off the record for a minute.

19 [Recess.]

20 Mr. Clerget. All right. Back on the record, please.

21 BY MR. CLERGET:

22 Q Okay. And who did you learn this information from, that the case had been  
23 presented to the U.S. Attorney's Office in D.C.?

24 A I don't recall explicitly who I heard it from first, but I know Mr. Shapley did  
25 inform me of that. I do believe, at one of the meetings, Mr. Weiss informed us, as well,

1 that the case had been presented.

2 Q Okay. Do you recall which meeting that was where Mr. Weiss informed  
3 you?

4 A I don't recall specifically.

5 Q Okay. Did U.S. Attorney Weiss tell you that the case had been rejected by  
6 the U.S. Attorney's Office in D.C.?

7 A I believe Mr. Weiss said that the case was presented and they did not agree  
8 to join or take on the case.

9 Q Did you understand that to be that the case was declined?

10 A I didn't understand that, that the case was declined; just that they were not  
11 going to be a partner on the case. The case was still able to move forward.

12 Q Okay. And did the case move forward in D.C.?

13 A No. Not up until the point in which I left, no.

14 Q And do you know why that happened?

15 A I believe --

16 Mr. Rillotta. I'm going to instruct you not to answer to the extent that the  
17 answer would disclose internal deliberations or characterize the evidence.

18 BY MR. CLERGET:

19 Q So you mentioned that you didn't attend a lot of meetings with Mr. Weiss.  
20 So we talked about the June 15th meeting, which Mr. Weiss was present for. And  
21 Mr. Weiss was present for the October 7th meeting, which you were at. Is that right?

22 A That's correct.

23 Q Can you recall any other meetings with Mr. Weiss?

24 A I, when I think of meetings, also include phone calls. And so we have had  
25 phone calls during the time in which I was the SAC of the D.C. Field Office.

1 Q Okay. And I know we sort of hit this, but any sense of how many? Even  
2 ballpark estimate?

3 A I can't -- I don't remember.

4 Q Okay. And you don't recall which meeting Mr. Weiss told you that he had  
5 presented the case to D.C. and that they were not going to partner on the case?

6 A I don't recall which meeting.

7 Q Okay. Do you recall whether it was in person or by the phone for that piece  
8 of information?

9 A I honestly don't recall.

10 Q Okay.

11 And we mentioned the Central District of California as well. When did you learn  
12 that the case had been presented to the Central District of California?

13 A My recollection is, they were going to present the case to the Central District  
14 of California. And that was sometime in the fall of 2023.

15 Q And do you know whether they ever did present a case --

16 Mr. Rillotta. Hold on a second. Fall of 2023 hasn't happened.

17 Mr. Waldon. I'm sorry. Fall of 2022. My apologies.

18 BY MR. CLERGET:

19 Q Okay. No problem. Thank you.

20 Do you know whether they ever presented the case in the Central District of  
21 California?

22 A I think they did. I don't know the details though.

23 Q All right. Can you recall why you think that? Did you hear that from  
24 someone?

25 A I know they had a timeframe in which they were going to talk to them



1       sometime in the fall, and I believe that there was a document that was shared with the  
2       Central District of California.  But, beyond that, I don't know.

3             Q     And you don't know the outcome of that presentation?

4             A     I don't recall the outcome of that presentation.

5             Q     Mr. Shapley, in his testimony before the Ways and Means Committee,  
6       indicated that in January of 2023 you informed him that the case had been presented to  
7       the Central District of California and that it had been declined.

8             Does that sound right to you?

9             A     I don't recall specifically.  What I recall about the case was, we wanted to  
10       be a part of the presentation and I asked.  That was not granted.  But I do not recall.

11            Q     Okay.  Is that the kind of information you would've shared with the  
12       investigative team --

13            A     Yes.

14            Q     -- as part of your job?  Okay.

15            And when you say you wanted to be part of that presentation and it was denied,  
16       was that that you, personally, wanted to be part of the presentation, or IRS CI?

17            A     IRS CI.

18            Q     Okay.  Did you make the same request for the presentation to D.C.?

19            A     No.

20            Q     Why not?

21            Mr. Rillotta.  Hold on.

22            I'm instructing you not to answer insofar as the question calls for disclosure of  
23       internal deliberations.

24                    BY MR. CLERGET:

25            Q     Do you know the answer to the question?

1           A    Repeat the question.  I'm sorry.

2           Q    You testified that IRS CI did not request to be part of the presentation to the  
3 U.S. Attorney's Office in the District of Columbia.  You've been instructed by agency  
4 counsel not to answer the question.  Do you know the answer to that question?

5           A    I would say that I was not personally involved in asking for us to be a part of  
6 the presentation to the D.C. U.S. Attorney's Office.  And that's all I could say on that.

7           Q    And do you know whether anyone else at IRS CI requested to be part of that  
8 presentation?

9           A    I don't recall.

10          Q    In a tax prosecution matter in which you're partnering with the Department,  
11 would IRS CI typically be involved in a presentation like that to another district  
12 U.S. Attorney's Office?

13          A    Generally speaking, you're prosecuting the case in the district in which  
14 you're working the investigation.  So, generally speaking, you don't -- that's not a  
15 practice.

16          Q    Has it ever happened in your career?

17          A    No.

18          Q    So this was the first time you were in that situation?

19          A    That's correct.

20          Q    Were you surprised that you were denied -- that that request was denied, to  
21 present to the Central District of California?

22          A    I was not surprised, being that it was attorney-to-attorney, sort of,  
23 deliberations.

24          Q    I want to step back for a second and ask about the relationship generally  
25 between IRS CI and Department of Justice when you're partnering on a case.

1           If a tax investigation originates at IRS within CI, when does DOJ typically get  
2 involved?

3           A    Generally speaking, DOJ is only involved to the extent that an IRS CI agent  
4 has requested a grand jury and that request has gone to DOJ Tax for evaluation.  If DOJ  
5 Tax authorizes the grand jury, it then goes to the U.S. Attorney's Office in which we're  
6 investigating the investigation, for Title 26 investigations.

7           Q    And, then, once IRS CI is engaged with Department of Justice in partnership,  
8 how does that work?  Who communicates with who across agencies?

9           A    Generally, it's the agent and the AUSA prosecutor -- the prosecutor that's  
10 assigned to the investigation.

11          Q    Okay.  And, then, in your role, when would you typically have  
12 communications with the prosecutor?

13          A    Well, it depends.  Generally, you meet with law enforcement partners with  
14 the U.S. attorney quarterly, sometimes biannually, where you meet and just talk general  
15 things.  If there's an issue that I need to speak with a U.S. attorney about, then we talk  
16 when that issue arises, and vice versa.

17          Q    And if there are disagreements about investigative steps, how are those  
18 worked out in a typical case?

19          A    If there are disagreements, the agent and the AUSA assigned generally work  
20 those out.  The supervisors get involved and try to resolve them.  And it just kind of  
21 escalates depending on what the issue is and whether or not it's able to be resolved.

22          Q    Okay.

23                And, when partnering with DOJ, I assume you partner with DOJ Tax as part of  
24 that --

25          A    Yes.

1 Q -- on tax matters typically, correct?

2 A That's correct.

3 Q Okay. When does FBI get involved in a prosecution that you're partnering  
4 with the Department of Justice on?

5 A That really just depends. Each case really is different. It could be that  
6 they're never involved. It could be that they're involved at the beginning. It could be  
7 in the middle, that there are some charges that have been identified that we believe we  
8 could benefit from FBI's resources.

9 So it really depends. Every case is different.

10 Q Okay. Is there any -- can you give -- in general, you know, is FBI involved in  
11 most cases? Half of cases?

12 A Tax cases, I would say -- I really can't quantify. I don't have that data.

13 Q It's a case-by-case --

14 A It really is case by case.

15 Q Okay. Understood.

16 And, obviously, we've talked a little bit, but FBI was involved in the Hunter Biden  
17 matter?

18 A Yes.

19 Q Do you know when they got involved?

20 A I don't know when.

21 Q All right. Were they involved the entire time you were in the position?

22 A The entire time I was in the position, FBI were partners on the investigation.

23 Q I'll mark as exhibit 1 -- can you hand that down? This was exhibit 10 to  
24 Mr. Shapley's testimony, but we'll mark it as exhibit 1 for the purposes of this.

25

[Waldon Exhibit No. 1

1 Was marked for identification.]

2 BY MR. CLERGET:

3 Q Exhibit 1 has been placed in front of you. Have you seen this document  
4 before?

5 A Yes.

6 Q Okay. And what is it?

7 A It's an email from me to Mr. Shapley and Mr. Batdorf.

8 Q Okay. And that's at the top of the page?

9 A That's correct.

10 Q And just below that is what looks like the beginning of this email chain. Is  
11 that correct?

12 A That's correct. It's an email from Mr. Shapley to Mr. Batdorf, with a CC to  
13 me.

14 Q Okay. And this email is dated Friday, October 7, 2022; is that right?

15 A The --

16 Q The bottom email.

17 A The bottom email is dated October 7, 2022.

18 Q Yeah. Given the way the email chain is, I'm going to start on the bottom,  
19 and then we'll come up to the top here.

20 Okay. And, you know, what is the nature of this email, from your perspective,  
21 from Mr. Shapley?

22 A Generally speaking, Mr. Shapley is informing Mr. Mike Batdorf of the general  
23 topics that were discussed at the October 7th meeting with the U.S. attorney in Delaware.

24 Q Okay. And that's the meeting we talked a little bit about before that you  
25 attended. Is that right?

1 A I did attend that meeting.

2 Q Okay. And did you attend that meeting in person?

3 A Yes.

4 Q And where was that meeting held?

5 A At the U.S. Attorney's Office in Delaware.

6 Q Okay. And Mr. Shapley was there as well?

7 A That's correct.

8 Q Was he there in person?

9 A Yes.

10 Q And do you recall who else was at the meeting?

11 A So it was Mr. Weiss; FBI SAC Tom Sobocinski; FBI ASAC Ryeshia Holley;  
12 Shannon from the U.S. Attorney's Office, and I don't remember her last name; and I  
13 believe Mr. Shawn Weede was there as well.

14 Q Shannon Hanson? Does that sound right?

15 A That sounds correct.

16 Q Okay. Is that the complete list?

17 A I believe so, yes.

18 Q Okay. About how long was that meeting, do you recall?

19 A I don't recall the length.

20 Q Okay. Do you know what time that meeting was?

21 A It was Friday morning, I believe.

22 Q And we talked before that you didn't attend prosecution meetings all the  
23 time or regularly on this matter. Why did you attend this meeting?

24 A I didn't attend prosecutorial meetings that were for the investigative team.  
25 I attended this meeting because I was asked to attend and it was going to be

1 management from FBI and the IRS with the U.S. Attorney's Office.

2 Q Okay. And who asked you to attend?

3 A I can't remember if the request came from Mr. Weiss through Gary  
4 or -- Mr. Shapley; excuse me -- Mr. Shapley arranged the meeting. I can't remember  
5 how it came about.

6 Q Okay.

7 I'm going to walk through in detail Mr. Shapley's email in a second, but I want to  
8 go to your response to that email here. And you responded on Tuesday, October 11,  
9 2022; is that right?

10 A That's the date at the top of the email, yes.

11 Q Okay.

12 And, moving to the second line here, you said, "Thanks, Gary. You covered it all.  
13 I'm taking care of referral to TIGTA."

14 Did I read that correctly?

15 A Yes.

16 Q Okay. And so, starting with the referral to TIGTA, what was that a  
17 reference to?

18 A That was in regard to a leak that apparently happened in the investigation.  
19 And that's -- so we were referring it to TIGTA for their investigation.

20 Q Okay.

21 And when you said "you covered it all," you were indicating that Mr. Shapley's  
22 email was complete, right?

23 A When I say "you covered it all," I generally am speaking of: You generally  
24 just highlighted the topics of discussion.

25 Q Okay.

1           And -- well, let's go through those. So you mentioned number 1, which was the  
2 discussion of a leak. Do you remember that being discussed at the meeting?

3           A    Yes.

4           Q    Okay.

5           And then number 2 says, "Weiss stated that he is not the deciding person on  
6 whether charges are filed." And it looks like that is bolded and underlined.

7           Did I read that correctly?

8           A    That's correct.

9           Q    Okay. And is that consistent with your recollection of the meeting?

10          A    My recollection in terms of that statement was, I walked away with the  
11 understanding of process. There are different processes that need to be followed in  
12 order to get the investigation across the line. So, generally, that's what I recall.

13          Q    Okay. But he said -- you recall him saying that he was not the deciding  
14 person.

15          A    I don't recall those exact words as I sit here today. But I do recall there  
16 being the process discussion, where he would talk about process in order to get the case  
17 indicted and subsequently prosecuted. And that could've involved the different  
18 districts, so on and so forth.

19          Q    Okay. So, meaning that there were other persons involved in that process?

20          A    As it is in any tax branch -- any tax investigation, yes.

21          Q    Okay. And did learning about that process surprise you?

22          A    No.

23          Q    Item 2(a), Mr. Shapley says, "I believe this to be a huge  
24 problem -- inconsistent with DOJ public position and Merrick Garland testimony."

25          What did you understand him to mean from that?



1 A I understood him to mean that's what he believed.

2 Q Okay. And did you agree with that?

3 A I -- no, I don't agree with that. I hadn't seen Merrick Garland's testimony.

4 So, again, that's his belief. I am not saying, when I said "you covered it all," that  
5 I'm endorsing what he believes.

6 Q Understood. Understood. But -- so -- we'll come back to that in a  
7 moment.

8 Let's go to 2(b), "Process for decision."

9 So you mentioned that there's a process.

10 [Audio interruption.]

11 Mr. Clerget. Let's go off the record for a second.

12 [Recess.]

13 Mr. Clerget. All right. Back on the record.

14 BY MR. CLERGET:

15 Q So item 2(b)(i), "Needs DOJ Tax approval first -- stated that DOJ Tax will give  
16 'discretion'."

17 Do you remember that being discussed?

18 A I generally remember a discussion regarding DOJ Tax's approval is needed.

19 As I stated, that's something that's needed in every tax investigation.

20 Q Okay.

21 And item 2(b)(ii), "No venue in Delaware has been known since at least June  
22 2021."

23 Mr. Rillotta. Hold on a second, Agent Waldon, please. I'm fine with you  
24 discussing -- or answering, rather, as to whether the issue of venue was discussed, but  
25 please do not characterize the deliberations or the evidence further.

1 BY MR. CLERGET:

2 Q Was venue discussed at that meeting?

3 A I think so. Yes.

4 Q And item 2(b)(iii), "Went to D.C. USAO in early summer to request to charge  
5 there -- Biden appointed USA said they could not charge in his district."

6 Did I read that right?

7 A That is what's written, correct.

8 Q Okay. Was that consistent with your understanding of what happened in  
9 D.C.?

10 A Yes, that Mr. Weiss went to the U.S. Attorney's Office -- I can't recall the  
11 dates -- and they did not agree to prosecute the case in D.C.

12 Q Okay.

13 And then just below that: "USA Weiss requested Special counsel authority when  
14 it was sent to D.C. and Main DOJ denied his request and told him to follow the process."

15 A I don't recall that.

16 Q But you wrote in your response to this email that Mr. Shapley had covered it  
17 all.

18 A I agreed that he covered it all, but, in terms of the word "special counsel"  
19 being requested, I don't recall those words being used. Again, this is Mr. Shapley's email  
20 and not my own.

21 Q Do you recall the general concept of Mr. Weiss's authority being discussed  
22 during that meeting?

23 A In talking about the process, he might've talked about what the process  
24 looks like generally. I don't recall anything about a special counsel.

25 Q Okay.

1           A    Being, a special counsel authority being requested at that time.  I don't  
2 recall that.

3           Q    So, in your response to this email, though, you didn't mention that that was  
4 inconsistent with what you heard at the meeting?

5           A    Again, generally speaking, I was confirming the details of what transpired,  
6 not every detail of what was stated and what wasn't.

7           Q    Okay.

8           Flipping over to the next page:  "Mid-September they sent the case to the central  
9 district of California -- coinciding with the confirmation of the new Biden appointed  
10 USA -- decision is still pending."

11          Did I read that correctly?

12          A    Yes.

13          Q    Okay.  And when you said that Mr. Shapley had covered it all, does that  
14 include this piece of information?

15          A    Again, generally speaking, if at that time the case went to the Central District  
16 of California, I would've agreed with it.  I have no comment about when it coincided or  
17 anything like that.  Again, that's his opinion.

18          Q    Okay.

19          And the next item:  "If CA does not support charging, USA Weiss has no authority  
20 to charge in CA."

21          When you said that he covered it all, did it include that piece of information?

22          A    It includes it in the email, yes.

23          Q    Okay.  And is that consistent with your recollection of what was discussed  
24 at the meeting?

25          A    That's consistent with my general understanding of what the process would

1 be.

2 BY MR. CASTOR:

3 Q But was that discussed in the 10/7 meeting that you attended and you -- I  
4 mean, you endorsed these notes here.

5 A You know, I generally -- as I sit here today, I can't recall the specific  
6 discussions of that meeting.

7 Q But on October 11th, which was, you know, closer in time, you know, you  
8 indicated that Mr. Shapley covered it all. So, if something Mr. Shapley wrote in his notes  
9 was inaccurate, presumably you would've chimed in and said, "Yay, you covered it all, but  
10 I remember this differently."

11 A Presumably, but, again, I'm stating -- I was generally speaking of the  
12 high-level topics in which he covered here. I'm not saying that this didn't happen. I'm  
13 saying, as I sit before you today, I can't explicitly --

14 Q That's fair enough.

15 A -- recall the details.

16 Q So you're saying you don't recall the discussion relating to taking the case to  
17 the U.S. attorney for the Central District of California?

18 A I recalled that being discussed generally.

19 Q Uh-huh.

20 A I can't necessarily say -- I mean, we probably talked about it more than once.

21 Q Right.

22 A So I can't say that he didn't discuss it here --

23 Q Okay.

24 A -- or he did. It could've been discussed. I just don't explicitly recall.

25 Q Okay. But Mr. Shapley's notes were -- you know, they're, you know,

1 basically contemporaneous. So there's no reason to believe his notes are not reliable,  
2 correct?

3 A Well, I am not here to classify his notes as being reliable or not, and what I  
4 could tell you is what I remember and what I don't remember.

5 Q Well, he worked for you, and you asked him to send you -- you know,  
6 according to him, he says that you asked for this set of notes to be emailed.

7 A I asked him to generally send an email of what transpired at the meeting,  
8 yes.

9 Q Correct. And so he typed up his notes from the meeting, and he sent them  
10 to you and Mr. Batdorf, and you indicated that he covered it all. You didn't quarrel with  
11 anything in his notes?

12 A I did not quarrel at the time with anything in his notes, no.

13 Q And we have no reason to believe that his notes are unreliable here, do we?

14 A I, again, can't classify what he --

15 Q Well, he worked for you, and you were in the meeting, and --

16 A I can tell you that -- what I can tell you is that I don't recall that specific  
17 statement.

18 Q Right. You don't recall it, but if he put it in his notes, more likely than not,  
19 that's the way it happened?

20 A Well, what I could tell you, as well, is that he might -- that is what he wrote.  
21 That's all I got. I can't say whether or not those are the accurate notes. I don't recall --

22 Q But you did on the 11th.

23 A Yeah. But I don't -- what I'm saying is, today, as I sit before you today, I  
24 can't recall this specific -- every specific statement that was discussed.

25 Q Fair enough. But you did indicate close in time to this meeting that the

1 notes were basically sufficient here. And we have no reason to believe these notes are  
2 not an accurate portrayal of what happened in the meeting, right?

3 A I have been telling you that I can't recall, and I would prefer -- you know, I  
4 can't say that he didn't misstate something or -- I can't -- I have no basis. I don't recall  
5 the --

6 Q Fair enough. But, I mean, he worked for you. Did you know him to be an  
7 unreliable reporter of events as a staffer for you?

8 A I am generally aware of, sometimes, there are misperceptions of what may  
9 have been said if there's disagreements.

10 Q But you were in this meeting, so it's not like you're if there was a  
11 misperception, presumably you would've corrected it for Mr. Batdorf and the other -- you  
12 know, he was the other person on this email.

13 A Well, I could tell you I just don't recall the specifics.

14 Q Okay.

15 BY MR. CLERGET:

16 Q Moving down to item 3, it says, "They are not going to charge 2014/2015 tax  
17 years."

18 Do you recall that being discussed at the meeting?

19 Mr. Rillotta. Can I stop you for a second, Agent Waldon? I'm okay with you  
20 testifying as to whether potential charges for 2014 and 2015 were discussed at this  
21 meeting. I ask you not to go beyond that.

22 Mr. Waldon. Generally speaking, the tax years of interest were discussed in the  
23 meeting.

24 BY MR. CLERGET:

25 Q Okay. And, similar to the earlier meeting we discussed, was the statute of

1 limitations discussed at this meeting?

2 A I can't explicitly recall, but, generally speaking, if we were having a meeting  
3 about the years involved, it's reasonable to assume that the tax years -- I mean, the  
4 statutes are up in discussion there.

5 Q Okay.

6 Jumping from 3 to 3(b): "Their reason not to charge it does not overcome the  
7 scheme and affirmative acts -- in my opinion."

8 Those are Mr. Shapley's words, but did I read that accurately?

9 A You did read it correctly, yes.

10 Q Okay. And did you agree with Mr. Shapley's opinion on that specific point?

11 Mr. Rillotta. I instruct the witness not to answer, for the reasons previously  
12 stated.

13 BY MR. CLERGET:

14 Q Do you have an opinion on that matter?

15 A In terms of whether or not --

16 Q In other words, you've been instructed not to answer by agency counsel as  
17 to whether you agreed with Mr. Shapley's opinion on the point articulated in 3(b).

18 Do you have an answer to that question?

19 A I would say, generally speaking, I do have an answer.

20 Q Number 4 --

21 Mr. Rillotta. Actually, counsel, I can lift this back out to a process point, and  
22 perhaps it'll be helpful to you, if you'll indulge me.

23 Mr. Clerget. Sure.

24 Mr. Rillotta. Agent Waldon, did you support the charges referred by IRS CI to Tax  
25 Division?

1 Mr. Waldon. That's correct.

2 Mr. Rillotta. Okay.

3 BY MR. CLERGET:

4 Q Number 4 -- I'll ask a followup to that. The charges recommended by IRS  
5 CI, those are the charges that were referred in a special agent report in, I believe,  
6 February of 2022? Is that correct?

7 A I don't recall the exact date, but they are the charges that would've been a  
8 part of the report.

9 Q And that included both felony and misdemeanor counts; is that correct?

10 A That's what I remember generally, yes.

11 Q Back to this email, number 4: "FBI SAC asked the room if anyone thought  
12 the case had been politicized -- we can discuss this if you prefer."

13 Is that a reference to Special Agent in Charge Sobocinski of the FBI?

14 A That's correct. Mr. Sobocinski asked that question.

15 Q And -- so he did ask that question? You --

16 A Yes.

17 Q -- recall that question being asked?

18 A Yes.

19 Q Okay. And what did you understand that question to be referring to?

20 A My understanding was whether or not there were any political influences or  
21 pressures being applied to Mr. Weiss and his team.

22 Q And he was asking that because the investigation was a son of the President  
23 of the United States; is that right?

24 A I can't speculate as to why he asked a question.

25 Q Why did you understand that he was asking the question?



1 A I thought, just given the sensitive nature of the investigation, yes.

2 Q Okay. And did you reply to that question in the meeting?

3 A I don't believe that was directed at us, but more so the U.S. Attorney's  
4 Office. So I don't recall replying.

5 Q Okay. Do you recall if anyone from the U.S. Attorney's Office replied?

6 A Yes.

7 Q Okay. And what did they say?

8 A No.

9 Q And that wasn't directed at you; you didn't reply. But did you feel the case  
10 had been politicized?

11 A No.

12 Q And number 5 says, "No major investigative actions remain." Is that  
13 correct?

14 A That's what it says, yes.

15 Q Okay. And you replied to this email and said Mr. Shapley had covered it all,  
16 so was that item discussed at the meeting?

17 A Generally speaking, we -- I don't recall specifically, but I believe we did talk  
18 about what was outstanding.

19 Q And he says that that's no major investigative actions. So is that what was  
20 said at the meeting?

21 A I can't recall that specific statement.

22 Q Is that consistent with your understanding of the case at that stage, on  
23 October 7, 2022?

24 A My understanding was, there were some things that needed to be done, but,  
25 for the most part, the report was sent over to the U.S. Attorney's Office. We write our

1 general prosecution report when we're done with the investigation, but the  
2 U.S. Attorney's Office can always come back and say they wanted additional work  
3 in -- whatever reason, depending on their reviews that have gone through.

4 Q Okay. So he's saying there's no major investigative actions remaining, so  
5 that suggests that the U.S. Attorney's Office had not come back and asked for additional  
6 work. Is that consistent with your understanding?

7 A Nothing major that sticks out to me. But, again, I don't recall that  
8 statement.

9 Q Okay.

10 So, given the process points you describe, did you believe that U.S. Attorney Weiss  
11 had unfettered discretion to bring a case in any district that he saw fit?

12 A I believe there were -- from my understanding, I understood that there were  
13 processes that he had to follow in order to bring the investigation. And if one process  
14 didn't work, I believe there were other processes that he would have to follow.

15 And that's just my general understanding about how this process worked. But  
16 that's a Department of Justice thing.

17 Q That's not unfettered discretion, right?

18 A I would hate to categorize it as not being -- I don't know what they meant by  
19 unfeathered -- unfettered. Sorry.

20 Q But just your understanding. I mean, he had ultimate authority, unfettered  
21 discretion. The suggestion was that he could do -- he could bring cases in whatever  
22 district he wanted. If he had to follow a process, if he had to get other approvals, that's  
23 not unfettered discretion.

24 A I understood there to be processes involved, and that's generally my  
25 understanding. I would hate to --

1 Q Right, so he didn't have unfettered discretion.

2 A I am not saying that he didn't, because I never heard those words in terms of  
3 anything that I was a part of during that time. I understood that he had a process that  
4 he had to work through to get the case processed --

5 Q And that process involved other persons?

6 A Yeah, as all investigations do.

7 Q Right. But in this investigation, this wasn't -- this wasn't a typical  
8 investigation, right?

9 A Typical from our processes, outside of it being sensitive.

10 BY MR. CASTOR:

11 Q I mean, at this point in time, he could not have just walked into, you know,  
12 Federal court in D.C. and brought the case, correct?

13 A I don't believe that's how --

14 Mr. Landrigan. I'll just instruct you to -- don't speculate as to your knowledge of  
15 Department of Justice and what they can or can't do. But you can answer to your  
16 knowledge.

17 Mr. Waldon. Yeah. My understanding is, there's a process to work through  
18 when you're bringing a case in another district.

19 BY MR. CASTOR:

20 Q So he had to partner with the U.S. attorney for D.C.?

21 A That's my understanding.

22 Q And if the U.S. attorney for D.C. didn't want to partner, maybe he had an  
23 ability to go appeal that to senior people at the Department, correct?

24 A I don't know the process. I can't speculate on the process --

25 Q And he couldn't bring a case without DOJ Tax's approval, could he?

1 A All --

2 Mr. Landrigan. Again, I'll ask you not to speculate as to what --

3 Mr. Waldon. Yeah. I --

4 Mr. Landrigan. -- DOJ can or can't do.

5 Mr. Waldon. My understanding of the process, DOJ Tax has to authorize every  
6 tax investigation by law.

7 BY MR. CASTOR:

8 Q And so, if -- and there was nothing about this case that was special, where  
9 he could bypass DOJ Tax, correct?

10 A I'm unaware of any policies that -- I can't speculate on their policies.

11 Q Okay. So you're unaware of any different set of rules for this case; that if  
12 he wanted to bring a case relating to tax, he had to have the Tax Division's approval,  
13 correct?

14 Mr. Landrigan. Again, I'll ask you not to speculate as to what Department of  
15 Justice can or can't do.

16 Mr. Waldon. Generally speaking, all tax cases have to be authorized, from my  
17 understanding, by DOJ Tax.

18 BY MR. CASTOR:

19 Q And you would agree, that's different from having special counsel authority?  
20 Now that he's a special counsel, he can walk into any district in the United States that he  
21 wants.

22 A I'm sorry. What was the question?

23 Q Now that he's special counsel, he has the authority to bring the case without  
24 partnering with the U.S. attorney for D.C.?

25 Mr. Landrigan. Again, I'd instruct you not to speculate as to what Department of

1 Justice can or can't do.

2 BY MR. CASTOR:

3 Q So something's changed, correct?

4 Mr. Landrigan. Again, I'd instruct you not to speculate as to what Department of  
5 Justice can or can't do.

6 Mr. Waldon. I can't speculate what has changed. I know that there is a  
7 different authority.

8 Mr. Castor. Okay --

9 Mr. Waldon. In terms of what that brings, I can't tell you what exactly, because I  
10 don't know all of Department of Justice's procedures.

11 Mr. Clerget. Our hour is up. Let's go off the record.

12 [Recess.]

1

2 [11:21 a.m.]

3 MINORITY COUNSEL 3\_ Back on the record.

4 Thank you for your testimony.

5

## EXAMINATION

6

BY MINORITY COUNSEL 3:

7

8 Q The three of us are going to ask questions, some following up on points that  
9 were made in the previous hour and others to elicit more information for the  
10 Committee's better understanding.

11

12 I'd first like to follow up on some of the responses you had to questions that our  
13 colleagues in the majority asked regarding the participation of IRS CI in presenting a case  
14 before the charging authorities at the U.S. Attorney's Office.

15

16 Mr. Shapley, for instance, previously testified before the Committee that he was  
17 very upset when he was told that he would not be able to participate in those meetings  
18 providing detail on IRS CI's ability to charge.

19

20 Your testimony, when majority counsel asked would IRS CI generally be involved in  
21 presenting that case, your testimony was that, no -- in fact, they asked. Has it ever  
22 happened in your career? And you said, no. And then they said, were you surprised  
23 the request was rejected? And your response was, no.

24

25 I'd ask first, did Mr. Shapley express frustration to you that he was not able to be  
involved in the presentation of that case?

26

A Presentation to who, just to make sure I'm clear?

27

Q To either the District of Columbia or the Central District of California.

28

29 A I do recall him being upset that he was not -- or, he and a team were not a  
30 part of the District of Columbia presentation, but I don't recall about California.

1 Q Given your previous experience with the participation, or lack thereof, of IRS  
2 CI in those meetings, would you find a -- especially someone at Mr. Shapley's level, would  
3 you find his being upset to be a reasonable thing for someone in his position?

4 Did he have a reasonable expectation to be able to participate in those briefings?

5 A I can't speculate on whether he had a reasonable expectation. I can tell  
6 you that, in my career, I've never been a part of those sort of meetings with a U.S.  
7 attorney, you know, collaborating with another U.S. attorney and then presenting  
8 evidence of a case.

9 Q Have you in your career ever had another person in Mr. Shapley's position or  
10 perhaps lower complain to you or come to you with a complaint about not being able to  
11 participate in such a meeting?

12 A I don't recall anyone ever coming to me complaining about that.

13 Q So you would say it certainly was unreasonable -- or unusual, I should say.

14 A I would say I've never experienced it.

15 Q Do you think that it presented to you as an unusual interest in the case itself  
16 for someone of Mr. Shapley's position?

17 A I wouldn't categorize it as necessarily unusual. I just never experienced it.

18 But here's a sensitive investigation, and presenting the evidence, you definitely  
19 just want -- if you can get an opportunity, why not ask for it?

20 Q Got it. Thank you.

21 I'd like to move briefly to majority's exhibit 10, so the email as previously  
22 discussed.

23 How many emails would you say you get a day in your position as SAC?

24 A I would say it really generally depends, but 50 to -- sometimes even up to 80.  
25 It's depends on what's going on.

1 Q With respect to your responses to those emails, do you generally expect that  
2 those emails will be proffered in a congressional investigation and scrutinized by the  
3 public?

4 A I don't expect that.

5 Q In the email that you're responding to here, is it fair to say, at 7:30 in the  
6 morning, after a holiday weekend, you were probably reading an email for general  
7 accuracy and not necessarily looking to dive into the details of every opinion expressed?

8 A I was reading the email for general accuracy, correct.

9 Q And you weren't sending it -- you didn't send it under oath?

10 A No.

11 Q No. And you also signed the email and said, "Let me know if you have any  
12 questions," meaning that there was the opportunity for Mr. Batdorf to follow up on the  
13 email with you?

14 A Yes.

15 Q All right. And so, at that time, for instance -- did Mr. Batdorf follow up,  
16 actually?

17 A I do believe there was one conversation, from what I recall, where he asked  
18 if the meeting was as contentious as Gary made it seem in the email.

19 Q Do you recall your reply to that?

20 Mr. Rillotta. Hold on.

21 Before you answer, Agent Waldon, remember not to characterize evidence or  
22 disclose deliberations about strategy. But you can answer on a general level.

23 BY MINORITY COUNSEL 3:

24 Q Was this a phone call or an email?

25 A I think it was a phone call.



1 Q Do you remember your response in that phone call? Or can you generally,  
2 sort of, categorize what you conveyed to Mr. Batdorf?

3 A Generally, I didn't find it to be as contentious as Mr. Shapley had stated.  
4 There were certainly differences of opinion expressed, but that's typical.

5 Q Right.

6 I don't have any further questions. Do you have any?

7 MINORITY COUNSEL 2\_ I have a few questions.

8 BY MINORITY COUNSEL 2:

9 Q For the October 11, 2022, meeting that we've been discussing, do you recall  
10 personally anything surprising from that meeting?

11 Mr. Rillotta. And that would be the October 7th meeting, correct, Counsel?

12 MINORITY COUNSEL 3\_ Yes.

13 MINORITY COUNSEL 2\_ Yes. Thank you.

14 Mr. Rillotta. Same instruction as before, Agent Waldon. Don't characterize  
15 evidence or disclose deliberations regarding strategy.

16 Mr. Waldon. Okay.

17 Can you repeat the question to make sure I answer it?

18 BY MINORITY COUNSEL 2:

19 Q Yes. Do you recall personally anything surprising from that meeting?

20 A I do not recall there being anything surprising other than I was not fully  
21 aware of a decision regarding some of the investigative years.

22 Q My next question is a two-parter. If you could just explain generally the  
23 role between IRS CI and IRS Criminal Tax, CT?

24 A Criminal tax counsel is just that, our counsel. They're there to advise us on  
25 legal matters as it pertains to investigations. They are not in CI, but we work closely

1 with them. They review product; they offer opinion. That's generally the role.  
2 Sometimes we bring them in to just talk generally about caselaw, you know, some  
3 challenges that they see occasionally in different investigations.

4 They're in an advisory role.

5 Q Thank you.

6 My second part of that question is, if you could explain generally the dynamic  
7 between IRS CI and CT?

8 A Generally, it's just a partnership. And where they express their opinion,  
9 sometimes we agree, sometimes we don't agree. And sometimes when we don't agree,  
10 agents, including myself, are a little frustrated with the disagreement, but that's the  
11 nature of the relationship. They're there to inform us, help us make an informed  
12 decision. And it's our role to either accept or state why we don't accept.

13 Q Okay. Thank you.

14 BY MINORITY COUNSEL 1:

15 Q Okay. I want to just go back and get a more high-level view of what this  
16 Washington office is, what it does, and what types of cases come through the office.

17 I want to talk about your time when you were the special agent in charge.

18 What geographical regions does the Washington Field Office cover?

19 A So, generally -- and I'm saying "generally" because, the way the office is  
20 made up, we have eight general groups, if you will, but we also have four specialty groups  
21 that investigated a certain type of crime that can occur anywhere in the U.S. or even in  
22 the world. So, in that sense, there is that more expansive, sort of, coverage as it is  
23 necessitated by a criminal investigation.

24 But in terms of the official States that we cover by the field office, it's all of  
25 Maryland, obviously D.C., Virginia, West Virginia, and that's it.

1 Q How many investigations a year would you estimate that the office handles?

2 A I believe, generally, we generally initiate over 100 and complete over 100  
3 investigations annually. Probably more close to 150 on each category.

4 Q What's the process that IRS CI goes through to refer cases to Department of  
5 Justice? Is there a formal process?

6 A So there is a formal process. An agent works an investigation, and, at the  
7 conclusion of the investigation, if we are recommending prosecution, we write a  
8 prosecution report. And we either send that directly to the U.S. Attorney's Office if it  
9 has no Title 26 tax violations in the report -- if it has tax violations, it goes through an  
10 internal review that consists of our centralized case reviewers, who is a third-party  
11 reviewer there to look at the evidence and see if the agent collected all the evidence and  
12 make recommendations. It also goes to Criminal Tax, who assesses it from a legal  
13 perspective, to ensure that the burden has been met in terms of evidence obtained to  
14 support the allegation. And then it goes to the Department of Justice Tax that does  
15 another review. And, if authorized, it goes to the U.S. Attorney's Office for prosecution.

16 Q , In that process that you just described, when the cases go from the  
17 investigators to CT counsel or your internal review, are all of those cases that are  
18 forwarded to those units referred to Department of Justice? Is it like, if you send it,  
19 they're more of a clearinghouse and then it's going on to Justice for referral?

20 A When you say "Justice," are you speaking of Justice Tax?

21 Q Tax.

22 A If it's a tax investigation, from my experience and my understanding, all tax  
23 investigations have to go through the Department of Justice Tax for approval.

24 Q Do they accept every case that IRS CI sends over?

25 A They accept it for review, but they don't authorize every case in terms of

1 moving forward with prosecution. There have been times in which they've declined to  
2 approve an investigation and move forward.

3 Q How often would you say they decline? Is that a rare occurrence? Occurs  
4 regularly? Frequently? Do you have any sort of sense of how often that might take  
5 place?

6 A I would say it happens -- in my perspective, my experience, it's happened  
7 every year that I was in the field, there might have been a declination at the Department  
8 of Justice Tax, if not more.

9 Q And, then, once the cases go to the U.S. Attorney's Office -- so they've been  
10 accepted and they go to the U.S. Attorney's Office or they go directly -- I'm only talking  
11 about the Title 26 cases in this setting -- what's the working relationship with the U.S.  
12 Attorney's Office at that point?

13 A From?

14 Q Between CI and the U.S. Attorney. Are they then working together to  
15 develop the case? Or what's the relationship at that point?

16 A The relationship is, they work together to complete the steps that are  
17 required either to prosecute or decline a case or further the investigation, depending on  
18 if it were a grand jury authorization. Or if it was like Department of Justice authorized a  
19 prosecution but with additional grand jury work, there might be additional grand jury  
20 steps that needed to be taken before they wrap their case up. Or if they just approved,  
21 then they work together to figure out the strategy to move forward.

22 Q Okay.

23 You mentioned that there's eight groups and then four that kind of work across  
24 the country within your unit. The U.S. Attorney's Offices that you work for, are they also  
25 all across the country, or are they located in one particular area?

1           A     So the U.S. Attorney's Offices that we work with are all across the country.  
2     It really depends on each case and where a venue might lie.

3           And, again, with the specialty groups, it could be, you know, Northern District of  
4     California or it could be D.C.   It really just depends on the investigation.

5           Q     Once the case is referred and taken up by the U.S. Attorney's Office, what's  
6     the role of the special agent in those cases at that time?   Are you interfacing with U.S.  
7     attorneys on a regular basis?   Or what's the role of the SAC at that point?

8           A     My role, again, generally speaking, I meet with the U.S. Attorney's Offices to  
9     talk high-level strategy, you know, sort of, initiatives, areas of interest.

10          As it relates to each individual investigation, I don't get involved in the weeds of  
11     that with the U.S. attorney.   That is handled at the special-agent level and the  
12     supervisory-special-agent level primarily.

13          Q     With the different U.S. Attorney's Offices that you've worked with across the  
14     country, do you notice differences in how they handle cases in terms of their pace or the  
15     types of cases they like to develop?

16          A     I definitely have noticed differences.   Some are quicker than others.   But it  
17     all is dependent upon resource availability, whether or not they have the resources, you  
18     know, their workload, so on and so forth.   But there are different paces.

19          Q     Do you have any impression, for maybe some of the offices that are working  
20     at a slower, more meticulous pace, do you have any sense as to if that's located by region,  
21     if there are certain regions?   Or is it just on a case-by-case basis, depending on who the  
22     attorney is?

23          A     Generally speaking, it's on a case-by-case basis.   You know, you could get a  
24     brand-new AUSA that has nothing else on their docket that gets one of our cases and  
25     ready to rock and roll right away.   Or if it's, you know, another case that's more

1 complicated that goes to a more experienced attorney, it just depends on where that  
2 case falls in line.

3 Q Do you have any opinion as to where the U.S. Attorney's Office for Delaware  
4 might fall in the spectrum of working slower or faster on cases?

5 A I have no basis to judge.

6 Q How common is it for there to be disagreements between IRS CI and the  
7 attorneys that they're working with?

8 A I would say it happens almost on every case that I've ever been a part of;  
9 there is some level of disagreement.

10 Q How does the SAC intervene or help resolve those disagreements?

11 A Well, it depends on whether or not it can be resolved at the  
12 special-agent/SSA level, ASAC level, before it gets to my level. Generally, I don't  
13 intervene with disagreements unless it's a major issue, and there's not been a ton of that,  
14 from my experience. And, like I said, it goes through other levels where they work to  
15 resolve.

16 I might consult with the ASAC and the SSA and say, hey, try this, try that. But in  
17 terms of me going to the U.S. Attorney's Office every time there's a disagreement, that  
18 doesn't happen.

19 Q Okay.

20 I want to talk a little bit about how cases are actually initiated and brought in. I  
21 want to walk through the IRM, because we just want to understand what the pipeline is  
22 for how these cases are started.

23 Looking at the IRM, I'm really looking at parts 9 and 10, so just looking at the  
24 criminal investigation pieces and privacy pieces.

25 I want to start with IRM 9.4.1.6.2, which is "Initiating a Subject Criminal

1 Investigation." I want to enter this as an exhibit as well.

2 [Waldon Exhibit No. 2

3 Was marked for identification.]

4 Mr. Rillotta. I was thinking for a second you were going to ask the witness to  
5 recall the IRM.

6 MINORITY COUNSEL 1\_ No, no, no. I didn't want to have to do that, so I did  
7 make a copy.

8 BY MINORITY COUNSEL 1:

9 Q Okay. What is a subject criminal investigation? What is an SCI?

10 A A subject criminal investigation in IRS CI is a full-blown investigation where, if  
11 approved, an agent is authorized to conduct all investigative steps that we are authorized  
12 to take. There are certain investigative steps that CI might not be authorized to take,  
13 but generally it's a full-fledged investigation.

14 Q Okay.

15 The IRM states that, to initiate an SCI, certain information must be entered into a  
16 database by the initiating agent. Is that correct?

17 A That's correct.

18 Q The IRM further states that the information is then reviewed and approved  
19 by the appropriate management officials. Is that correct?

20 A That's correct.

21 Q Okay.

22 I would like to introduce IRM section 9.4.1.6.3, and this deals with the approval.

23 [Waldon Exhibit No. 3

24 Was marked for identification.]

25 BY MINORITY COUNSEL 1:

1           Q    This section states in paragraph 1 that "any non-sensitive Title 26 SCIs may  
2 be approved by the field office SAC or ASAC." Is that correct?

3           A    That's correct. SCIs may be approved by the SAC or ASAC.

4           Q    It further states, in part, that all sensitive Title 26 SCIs must be approved by  
5 the chief of Criminal Investigation upon request of the SAC through the respective  
6 director of field operations.

7           Is that correct?

8           A    That's correct.

9           Q    The section defines a sensitive investigation as one involving a list of  
10 enumerated categories, including "currently serving elected Federal officials."

11          Is that correct?

12          A    That's correct.

13          Q    Okay. I would like to understand how this works in practice. Does it take  
14 longer, in practice, to get approval for a Title 26 sensitive investigation than a Title 26  
15 non-sensitive investigation?

16          A    I would say generally so, as there are additional levels of approval. So, just  
17 by sheer fact that it has to go through additional people, it might take a little longer.

18          Q    Is there any sense as to how long it might take to get these three levels of  
19 approval for a sensitive case that it appears would have to go through the SAC, the  
20 director of field operations, and then the chief of CI? Like, is there a general timeframe  
21 as to how long that might take?

22          A    There is no general -- you obviously want to do it as quick as possible, but it  
23 depends on a lot of factors: how quickly I could review; if I'm satisfied, as the SAC, with  
24 the recommendation and the evidence that's gathered to date; whether or not the DFO  
25 has additional questions.



1           So it really depends on just the review process and whether or not there's  
2 additional information we have to ask of the special agent.

3           Q    In the case of a non-sensitive case, it seems to only require one level of  
4 review; it's either the SAC or the ASAC, correct?

5           A    So, in a non-sensitive SCI, the approval -- the request comes from the special  
6 agent. It goes to their supervisory special agent, who then processes it to either the  
7 ASAC or the SAC depending on the level of delegation that's been given in the field office.

8           Q    Is there any general time period for that review, for the non-sensitive case?

9           A    Again, we try to do all of these as quickly as we can. It really just depends  
10 on the facts of the case and how it's laid out and whether or not there are questions  
11 involved.

12          Q    In practice, do sensitive cases take longer than non-sensitive cases,  
13 generally, to be approved, just given the --

14          A    I would say, generally, given the process, yes.

15          Q    And, then, how are these categories that are enumerated here, is that  
16 exhaustive?

17          A    I would --

18          Q    For example, for the Federal officials, is it limited to only those that are  
19 currently serving?

20          A    Generally speaking, this is our guidelines that we follow. There might be an  
21 exception here or there, depending upon the public profile of an individual, to where we  
22 might say, this is a sensitive case, maybe not defined by IRM, but given, you know,  
23 everything that's involved, and, therefore, we're going to enact these additional  
24 procedures.

25          Q    What's your understanding or guideline that you used, as the SAC, to

1 determine whether or not a case was sensitive?

2 A I mostly followed this, but, again, I also thought about the profile, public  
3 profile, of the individual, the notoriety as well, and we talked about whether or not that  
4 should -- you know, talked with my team, whether or not that should be considered a  
5 sensitive case.

6 Obviously, we talked with the DFO as well, Michael Batdorf in this case, and we  
7 would ask him his thoughts. And it's an agreement, if it's not outlined here, whether or  
8 not we should designate it as a sensitive case.

9 Q Okay.

10 I noticed, just in reviewing the IRM, that there are special procedures that apply to  
11 sensitive investigations in the context of search warrants.

12 I would like to introduce IRM 9.4.9.3.3.2, which is "Director, Field Operations  
13 Concurrence," as an exhibit.

14 [Waldon Exhibit No. 4

15 Was marked for identification.]

16 Mr. Rillotta. Have we designated these in any particular way, by number or  
17 otherwise?

18 MINORITY COUNSEL 1. They just follow in order. So we had 1. The next one  
19 was then 2, 3, and this one is 4.

20 BY MINORITY COUNSEL 1:

21 Q The first paragraph states, and I quote, "The SAC is required to obtain  
22 written concurrence from the respective Director, Field Operations, for the execution of a  
23 search warrant in a sensitive investigation."

24 Is that correct?

25 A That's correct.

1 Q Does this approval generally take longer than non-sensitive cases?

2 A Generally, yes.

3 Q The section further states, and I quote, "The SAC will obtain written  
4 concurrence from the respective Director, Field Operations, when a search warrant which  
5 targets an individual requiring DOJ, Tax Division approval is being considered. Criminal  
6 Tax Counsel review is required prior to forwarding the search warrant to the Director,  
7 Field Operations for concurrence."

8 Is that correct?

9 A That's correct.

10 Q In the case of someone requiring DOJ Tax Division approval, there's an extra  
11 layer of review by CT counsel before the search warrant even reaches the director of field  
12 operations? Is that correct?

13 A That's correct.

14 Q How long does it generally take CT counsel to review the search warrant in a  
15 sensitive case?

16 A I don't recall the exact days, but there is -- they do have additional time if it's  
17 considered sensitive. The IRM would state the number of days. I don't recall that off  
18 the top of my head.

19 Q And then how long does it generally take the director of field operations to  
20 review a search warrant in a sensitive case?

21 A I guess it really just depends on the facts and circumstances surrounding  
22 their day-to-day, you know, duties and whether or not there are questions, so on and so  
23 forth.

24 Q But you would agree that adding the extra layer of going through CT review,  
25 that adds time?

1 A That definitely adds time.

2 Q Okay.

3 Okay. I would like to introduce IRM section 9.4.9.3.3.3, the "Department of  
4 Justice, Tax Division Approval" list, as an exhibit. And this will be exhibit 5.

5 [Waldon Exhibit No. 5

6 Was marked for identification.]

7 BY MINORITY COUNSEL 1:

8 Q Are you generally familiar with this list?

9 A Generally, yes.

10 Q Okay.

11 This section provides that "the local U.S. Attorney's Offices can approve most Title  
12 26 and tax-related Title 18 search warrants. However, DOJ, Tax Division retains  
13 exclusive authority to approve Title 26 and tax-related Title 18 search warrants directed  
14 at offices, structures, or premises owned, controlled, or under the dominion of a subject  
15 of an investigation who is" on the list provided in that section.

16 Is that generally correct?

17 A That's generally correct.

18 Q The second bullet on that list is a lawyer. Is that correct?

19 A That's correct.

20 Q The fourth bullet on the list is a "local, state, Federal, or foreign public  
21 official or political candidate." Is that correct?

22 A That's correct.

23 Q The next paragraph, paragraph 2, states, and I quote, "It should be expected  
24 that due to the sensitivity of these professions, this additional scrutiny may require a  
25 longer period of review."

1 Is that correct?

2 A That's correct.

3 Q Do you have any sense as to how much additional time may be added by this  
4 additional review by DOJ Tax?

5 A I don't have a number of days off the top of my head, no.

6 Q In practice, does it take longer to review search warrants for individuals who  
7 DOJ Tax requires the exclusive authority to approve the search warrants than it does for  
8 other individuals?

9 A Yes.

10 Q Okay.

11 I would like to introduce IRM 9.4.9.3.2.4.1, which is "Executing Searches of  
12 Attorney's Offices," as an exhibit. This will be exhibit 6.

13 [Waldon Exhibit No. 6

14 Was marked for identification.]

15 BY MINORITY COUNSEL 1:

16 Q Are you generally familiar with this --

17 A Generally.

18 Q -- section of the IRM?

19 A Yes.

20 Q This section provides that "DOJ policy places additional procedures on  
21 situations pertaining to the search of the premises of any attorney who is engaged in the  
22 practice of law on behalf of clients."

23 Is that correct?

24 A That's correct.

25 Q This section also states, quote, "Searches of attorney's offices involve

1 extensive cooperation between CI, CT Counsel, DOJ, and the local U.S. Attorney for the  
2 government to ensure compliance with this policy. Additional resources outside the  
3 local area may be required that will call for coordination by the SSA."

4 Is that correct?

5 A That's correct.

6 Q In practice, what's involved in the extensive coordination and cooperation  
7 between these groups?

8 A In practice, you know, I think that one of the major things is making sure  
9 we've considered the "privilege team," talking about whether or not this is the best  
10 approach to gathering evidence -- everything all the way down to time of day, you know,  
11 what we're expected to find, how we're going to handle that evidence. It's a bunch of  
12 things that I'm sure they talk about at that level.

13 Q Does this cooperation add time, again, to the search warrant process, when  
14 you have to do the coordination?

15 A I would say, generally, yes.

16 Q Does the coordination cause the investigation to move slower than cases  
17 that don't require this coordination?

18 A I would say yes.

19 Q In general, would you say that there are more procedures that apply to  
20 sensitive investigations than non-sensitive investigations?

21 A Yes, as outlined by the IRMs.

22 Q Do these additional procedures, in general, just slow down sensitive cases,  
23 where they move slower than non-sensitive cases?

24 A I would say it adds additional time to the investigative process, yes.

25 Q Thank you.

1           ██████████, ██████████, do you have any questions on any of that?

2           MINORITY COUNSEL 2. No.

3                           BY MINORITY COUNSEL 3:

4           Q    I just have a question. As the individual who was in charge of, I think as you  
5           put it, managing the resources of the field office of the Washington, D.C., office, could  
6           you speak a bit about the personnel or man-hours assigned to the Hunter Biden case in  
7           particular?

8                   Were the number of personnel or number of hours spent on that case normal for  
9           the dollar amount charged? Without getting into specifics as to the specific dollar  
10          amount charged, in your estimation, were more or less or an average number of  
11          man-hours for a case that size generally devoted to the Hunter Biden case?

12          Mr. Rillotta. Without characterizing evidence or internal deliberations, you can  
13          answer.

14          Mr. Waldon. I really don't want to speculate in terms of whether it was normal  
15          or not. I look at each investigation as, the investigation steps that are required to be  
16          taken are, you know, reflected in the number of hours that an agent or a case might have,  
17          the direct investigative time that a case might have on it. But, in general, I can't really  
18          classify whether it was normal or abnormal.

19                           BY MINORITY COUNSEL 3:

20          Q    I'll ask it somewhat differently. Does the determination of the number of  
21          man-hours or time devoted to any case rest, at least in part, on the amount at issue?

22          A    It really rests on what's needed to determine whether or not you could  
23          prove or disprove the allegations. I would say that's -- the time that it takes to do that,  
24          of course, sometimes might take a little longer than we hope, for various reasons.  
25          Sometimes it might go quicker than we expected. But it really just depends on, you

1 know, the investigative steps and whether or not search warrants or other things -- you  
2 know, if there's foreign records, how long that takes to come in, so on and so forth. It  
3 just depends on a lot of different things.

4 Q In your judgment, there was nothing that prevented your field office from  
5 allocating adequate resources to the investigation of this case?

6 A Not from my perspective, no.

7 MINORITY COUNSEL 3\_ That's all I have.

8 MINORITY COUNSEL 2\_ No further questions.

9 BY MINORITY COUNSEL 1:

10 Q Okay. I would like to talk a little bit about the confidentiality of tax returns  
11 and return information.

12 As you know, section 6103 provides that returns and return information are  
13 confidential unless an exception applies. Is that correct?

14 A That's correct. That's my general understanding.

15 Q And there's an exception to the confidentiality rules for access by IRS  
16 employees for their official duties.

17 I'd like to introduce as exhibit 7 Internal Revenue Code section 6103(h)(1).

18 [Waldon Exhibit No. 7

19 Was marked for identification.]

20 BY MINORITY COUNSEL 1:

21 Q Section 6103(h)(1) states, and I quote, "Returns and return information shall,  
22 without written request, be open to inspection by or disclosure to officers and employees  
23 of the Department of the Treasury whose official duties require such inspection or  
24 disclosure for tax administration purposes."

25 Is this correct?



1 A That's correct.

2 Q I would like to introduce IRM section 9.3.1.17 and 9.3.1.18. They are  
3 dealing with "Protecting Records from Unauthorized Disclosure" and "Protecting  
4 Taxpayer Records Against Unauthorized Access." And this will be exhibit 8.

5 [Waldon Exhibit No. 8

6 Was marked for identification.]

7 BY MINORITY COUNSEL 1:

8 Q Are you familiar with, generally, unauthorized access and unauthorized  
9 disclosure?

10 A Generally, yes.

11 Q Okay.

12 IRM 9.3.1.17 states that, quote, "the Chief, CI; Directors, Field Operations; SACs,  
13 and ASACs, are responsible for safeguarding CI records maintained in their respective  
14 offices."

15 Is this correct?

16 A That's correct.

17 Q It further provides that, quote, "special agents and other CI personnel are  
18 responsible for the safeguarding of CI records in their custody against loss, destruction, or  
19 unauthorized access, and against unauthorized disclosure of information."

20 Is that correct?

21 A That's correct.

22 Q Are SACs, ASACs, special agents, and other CI personnel aware of this  
23 responsibility?

24 A I would say, generally, yes.

25 Q Do they receive any training on this responsibility?

1 A I would say yes.

2 Q When you were SAC, how did you safeguard the information, the CI records,  
3 that were within your respective office?

4 A They are secured -- the physical documents are secured, as required by the  
5 IRM, in special safes that only certain people have access to. There is an inventory log  
6 that is maintained so we can keep track of who and when had access to those particular  
7 records.

8 Q IRM 9.3.1.18 states that, quote, "Unauthorized Access (UNAX) is the willful  
9 unauthorized access or inspection of any return or return information."

10 It further provides that, quote, "the Office of the Treasury Inspector General for  
11 Tax Administration has full responsibility for the investigation of all allegations of UNAX."

12 Is that correct?

13 A That's correct.

14 Q Are there procedures in place for SACs to refer allegations of unauthorized  
15 access to the Treasury Inspector General for Tax Administration?

16 A Yes.

17 Q Are SACs aware of these procedures?

18 A Generally, yes.

19 Q Okay.

20 I would like to introduce IRM 10.5.1.2.4, which is an exhibit on the "Federal Tax  
21 Information." This is exhibit 9.

22 [Waldon Exhibit No. 9

23 Was marked for identification.]

24 BY MINORITY COUNSEL 1:

25 Q Are you generally familiar with the definition of "Federal tax information"?

1 A Generally, yes.

2 Q The IRM states, and I quote, "The term tax information, or Federal tax  
3 information (FTI), refers to a taxpayer's return and return information protected from  
4 unauthorized disclosure under IRC 6103."

5 Is this correct?

6 A That's correct.

7 Q Paragraph 4 of this section also states that, quote, "tax information is SBU  
8 data. IRC 6103 protects tax information from unauthorized disclosure."

9 Is this correct?

10 A That's correct.

11 Q Does "SBU" stand for "sensitive but unclassified" data?

12 A That's my understanding. Correct.

13 Q Are special agents and other CI personnel aware of this restriction?

14 A I would say, generally, yes.

15 Q And is this something that's widely known through the CI division?

16 A What, in particular? I'm sorry.

17 Q The fact that this tax information is confidential and protected from an  
18 unauthorized disclosure.

19 A Yes.

20 Q How are CI personnel made aware of this?

21 A We take annual trainings.

22 Q Okay.

23 I would like to introduce IRM 10.5.1.2.8. This is exhibit 10.

24 [Waldon Exhibit No. 10

25 Was marked for identification.]

1 BY MINORITY COUNSEL 1:

2 Q This section provides more guidance on when IRS personnel are authorized  
3 to access SBU data, including Federal tax information.

4 The first paragraph states, quote, "Restrict access to SBU data (including PII and  
5 tax information) to those IRS personnel who have a need for the information in the  
6 performance of their duties."

7 Is that correct?

8 A That's correct.

9 Q Is this referred to as "need to know"?

10 A What is "this"? I'm sorry.

11 Q The restricted access.

12 A Yes. I would say, generally, yes.

13 Q The second paragraph states, quote, "The term 'need to know' describes the  
14 requirement that personnel may access SBU data (including PII and tax information) only  
15 as authorized to meet a legitimate business need, which means personnel need the  
16 information to perform their official duties."

17 Is that correct?

18 A That's correct.

19 Q The third paragraph provides that IRS personnel who, quote, "change roles  
20 or assignments may access only the SBU data (including PII and tax information) for which  
21 they still have a business need to know to perform their duties. If you no longer have a  
22 business need to know, you must not access the information. This policy includes, but is  
23 not limited to, information in systems, files (electronic and paper), and emails, even if  
24 technology does not prevent access," end of quote.

25 Is this correct?

1 A That's correct.

2 Q Are CI personnel aware of this need-to-know policy?

3 A I would say, generally, yes.

4 Q How are they made aware of this policy?

5 A Again, I think, annual trainings.

6 Q As a supervisor, are there any steps that you take when CI employees change  
7 roles or assignments generally to remind them of this policy?

8 A Generally, yeah, we're securing the information that they might have. For  
9 instance, if it's a part of a case file they no longer need access, we transfer it to who the  
10 case is going to be. I think generally everyone's aware that you shouldn't be accessing  
11 anything that you don't have a need to know to access.

12 Q The fourth paragraph states, quote, "You must ensure your own adherence  
13 to this need-to-know policy."

14 Is that correct?

15 A That's correct.

16 Q What is your understanding of the requirement that employees adhere to  
17 this policy on their own?

18 A I think everyone knows that they've got to adhere to it.

19 Q How's the policy communicated to employees that you supervise? Is it  
20 beyond the annual training, or is it in the annual training?

21 A I believe it's in the annual training.

22 Q Thank you.

23 That's it.

24 Mr. Clerget. Let's go off the record, please.

25 [Recess.]

1 Mr. Clerget. We can go back on the record.

2 BY MR. CLERGET:

3 Q Okay. So, moving back to the 10/7 meeting and what's marked as exhibit 1,  
4 we've been talking a lot about your recollection of that meeting, your recollection today  
5 versus your response to Mr. Shapley's email a couple days after, where you said, "You  
6 covered it all."

7 And I wanted to just -- and you were asked by our colleagues about whether, you  
8 know, after a holiday weekend, maybe you just read that for general accuracy and wrote,  
9 "That covered it all." And I wanted to just dig into that a little bit.

10 You report directly to Mr. Batdorf, right?

11 A That's correct.

12 Q So he's your boss?

13 A That's correct.

14 Q And you asked Mr. Shapley to send this update, this email we've been  
15 discussing, right?

16 A That's correct.

17 Q Okay. And did you take notes at the 10/7 meeting?

18 A I probably did.

19 Q Do you know if you have those notes?

20 A I don't have them.

21 Q Did you throw them away?

22 A Yeah, well, upon moving offices, anything dealing with any cases, I shred it.  
23 Yeah, I shredded -- I don't think I have them.

24 Q All right. And did Mr. Shapley take notes?

25 A I think he did.

1 Q And by asking him to provide this update, you relied on him to capture what  
2 happened in the meeting?

3 A By asking him, yes, I relied on him to summarize the general facts of the  
4 meeting. Correct.

5 Q And as a supervisory special agent, Mr. Shapley is trained to report on  
6 interviews, meetings, other investigative activities? Is that right?

7 A Yes.

8 Q And this particular matter was a pretty high-profile case, right?

9 A Yes.

10 Q It's been reported on in the press?

11 A Yes.

12 Q Involves the son of the President of the United States?

13 A Yes.

14 Q So, in all cases you have, this was a pretty significant one. Is that fair to  
15 say?

16 A That is fair to say.

17 Q And if you thought that Mr. Shapley made an error in his report on the  
18 meeting to your boss, Mr. Batdorf, you would be obligated to correct that, right?

19 A I would not have changed his writing. Again, when I read this email, I was  
20 reading it for general topics of discussions. I was not reading it for his commentary on it.

21 Q Yeah, no, I understand. I understand that distinction that you're making  
22 between capture the meeting and pieces where he says, in one case, even, this is my  
23 opinion, right?

24 But on the general topics of discussion, item 2, bolded, underlined, "Weiss stated  
25 that he is not the deciding person on whether charges are filed," if that wasn't true, if that

1 was incorrect, you would've been obligated to tell your boss, Mr. Batdorf, that, hey,  
2 Gary's incorrect here, right?

3 A I took this statement to mean that there are processes that he had to follow.

4 Q I understand. But if he made that up, if it was a lie -- you were at the  
5 meeting, never happened, he lied about it -- you would have to tell your boss, that's not  
6 true?

7 A If there was a lie, I definitely would've stated what my position was if it  
8 differed. Correct.

9 Q Okay. And Mr. Shapley even says in the introduction of this email,  
10 "Darrell -- feel free to comment if I miss something," right?

11 A Yeah.

12 Q Okay. And you didn't. You said, "You covered it all."

13 A That's correct.

14 Q Okay.

15 And you read your emails before replying to them or characterizing them, right?

16 A Generally, yes.

17 Q And an email in a sensitive, high-profile case to your boss that you're  
18 commenting on, you've read the email before you reply?

19 A For general context, yes.

20 Q And this wasn't just a casual sort of email, "Let's get lunch later." This was  
21 an update on a significant meeting in a high-profile, very sensitive case, right?

22 A It was an email about a case that's high-profile. Correct.

23 Q And, in this email, you also discussed making a referral to TIGTA, right?

24 A That's correct.

25 Q That's the Treasury Inspector General for Tax Administration, correct?



1 A That's correct.

2 Q Okay. So this is a serious email. Is that fair?

3 A Correct.

4 Q And so, when you said "you covered it all," you didn't identify any lies, any  
5 inaccuracies, anything incorrect that you needed to correct for your boss so that he had  
6 accurate information about what happened at the meeting.

7 A I did not -- well, I'm not going to say whether or not -- I agreed to what  
8 generally happened in the meeting, correct.

9 Q And you said you had conversations with Mr. Batdorf afterwards about  
10 contentiousness.

11 A Correct. I believe there was one conversation in which we discussed that.

12 Q And, in that conversation, did you tell Mr. Batdorf that this email was a lie?

13 A I don't recall saying that.

14 Q You wouldn't have said that, because you said "you covered it all," and you  
15 would've corrected it in the email response, right?

16 A Well, I'm not going to say that I would've corrected it in an email response.  
17 I can't speculate on what I would've done if there was a lie here. But I did not tell him  
18 there were lies in the email.

19 Q And you would have if there was?

20 A Yes.

21 Q Turning to the back page of this document, item number 6, which we didn't  
22 quite get to in my prior round of questioning, and that's where Mr. Shapley says, "Both us  
23 and the FBI brought up some general issues, to include communication issues, update  
24 issues," and said at the bottom, 6(c), "These issues were surprisingly contentious."

25 Is that consistent with your recollection of the meeting?

1 A That's -- again, I didn't find them to be contentious.

2 Q Okay. But you understood that Mr. Shapley was referring to the issues  
3 regarding communication issues and update issues, right?

4 A As I read that today, that appears to be what he was referring to.

5 Q Okay. So, when you said you disagreed with Mr. Shapley on the  
6 contentiousness of the meeting, you were referring to this item number 6. Is that right?

7 A I -- yes. I did not agree the meeting generally was contentious.

8 Q But he didn't say that, right? He said number 6 was contentious. Is that  
9 your understanding of what he wrote?

10 A That's my understanding as presented here.

11 Q Okay.

12 I want to talk a little bit about what happened after the 10/7 meeting.

13 So, in their testimony to the Committee, Mr. Shapley and Mr. Ziegler testified  
14 that, after this meeting, they felt like they were cut out of the process, of the prosecution  
15 team meetings that they had regularly attended previously.

16 Is that consistent with your understanding of what happened after the 10/7  
17 meeting?

18 A My understanding is that the U.S. attorney stated that he would not be  
19 talking with Mr. Shapley henceforth, as they were going through their deliberative  
20 process.

21 Q Okay. And did he make that statement to you directly?

22 A Yes.

23 Q Okay. When did he make that statement to you?

24 A It was sometime after the October 7th meeting. I don't remember the  
25 date.

1 Q Shortly after? The next day?

2 A I don't believe it was the next date -- day, rather. I think it was probably  
3 later in October.

4 Q Later in October. Okay. Can you give any more specific than that?  
5 Latter half of October? The last week of October?

6 A I don't recall the date.

7 Q Okay.

8 And you said earlier that Mr. Shapley was, sort of, the primary point of contact for  
9 IRS CI with U.S. Attorney Weiss and the prosecution team. Is that right?

10 A Mr. Shapley and the investigative team. They communicate with the  
11 prosecutors that were on the case.

12 Q As sort of, like, the day-to-day point of contact with --

13 A Yeah. I wouldn't -- I can't say that it was Mr. Weiss. I believe it was the  
14 prosecutors from DOJ Tax and DOJ that were assigned to the case.

15 Q Okay. Fair enough. But Mr. Shapley was the primary point of contact for  
16 IRS CI with DOJ.

17 A He and Mr. Ziegler, I would say, were the primary contacts, yes.

18 Q Okay.

19 Mr. Ziegler testified about an incident in December 2022 where he reached out to  
20 Mark Daly, a senior litigation counsel at DOJ Tax, seeking confirmation that a meeting for  
21 the following day had been canceled. And Ziegler testified that he heard about the  
22 cancelation of that meeting from you.

23 Do you recall the cancelation of a meeting, a prosecution team meeting, in  
24 December 2022?

25 A I generally remember a meeting being canceled. Correct.

1 Q Okay.

2 And Mark Daly responded to Mr. Ziegler and confirmed this was correct and that  
3 U.S. Attorney Weiss and SAC Waldon had been in conversation and came to that decision.

4 Is that your recollection?

5 A Mr. Weiss stated to me that he would not be communicating with  
6 Mr. Shapley anymore and he would be going directly to me.

7 Q To you. Okay.

8 A That's correct.

9 Q And he told you that sometime in the latter -- you think the latter half of  
10 October potentially?

11 A Yeah. It was after the October 7th meeting, definitely.

12 Q Okay. So presumably before December 2022.

13 A Absolutely.

14 Q And so, at that point, you became the primary contact for the prosecution  
15 team at IRS CI?

16 A Yeah, on any substantive matters. We -- David Weiss and I would discuss  
17 those.

18 Q Okay. And in that time period, so after the October 7th meeting, how  
19 frequently did you talk to Mr. Weiss?

20 A I would say that it really was dependent upon an issue that arised, perhaps,  
21 that I can't get into, but maybe a handful of times. I can't count -- I don't recall the  
22 specific amount of times that he and I talked. We talked via email a couple of times and  
23 I know via telephone a couple of times.

24 Q Okay.

25 You said you moved jobs in April of 2023; is that right?

1 A February of 2023.

2 Q February of 2023. My mistake. When you switched jobs in  
3 February 2023, were you no longer involved in the Hunter Biden matter?

4 A That's correct.

5 Q Okay. In any way?

6 A That's correct.

7 Q Okay.

8 And so, between October 7, 2022, and February of 2023 when you switched jobs,  
9 about how many times did you talk to Mr. Weiss?

10 A I would say a handful. I honestly cannot recall the specific amount. But I  
11 would say about -- maybe five seems reasonable.

12 Q Less than 10?

13 A Yeah, definitely, I believe.

14 Q And did you talk to anyone else on the prosecution team other than  
15 Mr. Weiss?

16 A I don't recall if I had a conversation with Mr. Daly or not. I don't recall.

17 Q It's possible you did?

18 A It's possible.

19 Q Back to this December 2022 meeting and the meeting being canceled, what  
20 else can you tell us about that?

21 So you said that Mr. Weiss said he didn't want to talk to Mr. Shapley about the  
22 case; he was going to talk to you about it. What was the nature of the meeting?

23 Mr. Rillotta. Agent Waldon, perhaps -- you've worked a lot of your life in or  
24 around litigation. You know what a privilege log is, right?

25 Mr. Waldon. That's correct.

1           Mr. Rillotta. Why don't you sort of keep it at the level of privilege log, which is  
2 just sort of the general subject matter of the contemplated meeting, if that makes sense  
3 to you.

4           Mr. Waldon. Okay. Yeah, it does.

5                           BY MR. CLERGET:

6           Q    Do you recall the nature of the December meeting that Joseph Ziegler  
7 referenced in his testimony?

8           A    I thought it was just a status update meeting. I don't recall the general  
9 specifics, but --

10          Q    Do you know, was it a meeting that the whole prosecution team -- the IRS,  
11 the FBI -- all those folks were on it?

12          A    I can't remember the specifics there.

13          Q    Okay. And you canceled the whole meeting?

14          A    I -- well, so here's how it worked. They were going through their  
15 deliberative process, the U.S. Attorney's Office, and there were no substantive updates.  
16 The way it was left is that they would reach out to us once that process was done.

17          Q    Were there any other team meetings that you participated in after  
18 October 7th and before February 2023?

19          A    I don't think so. And by "team," you mean, just to make sure --

20          Q    Sorry. So any meetings with the U.S. Attorney's Office, DOJ Tax, FBI?

21          A    I don't recall any. I might have had a phone call, but I don't recall.

22          Q    Were there ever meetings canceled like this one?

23          A    Not that I recall.

24          Q    Did anyone other than you at IRS CI attend any meetings or have any  
25 conversations with the prosecution team, U.S. Attorney's Office, after the 10/7 meeting?

1           A    I can't speak for everyone. I do believe that Mr. Weiss reached out to the  
2 deputy chief, which was Guy Ficco.

3           Q    Do you know when that was?

4           A    I think that was sometime in November, but I don't know the exact date.

5           Q    And do you know what the topic of that conversation was?

6           A    I think it was related to discovery.

7           Q    Discovery for what?

8           A    Emails.

9           Q    Related to?

10          A    Mr. Shapley's emails.

11          Q    Okay. And do you know when that was?

12          A    I don't recall the exact date. I would think that it was sometime in  
13 November, but I don't recall.

1

2 [12:35 p.m.]

3

BY MR. CLERGET:

4

Q So now that we clarified that you were the point of contact for the U.S.

5

Attorney's Office, Mr. Shapley testified -- and we hit on this earlier -- that you informed

6

investigators that the Central District of California declined the case when it was

7

presented to them; that you provided that update.

8

Is that your recollection, based on the discussion we've had, that Mr. Weiss would

9

have updated you and you would have passed that along?

10

A If that decision came, he definitely would have updated me at the time, and I

11

would have talked with the investigative team.

12

Q Okay. So if it happened, he would have updated you?

13

A I believe, given the arrangement, he would have come to me and not anyone

14

else on the investigative team from IRS CI.

15

Q And do you recall learning that California had declined the case?

16

A I don't explicitly recall, but if that's what was stated -- I don't explicitly recall.

17

Q Okay. But is it your view -- you know now that California declined the case.

18

Is that fair?

19

A I think generally I know that it's been declined, yes.

20

Q Okay. You're just not sure --

21

A I'm not sure.

22

Q -- who you learned it from or where you learned that information?

23

A No, I'm not.

24

Q Okay. Okay. Did you talk to U.S. Attorney Weiss before the 10/7 meeting

25

directly?



1           A    We had the meeting in June of -- I think June 15th. I may have talked to  
2 him thereafter. So to your answer -- I mean to your question, yes.

3           Q    And do you know how many times before 10/7?

4           A    I don't recall the number of times.

5           Q    And when was the last time you spoke with David Weiss?

6           A    I -- it was definitely before I left the position, but I can't give you an exact  
7 date.

8           Q    So February 2023 or before?

9           A    I would say yes. Or before, yes.

10          Q    Okay. And have you ever spoken directly to Shawn Weede about the  
11 Hunter Biden matter?

12          A    Mr. Weede has been in meetings in which I attended.

13          Q    So the June 15th meeting and the October 7th meeting?

14          A    Correct.

15          Q    Both of those? Any others?

16          A    I can't recall.

17          Q    Have you ever spoken to him by phone?

18          A    I can't recall.

19          Q    Have you spoken to Shannon Hanson about the Hunter Biden matter?

20          A    Again, in meetings.

21          Q    Same meetings we just described, June 15th and October 7th?

22          A    That's correct.

23          Q    Okay. And have you spoken to her by phone?

24          A    I can't recall.

25          Q    What about Derek Hines?

1 A I don't recall the name.

2 Q Leo Wise?

3 A About Hunter Biden?

4 Q Yes.

5 A No.

6 Q Lesley Wolf?

7 A I don't recall talking with -- I don't recall. I know she's been in meetings.

8 Yeah.

9 Q She was in those meetings we just talked about earlier, but you don't recall  
10 any phone calls with Lesley Wolf?

11 A I don't -- I know I attended one investigative phone call, a team phone call,  
12 and I think she was on that call.

13 Q Okay. Any emails back and forth with Lesley Wolf?

14 A I don't think so, but I'd have to double-check. I don't think so.

15 Q Okay. Any emails with the other folks we discussed -- Shawn Weede,  
16 Shannon Hanson, Derek Hines, or Leo Wise -- on the Hunter Biden matter?

17 A Not Derek Hines. Not Leo Wise. I know I was forwarded an email chain.  
18 I don't think we traded emails. I primarily talked with David Weiss.

19 Q Did you email back and forth with David Weiss?

20 A I traded a couple emails with David Weiss.

21 Q Okay. A couple?

22 A Just not many at all.

23 Q Less than 10?

24 A I don't -- I would hesitate to quantify.

25 Q Okay. But not a huge volume?

- 1 A I don't think so, depending on what you characterize as huge.
- 2 Q What about Stuart Goldberg? Talk to him about the Hunter Biden matter?
- 3 A Again, at meetings.
- 4 Q Not on the phone?
- 5 A Not that I can recall.
- 6 Q What about emails?
- 7 A Not that I could explicitly recall.
- 8 Q Okay. Have you spoken to Mark Daly about the Hunter Biden matter?
- 9 A In meetings, and I can't recall if I talked to him on the phone or not about
- 10 the case.
- 11 Q Would you have been on emails with him?
- 12 A Yes.
- 13 Q Do you know about how many?
- 14 A I don't know. I don't know how many.
- 15 Q Same question --
- 16 Mr. Rillotta. Emails with him about Hunter Biden?
- 17 Mr. Clerget. Yes.
- 18 Mr. Waldon. Yes. Correct.
- 19 BY MR. CLERGET:
- 20 Q Okay. Have you spoken to Jack Morgan about the Hunter Biden matter?
- 21 A In meetings.
- 22 Q Phone calls?
- 23 A Not that I recall.
- 24 Q Emails?
- 25 A He could have been on an email that I was sent. I don't recall.

1 Q Have you spoken with Bradley Weinsheimer about the Hunter Biden matter?

2 A I don't know that name, so --

3 Q Have you spoken to anyone else at what we often refer to as Main Justice,  
4 Main DOJ in Washington, other than DOJ Tax officials? Anyone outside DOJ Tax?

5 A At Main DOJ outside of the investigative team we just discussed?

6 Q Uh-huh.

7 A I don't recall, no.

8 Q Have you spoken to FBI Special Agent in Charge Thomas Sobocinski about  
9 the Hunter Biden matter?

10 A We've been in meetings where we discussed the matter.

11 Q Have you had phone calls about the case?

12 A I don't think so, but I don't -- it's possible. I don't recall.

13 Q Do you know if you've had emails exchanged with him?

14 A About the Hunter Biden matter? I don't recall specifically. We've traded  
15 emails on other matters.

16 Q When was the last time you spoke to him?

17 A I believe at the October 7th meeting.

18 Q Okay. So you didn't talk to him about your testimony here today?

19 A No.

20 Q Have you spoken to FBI Special Agent Ryeshia Holley about the Hunter Biden  
21 matter?

22 A Only to the extent that we were in meetings.

23 Q And no phone calls?

24 A No.

25 Q Emails?

- 1 A Not that I -- no.
- 2 Q Okay. And did you speak with her about your testimony?
- 3 A Not at all.
- 4 Q Have you spoken to anyone else at the FBI about the Hunter Biden matter?
- 5 A Not that I could recall, no.
- 6 Q Have you spoken to anyone at DOJ about your testimony here today?
- 7 A DOJ, no.
- 8 Q Anyone at FBI?
- 9 A No.
- 10 Q Presumably, you've spoken to folks at IRS?
- 11 A Yes.
- 12 Q Okay. We talked about an authorization letter earlier. Did you receive a  
13 letter about what you can and can't talk about here today?
- 14 A Yes.
- 15 Q Who signed that letter?
- 16 A I don't recall. I think it might have been a commissioner, but I don't recall.
- 17 Q Have you spoken to Michael Batdorf about your testimony here today?
- 18 A No.
- 19 Q Does he know you're testifying?
- 20 A I think so, yes.
- 21 Q Okay. But you haven't discussed --
- 22 A No.
- 23 Q Have you discussed the Hunter Biden matter with Mr. Batdorf since February  
24 2023?
- 25 A I don't recall. Not substantively, no. But this is the Hunter Biden matter

1 as well, so --

2 Q Did you discuss -- Gary Shapley testified before this Committee in May, and  
3 he did an interview on CBS around that same time. Is that -- did you discuss Mr. Shapley  
4 testifying to Congress with Mr. Batdorf?

5 A I may have had discussions with him.

6 Q Did you have discussions with anyone else in the IRS about Mr. Shapley  
7 testifying to Congress?

8 A I may have talked with Kareem Carter about it, the current SAC. And  
9 maybe just generally, Lola Watson.

10 Q Okay. And she was the ASAC?

11 A She was the ASAC.

12 Q Is she still the ASAC?

13 A Yes.

14 Q Okay. And Kareem Carter took your position?

15 A That is correct.

16 Q Okay. And did you update Kareem Carter on the Hunter Biden matter in  
17 that transition? Did you discuss that case?

18 A Yes.

19 Q Did you have discussions with the case -- with anyone else at IRS as part of  
20 your transition; you know, as part of switching positions to hand off the matter?

21 A Just Kareem Carter and maybe Mike Batdorf would have been included in  
22 those.

23 Q Okay. Do you know if Kareem Carter stepped into the role you were  
24 playing as the primary point of contact for IRS CI?

25 A I don't know for sure.

1 Q Would that have been your expectation?

2 A Yes.

3 Q I want to talk a little bit -- move to talk a little bit about some of the items in  
4 Mr. Shapley and Mr. Ziegler's testimony and some of the current concerns they had about  
5 this case.

6 One of the things that they said in their testimony is that this case was  
7 slow-walked. That it moved incredibly slowly. It's been open for, I believe, 5 years.

8 Do you agree with that, that it's been -- that it's moved slowly? Do you agree?

9 A I won't agree with that general characterization. I don't know what they're  
10 basing it on. I mean, it's a sensitive investigation that's very involved, and it moved at  
11 the pace in which it did.

12 Q Okay. Were you aware that they were frustrated with the pace of the  
13 matter?

14 A I was more aware of certain investigative steps that they perhaps wanted to  
15 take that weren't taken prior to me getting there.

16 Q Okay. And I want to talk about a couple of those items, and the first couple  
17 are before your time in the position. But I would think that you, coming into the  
18 position, would have been updated on the case and at least have learned of these items.

19 So, in 2020, investigators were denied the ability to get a search warrant for Joe  
20 Biden's Delaware guesthouse where Hunter Biden was staying, even though Lesley Wolf  
21 told investigators there was more than enough probable cause for a physical search  
22 warrant.

23 Did the investigators tell you about that?

24 A Yeah.

25 Mr. Rillotta. Agent Waldon, I'm going to instruct you in your answer not to

1 disclose any discussions regarding investigative tactics taken in the ongoing criminal case.

2 Mr. Clerget. Do you know the answer to that question?

3 Mr. Waldon. Yes.

4 Mr. Clerget. And Lesley Wolf -- they testified also that Lesley Wolf said that  
5 David Weiss had reviewed the affidavit for the search warrant of Hunter Biden's  
6 residence and agreed that there was -- that probable cause had been achieved, but a  
7 physical search warrant was not allowed.

8 Was that reported to you?

9 Mr. Rillotta. Hold on a second. I'm going to instruct you not to disclose any  
10 internal deliberations concerning tactics in the matter.

11 Mr. Clerget. Do you know the answer to that question?

12 Mr. Waldon. I don't recall.

13 Mr. Clerget. They also testified about a meeting at the U.S. Attorney's Office in  
14 Delaware, a discussion of wanting to interview Rob Walker. And they testified that  
15 Lesley Wolf interjected when they were discussing their investigative plan, that they  
16 wanted to ask him about the idea of, quote, "10 held by H for the big guy," end quote,  
17 and she interjected and said she did not want to ask about "the big guy" or ask about  
18 "dad."

19 Was that reported to you?

20 Mr. Rillotta. I'm instructing you not to answer on the same basis.

21 Mr. Landrigan. So don't answer.

22 Mr. Clerget. Do you know the answer to that question?

23 Mr. Waldon. Yes.

24 Mr. Clerget. They also testified that the FBI notified Secret Service headquarters  
25 and the transition team in advance of planned actions to interview Hunter Biden and



1 others on what the investigators called their day of action, which was scheduled for  
2 December 8, 2020.

3 The first question on that is: Was the plan and the events of the day of action on  
4 December 8, 2020, reported to you?

5 Mr. Rillotta. The day of action generally?

6 Mr. Clerget. Yeah. My first question is, you know, it happened before your  
7 time in the position when you came on. Did you learn about what happened on the day  
8 of action?

9 Mr. Rillotta. I'm instructing you not to answer. Same rationale.

10 Mr. Clerget. Do you know the answer to that question?

11 Mr. Waldon. Yes.

12 Mr. Landrigan. And just for the record, making sure it's clear, when you're saying  
13 you know the answer to the question, you're strictly answering that you have knowledge  
14 as to what the answer to that question is. You're not actually speaking to the underlying  
15 substance of the question that was asked.

16 Mr. Waldon. That's correct.

17 Mr. Clerget. That's my understanding as well.

18 Mr. Landrigan. Thank you.

19 Mr. Clerget. The items I'm discussing came out into public view when the Ways  
20 and Means Committee released Mr. Shapley and Mr. Ziegler's testimony on June 22nd of  
21 this year. Were you surprised by any items in that testimony?

22 Mr. Waldon. You know, I'm surprised by --

23 Mr. Rillotta. Can I interject for a second?

24 I don't know what you're going to say next, and so I'm not sure whether it's going  
25 to be within the scope of your testimony or not.

1 I'm trying to -- I'm trying to be flexible here, and in that spirit, would you give us a  
2 few minutes to confer?

3 Mr. Clerget. We can go off the record. Sure.

4 We'll go off the record.

5 [Discussion off the record.]

6 Mr. Clerget. We can go back on the record.

7 Okay.

8 Mr. Rillotta. Should I take a stab at resetting where we are?

9 Mr. Clerget. That's fine.

10 Mr. Rillotta. All right.

11 So counsel have met and conferred off the record, IRS counsel suggests going  
12 forward and providing information of what is essentially a privilege-log level.  
13 Identification of particular subject matters, whether Agent Waldon discussed them with  
14 other personnel at IRS or DOJ, and when. And the witness will be permitted to answer  
15 at that level.

16 BY MR. CLERGET:

17 Q So remind me again when you became SAC.

18 A February -- I'm sorry. April of 2021.

19 Q So the items we've been discussing happened before you were in that  
20 position. And when you transitioned into your role and you learned about the Hunter  
21 Biden case, presumably, you met with Supervisory Special Agent Shapley. Is that right?  
22 At some point?

23 A At some point, I met with Mr. Shapley.

24 Q Okay. About the Hunter Biden matter?

25 A That's correct.

1 Q Okay. And whether it was at that first meeting or at a later meeting, did  
2 Mr. Shapley give you an update, a summary of what had occurred in the case prior to  
3 your arrival?

4 A Yes.

5 Q Okay. And in those discussions, did he discuss investigative steps that were  
6 taken in the past?

7 A Yes.

8 Q Did he discuss investigative steps that he wanted to take but that were not  
9 taken in the past?

10 A Yes.

11 Q And did some of those steps include search warrants?

12 A It included a search warrant, yes.

13 Q A search warrant?

14 A It could have included multiple, but I -- yes.

15 Q You recall at least one search warrant that you discussed?

16 A At least one.

17 Q Okay. Did it include -- did the discussion of investigative steps he wanted  
18 to take include the limitation of topics that investigators could ask about?

19 Mr. Rillotta. If I can rephrase it in a way that I think he will be more comfortable  
20 putting in an answer.

21 Did he discuss with you interviews of witnesses that he wanted to conduct?

22 Mr. Waldon. Yes.

23 Mr. Clerget. Did he discuss with you his view that investigators had been limited  
24 in what they could ask about?

25 Mr. Landrigan. Hold on.

1 Mr. Rillotta. You can answer that question.

2 Mr. Waldon. Yes.

3 Mr. Clerget. And was it his view that he had been limited in what topics he could  
4 discuss?

5 Mr. Rillotta. You can answer that question yes or no.

6 Mr. Waldon. Yes.

7 BY MR. CLERGET:

8 Q Did he describe the -- what we discussed earlier, what they called the day of  
9 action on December 8th, 2020?

10 A Yes, I'm sure we had conversations about it.

11 Q And this was a day, Mr. Shapley testified, where they were going to take  
12 overt steps in the investigation. They were going to seek out interviews of multiple  
13 witnesses, and they had been planning for this action -- this day of action.

14 Is that -- do you recall that or something like that?

15 A I recall them wanting to interview certain people.

16 Q Okay. And do you recall Mr. Shapley telling you that the team was limited  
17 in who they were able to interview?

18 Mr. Rillotta. You can answer yes or no.

19 Mr. Waldon. Yes.

20 Mr. Clerget. And was it his view that they were limited in who they could  
21 interview?

22 Mr. Rillotta. You can answer yes or no.

23 Mr. Waldon. Yes. Or I should say at least of the things that they can ask in  
24 interviews, is my general awareness.

25 BY MR. CLERGET:

1 Q And what about the people they wanted to interview?

2 A I can't recall specifically who that would have been sitting at this -- right  
3 here, right now.

4 Q So you don't recall whether Mr. Shapley told you that there were people he  
5 wanted to interview or if there was a list of people that they had planned to interview but  
6 they were not able to do so?

7 A Yeah, I don't recall the specifics.

8 Q Do you recall, shortly after the day of action, the issue of a storage unit in  
9 which there may have been relevant evidence?

10 Mr. Rillotta. Was that issue raised to you by Agent Shapley?

11 Mr. Waldon. Yes.

12 Mr. Clerget. Okay. And did he describe to you, from his perspective, what  
13 happened with regard to that issue?

14 Mr. Rillotta. Hold on a second. I guess you can answer yes or no whether he  
15 described what happened with regard to that issue.

16 Mr. Waldon. I don't recall the specifics. I recall us speaking about it.

17 BY MR. CLERGET:

18 Q Moving into 2021 now. This is September 2021. So this would be after  
19 you took the position. Do you recall an incident where Mr. Shapley and his team  
20 wanted to interview certain individuals but were told that they could not do so because it  
21 would require approval from DOJ Tax?

22 A I don't recall the specifics there.

23 Q Do you recall Shapley or anyone on his team ever telling you that they were  
24 unable or restricted from interviewing witnesses because it would require approval from  
25 DOJ Tax?

1 A I don't recall that.

2 Q Do you recall an incident where Shapley or his team were restricted from  
3 requesting certain interviews of relatives of Hunter Biden?

4 Mr. Rillotta. Do you recall a discussion on that subject matter?

5 Mr. Waldon. Yes.

6 BY MR. CLERGET:

7 Q Okay. And Mr. Shapley testified that Lesley Wolf emailed him and said that  
8 it will get us into hot water if we interview the President's grandchildren.

9 Do you recall learning about that?

10 Mr. Rillotta. I instruct the witness to decline to answer for the rationale  
11 previously stated.

12 BY MR. CLERGET:

13 Q Do you know the answer to the question?

14 A Repeat the question. I'm sorry.

15 Q The question is -- Mr. Shapley testified that Lesley Wolf emailed his team  
16 saying that it will get us into hot water if we interview the President's grandchildren.

17 A I don't recall the substance of that, no.

18 Q Okay. In a typical case, when you learn about the existence of relevant  
19 evidence, is it common in a criminal case to -- for investigators to seek search warrants to  
20 obtain that evidence?

21 A I would say it really is case-by-case specific.

22 Q But it happens?

23 A It's an investigative technique that can be used.

24 Q And is it sometimes the case that you want to obtain a search warrant to  
25 secure that information without the subject knowing that you are seeking that

1 information?

2 A Again, I would say it's a case-by-case basis.

3 Q But is that a technique that is used in criminal investigations?

4 A We execute search warrants to the surprise of some individuals.

5 Q And so the use of surprise is one -- at least one investigative technique that  
6 criminal investigators use?

7 A It's at least one, yes.

8 Q And what's the reason for -- what's the reason why a criminal investigator  
9 would want to execute a search warrant with the element of surprise?

10 A To preserve the evidence.

11 Q Preserve it from what?

12 A Destroying, moving it. You just want to make sure that you have the best  
13 chance to get the evidence in that scenario.

14 Q And in criminal matters, at least in some cases, presumably, that tactic is  
15 used because such evidence has been destroyed?

16 A It's case-by-case specific.

17 Q But presumably, you use that tactic because that concern is real and  
18 legitimate in -- at least in some cases?

19 A It's one technique you use to give yourself the best opportunity to get the  
20 evidence that's available.

21 Q Okay. And do you recall -- we mentioned the issue of a storage unit before.  
22 Do you recall Mr. Shapley telling you about the fact that the storage unit contained the  
23 files of Owasco after it had closed down its D.C. office?

24 Mr. Rillotta. Hold on a second. It's a level of detail that I think triggers our  
25 concern about the integrity of the ongoing criminal investigation. So I'm going to

1 instruct the witness not to answer.

2 Mr. Clerget. Do you know the answer to the question?

3 Mr. Waldon. I don't know --

4 Mr. Landrigan. He just wants to know whether you know the answer to the  
5 question.

6 Actually, it might be helpful to repeat the question.

7 Mr. Waldon. Yeah. Let's repeat the question.

8 Mr. Clerget. Did Mr. Shapley report to you that the storage unit that we  
9 mentioned earlier, which is in Northern Virginia, contained Owasco's D.C. office files?

10 Mr. Rillotta. And the question is, do you have -- do you know the answer to that  
11 question? Yes or no?

12 Mr. Clerget. Yes. Do you know the answer to that question?

13 Mr. Waldon. No.

14 Mr. Clerget. And with regard to that same storage unit, did Mr. Shapley tell you  
15 about a plan in which they would -- the investigators would monitor that unit for about  
16 30 days, and if the unit was not accessed, they would then execute a search warrant?

17 Mr. Rillotta. Instruction not to answer. Same reason.

18 Mr. Clerget. Do you know the answer to the question?

19 Mr. Landrigan. Hold on. Just to make sure we're on the same page with what  
20 that means, "do you know the answer to the question," that can be confusing in context.

21 Mr. Rillotta. I guess, Counsel, could you take a stab at restating the underlying  
22 question?

23 Mr. Landrigan. In other words, I don't want any of his answers to be construed  
24 as actually answering the underlying question. That's all --

25 Mr. Clerget. Understood. And that's not my intent as well.



1           So are you aware of a plan by investigators and prosecutors to monitor the  
2 storage unit for 30 days and then execute a warrant if it is not accessed within 30 days?

3           Mr. Rillotta. Do you know the answer to that question?

4           Mr. Waldon. I can't recall.

5           Mr. Clerget. And did anyone on the investigative team ever tell you that Lesley  
6 Wolf reached out to Hunter Biden's attorneys to notify him about the existence of a  
7 storage unit?

8           Mr. Rillotta. Instruction not to answer. But do you know the answer to that  
9 question?

10          Mr. Waldon. Sitting here today, I can't recall.

11          Mr. Rillotta. I figured I would cut the middleman there, Sean.

12          Mr. Clerget. Understood.

13                   BY MR. CLERGET:

14          Q    So are you aware that Mr. Shapley, Mr. Ziegler, and the entire IRS CI  
15 investigative team was removed from the Hunter Biden investigation on May 15th, 2023?

16          A    I'm aware of there being the reassignment. I can't say what the  
17 investigative team looks like holistically.

18          Q    Were you involved in that decision?

19          A    In the decision happening in May? No.

20          Q    Were you consulted about that decision?

21          A    No.

22          Q    Do you know who was involved in that decision?

23          A    I would be speculating.

24          Q    In a typical case, if an IRS CI investigative team is going to be reassigned off a  
25 case, who would typically be involved in that kind of decision of the assignment of tasks

1 and duties?

2 A Well, I can say, from my perspective, I definitely would have talked to my  
3 supervisor, the director of field operations.

4 Q Anyone else?

5 A It depends on what's the result of that conversation.

6 Q And within your chain of command, do you know who would have the  
7 ultimate authority to say, you know, Mr. Shapley, you are being reassigned?

8 A So, again, I would have consulted with my supervisor and then communicate  
9 whatever decision we arrive to.

10 Q And so that would be an agreement between you and your supervisor? Or  
11 it would be -- would you be -- or would you be consulting your supervisor and then you  
12 would be making that decision?

13 A Well, it really just depends on the facts, right? I mean, it could happen a  
14 number of different ways. And I hesitate to say that it's only going to happen one way.  
15 You will consult and then make the decision thereafter. I would be the one, as the  
16 special agent in charge, to deliver the message.

17 Q And have you ever been involved in a decision to reassign an entire case  
18 team?

19 A I've certainly reassigned investigations during my time. And a case team  
20 could be one agent.

21 Q Have you ever reassigned a group of agents?

22 A I personally have not.

23 Q And as far as you understand, in May 2023, was Kareem Carter the SAC?

24 A Yes.

25 Q Okay. And Michael Batdorf was still -- was his supervisor?

1 A The DFO. Correct.

2 Q So what would be -- with regard to partnerships with the Department of  
3 Justice, would -- does DOJ have the authority to tell you who to assign to a specific  
4 investigation?

5 A I think, from my perspective, DOJ would communicate what their preference  
6 is, and then we would deliberate on that conversation.

7 Q But, ultimately, the decision would rest within the IRS for the duties and  
8 responsibilities of IRS agents?

9 A As far as I know, yes.

10 Q And are you aware of any policies or procedures that would guide that  
11 decision? We went through a number of sections of the IRM earlier.

12 A I'm not aware of any formal policies or procedures.

13 Q Are you aware of any informal policies, practices, procedures?

14 A I think it all is case by case, and you assess the facts and you make a decision  
15 based on those facts.

16 Q So Mr. Shapley testified about the removal of the case team. But he also  
17 testified that he had raised his concerns about the handling of the Hunter Biden matter,  
18 particularly the handling of the matter by the Department of Justice, numerous times and  
19 in different ways over a multiyear period.

20 Did he raise any of his concerns about the handling of the Hunter Biden matter by  
21 the Department of Justice directly to you?

22 A Yes. And he raised those concerns.

23 Q Okay. Do you recall the first time he raised a concern to you?

24 A I don't recall. I --

25 Q Do you re- -- sorry.

1 A No, go ahead.

2 Q Do you recall whether it was early on in your tenure?

3 A I generally became aware of, I think, issues -- challenges in the investigation  
4 during my initial briefings of the case. That would be an ordinary sort of conversation to  
5 have, is this is where we are. These are some of the challenges. These are the  
6 challenges that I can see going forward, and you figure out a way forward.

7 Q And did Mr. Shapley or anyone else on the investigative team -- you know, if  
8 we start at the beginning of your tenure in 2021 -- continue to raise problems, concerns,  
9 steps that -- you know, prohibitions? Anything like that to you?

10 A Yes. He -- he perceived problems that he did raise to us -- to me. Yeah.

11 Q And when an agent raises a concern, a problem, an allegation, an allegation  
12 of misconduct, what -- in a typical case, what would you do with that information?

13 A Well, it depends on whether or not I see substantiated evidence. But  
14 everyone would understand that if they have an issue, there are appropriate ways to  
15 raise that issue with -- let's say the IG, if that was your concern.

16 Q Okay. Did you raise -- did you personally take any of Mr. Shapley's  
17 complaints and forward them on to the IG?

18 A I did not because I didn't see the --  
19 Mr. Landrigan. Just answer the question.

20 Mr. Waldon. I did not.

21 BY MR. CLERGET:

22 Q Why not?

23 A I wasn't seeing supportive evidence. And, again, if he had those issues, he  
24 has the opportunity to raise them as well.

25 Q Did you talk to him about those options?

1           A    He received an email from Michael Batdorf saying there are avenues to raise  
2 those concerns.

3           Q    Do you remember when that was?

4           A    I believe it was December 2022.

5           Q    Did he raise any additional issues about misconduct or additional concerns  
6 with the handling of the Hunter Biden matter after December 2022?

7           A    I can't recall specifics. Perhaps, yes.

8           Q    Do you know on what specific topic?

9           A    I don't remember.

10          Q    Okay. Did he ever raise issues with you about his views that he had been  
11 retaliated against by the agency?

12          A    I don't recall that, no.

13          Q    Did you receive guidance from the IRS regarding how employees of the IRS  
14 may blow the whistle or allege wrongdoing in the course of their work around the time of  
15 May 2023?

16          A    I recall an email coming out from -- it might be the deputy commissioner or  
17 the commissioner of the IRS.

18          Q    Douglas O'Donnell? Does that sound --

19          A    That's the deputy commissioner.

20          Q    Do you recall the details of that guidance?

21          A    I don't recall the specific guidance, but there are ways to blow the whistle, if  
22 that's what you need to do. And there's encouragement to do so if you witness  
23 wrongdoing.

24          Q    What are some of those ways?

25          A    Again, what I recall, not specifically from -- my understanding is you could go

1 to the OIG or Office of Professional Responsibilities. There are a number of ways,  
2 depending on who you're reporting it to.

3 Q Okay. And does that include reporting allegations of misconduct to  
4 Congress?

5 A I would think that that's an avenue, but I don't know the whistleblower laws.

6 Q Do you receive -- do IRS CI employees receive training on whistleblower  
7 conduct?

8 A Yeah. Annually, we will.

9 Q Do you recall if in those trainings the trainings discussed blowing the whistle  
10 to Congress?

11 A I don't explicitly recall.

12 Q Okay. And are you aware that blowing the whistle to Congress is generally  
13 protected under the law?

14 Mr. Rillotta. Hold on a second. I'm going to object to the question just on the  
15 premise it's based on. It depends on the circumstances, Counsel.

16 Mr. Clerget. I'll rephrase.

17 BY MR. CLERGET:

18 Q Are you aware of Section 6103(f)(5), titled Disclosure By Whistleblower?

19 A I would not recall. I would have to see that, you know.

20 Q I don't have it printed out here, but it's quite short, so I'll read it to you.

21 Any person who otherwise has or had access to any return or return information  
22 under this section may disclose such return or return information to a Committee  
23 referred to in paragraph 1 or any individual authorized to receive or inspect information  
24 in paragraph 4A if such person believes such return or return information may relate to  
25 possible misconduct, maladministration, or taxpayer abuse.

1           Do you recall ever hearing about that provision, learning about that provision with  
2 regard to Section 6103?

3           A    Generally -- I don't explicitly recall, but it could be included in the trainings.  
4 Yeah. I don't recall the specific 6103 -- whatever section you --

5           Q    Okay. And I just read it to you. You don't have it in front of you.

6           A    Yeah.

7           Q    I understand that. But based on what I just read, would you understand  
8 that to mean that there are circumstances under which an IRS employee can provide  
9 information to Congress under Section 6103?

10          A    Yes.

11          Q    And with regard to the email you recall receiving from the deputy  
12 commissioner around the time of May 2023, were you aware of letters sent to the  
13 commissioner about that guidance by Committees in Congress?

14          A    I may have heard it. I don't recall. I don't know if it's letters or what. I  
15 just can't recall those specifics.

16          Q    And are you aware of receiving updated guidance after May 2023 with  
17 regard to the options for blowing the whistle for IRS employees?

18          A    Updated guidance from who?

19          Q    It would have been from -- I have to double-check. It would have been  
20 from IRS senior leadership.

21          A    Again, I don't recall. There could have been emails that were sent that I  
22 just am not recalling as I sit here today.

23          Q    But you recall the initial guidance in May of 2023?

24          A    Yes.

25          Q    But you don't recall a specific follow up to that or a change or a update to

1 that guidance?

2 A I don't recall. I mean, it could have come to my inbox. I get tons of them.

3 Q Okay. A couple quick points on Mr. Shapley. Are you aware of him  
4 receiving any awards within the agency?

5 A I am not aware --

6 Q Okay.

7 A -- specifically of any awards that he's received.

8 Q The agency gives out awards to -- for different things. Is that correct?

9 A Yes.

10 Q And are you aware that Mr. Shapley has received the highest performance  
11 rating in recent years?

12 A I am aware that, yes, there was one.

13 Q And Mr. Shapley led a team of investigators that worked on international  
14 foreign tax issues. Is that right?

15 A Yes.

16 Q Okay. And they worked big cases. Is that correct?

17 A I don't want to categorize. It can be a case of any size.

18 Q Mr. Shapley says he worked on some of the largest cases in U.S. history,  
19 recovering over 3.5 billion for the United States Government. Does that sound about  
20 right?

21 A I can't categorize that. Whether he worked on it or he supervised it by  
22 virtue of somebody being transferred into his group, I mean, I can't speak to the details of  
23 that.

24 Q Okay. I want to read you a couple quotes from Mr. Weiss and get your  
25 reaction to them. These are quotes that he has offered in publicly available press



1 releases, and they involve cases -- tax evasion cases that he prosecuted not related to the  
2 Hunter Biden matter. Just some other tax evasion cases publicly -- public press releases  
3 from him.

4 So, in 2022, discussing a prosecution, he said, Tax dodging represents an affront to  
5 every member of the tax-paying public. We will continue to prosecute tax cheats  
6 aggressively.

7 Do you agree with that statement? Or do you think that's an appropriate,  
8 laudable goal?

9 A Yes.

10 Q Okay. And in 2021, in another case, he said, The financial loss in tax cases  
11 is shared by every member of the tax-paying public. Our Nation's ability to operate and  
12 serve its citizenry depends on voluntary compliance with tax obligations.

13 Do you agree with that?

14 A Read it again. I'm sorry.

15 Q Sorry. I read too fast.

16 The financial loss in tax cases is shared by every member of the tax-paying public.  
17 Our Nation's ability to operate and serve its citizenry depends on voluntary compliance  
18 with tax obligations.

19 Do you agree with that?

20 A I agree that voluntary compliance is integral to our country and, yes, that  
21 when a person doesn't pay their fair share, that burden is shared. That's my  
22 perspective.

23 Q No, I understand. I'm just asking for your perspective on these quotes.

24 And just one more. In 2019: The 5-year sentence handed down by the court  
25 should send a message to others contemplating similar crimes that, in the end, crime

1 does not pay.

2 Do you agree with that statement?

3 A I would agree that it -- in a sentence, people should take notice and perhaps  
4 not do the same crime.

5 Q So if there's a case where that's not happening, where there's unpaid tax  
6 liability, where the statute of limitations has been allowed to expire, it seems that crime  
7 can pay.

8 Do you think that -- do you think that the IRS and the Department of Justice in  
9 their relationships have always been able to achieve these lofty goals and ambitions in  
10 every single case?

11 A Well, it depends on the facts of the case. You know, I can't speak about  
12 every fact -- every case. But we certainly achieve to hold those accountable that have  
13 committed a crime.

14 Q Okay. And just to go back to the SAR we discussed in the Hunter Biden  
15 matter. You agree with the recommendations in that document. Is that right?

16 A Yes.

17 Q And that includes felony and misdemeanor accounts, right?

18 A Yes.

19 Mr. Clerget. My hour is up, so I will stop.

20 MINORITY COUNSEL 1. Thanks. We're going to take a break.

21 Mr. Clerget. Take a break? Okay.

22 [Recess.]

23 Mr. Clerget. We'll go back on the record.

24 Go ahead.

25 Mr. Landrigan. Thank you. This is Mr. Landrigan.

1           Mr. Waldon just has a point of clarification he'd like to raise regarding some of  
2 the -- one of the topics that was discussed in the last round of inquiry. He knows that it  
3 might open up some more questions, but go ahead.

4           Mr. Waldon. Yeah. So before I left the special agent in charge position, in  
5 February, I recommended to Mr. Batdorf that Gary Shapley be removed as the SSA from  
6 the Hunter Biden investigation, primarily due to what I perceived to be unsubstantiated  
7 allegations about motive, intent, bias. And, again, my goal was to protect the integrity of  
8 the investigation and figure out a way forward.

9           When I left, Mr. Shapley was still on the case, and as I understand it, was on it until  
10 May. So in my mind, my recommendation was just that, a recommendation.

11          Mr. Clerget. Okay. Appreciate it.

12          It's your time. But we may come back to that.

13          Mr. Waldon. Yeah.

14          MINORITY COUNSEL 1. Thank you.

15                   BY MINORITY COUNSEL 1:

16          Q    I just wanted to go over your career at IRS a little bit. By my numbers, I  
17 think you have been at the IRS approximately 17 years. Is that correct?

18          A    About 17 and a half. That's correct.

19          Q    You started as an SA. Is that correct?

20          A    Special agent. Correct.

21          Q    You've been promoted through a number of different positions going up the  
22 chain, correct?

23          A    That's correct.

24          Q    Have you received any awards or commendations or placement into any  
25 executive management programs during your time at IRS?

1 A Yes.

2 Q Can you describe those?

3 A I've received performance awards. I've received, I think, a Commissioner's  
4 Award before. I received the Chief's Awards before. I was selected for, through my  
5 career, the Accelerated Leadership Program that CI had. I participated in the Executive  
6 Readiness Program. I've attended a bunch of management programs as well.

7 Q Would you say that through all of your experiences you have a pretty good  
8 idea of different responsibilities and different jobs that you've held across the IRS?

9 A Yes.

10 Q Have you, in your experience in the different jobs, dealt with some teams  
11 that may be more difficult to work with than others?

12 A In my different jobs, I have dealt with employees that are a little more  
13 difficult to work with than others, yes.

14 Q Is there anything additional that you do or try to do to help those individuals  
15 resolve whatever perceived grievances they have?

16 A Yes. It really depends on what the grievances are. In some cases, you  
17 know, to the extent that we can control, we try to play nice. And, you know, the  
18 differences are with other offices, other individuals, it happens. Try to play nice. We  
19 see how we can accommodate.

20 My biggest thing is always just try to find a way forward. How can we find a way  
21 forward to ensure -- you know, make sure that the issue is resolved for all  
22 players -- people at play? Sometimes that works, sometimes that doesn't. But my goal  
23 is always to find a positive way forward.

24 Q You mentioned accommodations. Sometimes you can find an  
25 accommodation that would work. What's an example of accommodations that might

1 work?

2 A Well, for instance, I mean, just generally speaking, what comes to mind,  
3 if -- you know, oftentimes it's turf wars between the different offices due to, you know,  
4 the investigation. You know, if there are multiple subjects on an investigation, maybe  
5 you guys take one, we take another. Or, you know, accommodations is -- it can be  
6 something like that. Without specifics, it's -- you know, I could go on for a while.

7 Q Are you generally able to resolve the differences or at least get the  
8 employees to a point where they can work collegially with their coworkers?

9 A You know, you make a decision. Some people like it, some people don't.  
10 But you give it a good effort. You explain the rationale for moving forward, and we go  
11 from there. But, yeah, we've been able to resolve problems, myself and the team.

12 Q Okay. Thank you.

13 MINORITY COUNSEL 1\_ [REDACTED]?

14 MINORITY COUNSEL 3\_ Yeah. Thanks.

15 MINORITY COUNSEL 3:

16 Q A few follow ups on some topics that were touched on in the last round of  
17 questioning.

18 First, I'd like to talk about the conversation that you had with Mr. Weiss regarding  
19 you becoming the primary point of contact for DOJ and IRS CI.

20 Did Mr. Weiss specifically say to you that he didn't want to meet with Mr. Shapley  
21 and/or Mr. Ziegler, or did he just simply say, assert affirmatively that he wanted you to be  
22 the primary contact from here on out?

23 A I recall more vividly him stating he was not going to be responding to  
24 Mr. Shapley's emails anymore, and at some point, he said he would be talking to me.

25 Q Did he offer any reasons why he would no longer be responding to

1 Mr. Shapley's emails?

2 Mr. Rillotta. Of course, in answering the question, Agent Waldon, please refrain  
3 from characterizing any evidence in the case or strategic discussions.

4 Mr. Waldon. I just believe that it was around the time there was a conflict  
5 around discovery and just getting discovery.

6 MINORITY COUNSEL 3. But presumably, in [a] relationship between the IRS CI  
7 and DOJ and the U.S. Attorney's Office, there are often conflicts around discovery,  
8 correct? I mean, there are often professional disagreements around discovery, correct?

9 Mr. Waldon. I generally have -- in recent memory, that's the one time that -- I  
10 mean, generally the U.S. Attorney's Office tell us what they need and we give it to them.

11 MINORITY COUNSEL 3. I guess what I'm asking -- was there something beyond  
12 the disagreement in terms of how the discovery process was going? Was there an  
13 element of a lack of professionalism, perhaps, that Mr. Weiss was concerned about?

14 Mr. Landrigan. And to the extent it calls for speculation, don't answer.

15 Mr. Waldon. Yeah, I would hate to speculate on that.

16 BY MINORITY COUNSEL 3:

17 Q Understood -- understanding that you've offered some clarification on the  
18 point of the investigative team and changing the investigative team. As a general  
19 matter, why would someone in your position -- what are examples of reasons that  
20 someone in your position or the director of field operations would reassign either a  
21 member of an investigative team or the entirety of investigative team? Can you give  
22 some examples of reasons why that might occur?

23 A I could speak to this particular instance. The U.S. Attorney's Office was no  
24 longer working or talking with Mr. Shapley. And there was no immediate -- I didn't think  
25 that that would be resolved quickly. And in order to move the investigation forward, I

1 recommended that, you know, he be removed so that we could continue to push the  
2 investigation forward.

3 Q So to sort of generalize, there was a breakdown in communication between  
4 the investigative team and the Justice Department, essentially, and so from your  
5 perspective, a personnel shift was needed?

6 A From my perspective, a personnel shift was needed because there was no  
7 longer any communication going on between the team.

8 Q In your experience, have you seen examples of that happening before?

9 A Not -- I've not witnessed that personally. I've heard of it.

10 Q You were anticipating my next question.

11 Had you consulted with other colleagues who had potentially experienced  
12 something similar and sought a similar solution?

13 A I don't know that I consulted with other colleagues, but I certainly heard  
14 that, you know, this was done before. There might have been one special agent in  
15 charge that I did talk with, but I can't -- you know, as I sit here right now, it's kind of fuzzy.

16 MINORITY COUNSEL 3. I don't think I have anything else.

17 BY MINORITY COUNSEL 1:

18 Q I just have a couple quick questions.

19 Going back to when you first became the SAC in this position and you were briefed  
20 and you were kind of caught up to speed, I guess, on the case, did anyone mention the  
21 first SSA that was on the case before Shapley? Was there mention of that person in  
22 your briefings? Do you recall?

23 A I do believe that the prior SSA was brought up in briefings generally.

24 Q Do you remember the prior SSA's name? Would it be Matthew Kutz, or do  
25 you remember?

1 A That's correct.

2 Q Do you recall whether there was any mention of the former attorney  
3 general, Bill Barr, at that briefing?

4 A I don't recall.

5 Q Do you remember if there were any other individuals in particular that were  
6 in place before you got there that were no longer in the position or on your team or  
7 working with your team? For instance, were there any career individuals that may have  
8 left in between 2020 and 2021 when you arrived?

9 A Yes. The special agent in charge that preceded me had retired, and I know  
10 there were ASACs as well that had retired.

11 MINORITY COUNSEL 1\_ Okay. Thank you.

12 BY MR. CASTOR:

13 Q Can you tell us what you did to support Shapley and Ziegler when they  
14 brought these issues to you?

15 A Generally speaking, I would have had conversations with Mr. Weiss a couple  
16 of times.

17 Q Okay. And how did they go?

18 A You know, he explained his side, and what I realized, sometimes what they  
19 were saying was -- it was not the case. For instance, I remember getting an email saying  
20 that the FBI had met with Mr. Weiss.

21 Mr. Rillotta. Okay. I'm just going to give you my instruction to refrain from  
22 characterizing evidence or getting into strategic discussions. I don't know if that's where  
23 you were going.

24 Mr. Waldon. And they didn't invite us. But when talking with Mr. Weiss, it was  
25 about something totally different. Of course, they talked about the case, and he



1 updated me, and we moved forward.

1

2 [1:52 p.m.]

3

BY MR. CASTOR:

4

5

6

7

8

Q But on the specific investigative concerns, it's one thing if you're excluded from a meeting and you could have a difference of opinion over why or, you know, that occurred, but when it comes to investigative steps, as in who you're going to interview, what search warrants you're going to issue, I mean, that is at the heart of the investigator's job duties.

9

10

11

A As I sit here, the search warrant that you're speaking of is the one that happened before I became the special agent in charge, so I wouldn't have talked with him about that at that time.

12

13

14

Q But there were other aspects of the investigation that the investigators, Ziegler and Shapley, wanted to take that they were -- they felt they were prohibited from taking.

15

16

A I don't recall that there was, during my tenure, anything that they wanted to do explicitly that they couldn't do. I don't recall that.

17

18

Q Okay. But did you follow Ziegler and Shapley's testimony when it was on TV?

19

A I saw bits and pieces. I didn't really follow it closely.

20

Q Okay.

21

A I was working.

22

23

Q And when their testimony was released from the Ways and Means Committee in mid-June, did you follow that?

24

A I scanned it a bit, but I didn't read it in great details, no.

25

Q Okay. But you had a general sense of the types of investigative activities

1 they were frustrated that they could not take?

2 A Yes.

3 Q Okay. And I guess the question, going back to my -- where I started, is:  
4 Did you do anything to support them with Mr. Weiss other than, you know, you  
5 mentioned inquiring about who was excluded from a meeting. I'm asking whether you  
6 inquired with Mr. Weiss on the specifics of an investigative technique they wanted to  
7 take?

8 A Again, I don't recall, sitting here, explicit investigative steps that they wanted  
9 to take that they did not take.

10 Q Okay. Going back to the first exhibit, second page, what do you remember  
11 from -- on number 6a and b? Obviously, we -- you know, a, b, and c, inside of 6 -- c is a  
12 characterization of that topic. But what do you remember generally from that topic  
13 occurring at that meeting? I mean, communication issues and update issues are two  
14 ambiguous words that, you know -- what can you tell us about number 6 here, that part  
15 of the meeting?

16 A That I asked to be updated with regard to any change in status of the  
17 investigation, and the FBI asked the same.

18 Q Okay. And what were the communication issues?

19 A Again, the perceived issue, from my perspective, I didn't think I was updated  
20 timely with regard to one issue, and so that's what I expressed.

21 Q Okay. But letter c here seems to indicate that at least Shapley thought it  
22 got contentious. So I'm just trying to get some more meat on the bones there. What  
23 was going on?

24 A That was his perspective, so I would ask you to ask him. I don't share that  
25 same concern.

1 Q Okay. What was the issue that you were -- that you thought you weren't --

2 Mr. Rillotta. Hold on. I think --

3 Mr. Castor. -- you thought there was a communication issue on?

4 Mr. Rillotta. I think he's being circumspect because it's a matter that would  
5 involve him characterizing the evidence or discussing strategic deliberations. So,  
6 accordingly, I instruct him not to answer.

7 Mr. Castor. Okay.

8 BY MR. CASTOR:

9 Q Then the question is: Do you remember what that was? Would you be  
10 able to answer, barring the instruction from counsel?

11 A Yes.

12 Q Okay. You're the special agent in charge of one of the highest profile cases  
13 in modern history, right, -- this is an investigation of the President's son, correct?

14 A It's an investigation of the current President's son, correct.

15 Q And so, earlier, you mentioned that there was a process Weiss had to  
16 undergo to bring charges outside of his district. Can you tell us what your understanding  
17 of those processes were?

18 A Again, I state that you have to collaborate with the U.S. Attorney's Office, as  
19 I understand it. Anything beyond that, you would have to ask the Department of Justice.  
20 That's my --

21 Q Okay.

22 A That's my understanding.

23 Q Okay. But from your perspective, Weiss didn't have the ultimate authority  
24 to bring cases in any district that he wanted to?

25 A You know, as I stated before, anytime a U.S. attorney has to go into another

1 district, there is a process where they collaborate.

2 Q Right. And what was your understanding of that process?

3 A That they talk and decide whether or not they're going to participate.

4 Q And it was your understanding, at least with respect to D.C., that they talked  
5 and they decided that they were not going to welcome Mr. Weiss into their district,  
6 correct --

7 A It was --

8 Q -- in this particular case?

9 A -- my understanding that they did not want to collaborate on the case.

10 Q And it's the same for the U.S. attorney in Los Angeles?

11 A I don't believe it was Los Angeles, but I could be wrong.

12 Q The Central District of California --

13 A Central District --

14 Q -- in Los Angeles, in L.A.?

15 A At some point, yes. I just don't remember the dates.

16 Q Okay. And what was your understanding of the way forward? I mean,  
17 was this case going to be dropped? Like, if they couldn't bring it in D.C. and they  
18 couldn't bring it in Los Angeles, what's the way forward?

19 Mr. Landrigan. I'd instruct you not to speculate as to actions of the Department  
20 of Justice.

21 Mr. Waldon. There was processes that Mr. Weiss would have to work out with  
22 the Department of Justice, and that's my basic understanding.

23 BY MR. CASTOR:

24 Q So it wasn't your understanding the whole case was going to go away?

25 A I did not get that impression, no.

1 Q And were you ever in a meeting with Weiss where the topic of special  
2 counsel authority was brought up?

3 A I cannot recall explicitly whether special counsel authority was specifically  
4 cited. I had numerous meetings with them where we talked process.

5 Q Did Mr. Weiss ever articulate in a meeting with you that the Justice  
6 Department told him no on any one of his initiatives to move the case forward?

7 A I do not recall that ever being said.

8 Q Did Mr. Weiss ever talk about efforts to work with the DAG's office or work  
9 with other officials in the Justice Department in light of the case being declined or in light  
10 of the U.S. attorneys in Los Angeles and D.C., you know, declining to partner?

11 A I recall Mr. Weiss mentioning that there are people in Justice that he had to  
12 brief, and that's it. I don't recall it in light of, as you state it, that there were times he  
13 had to discuss the case with those in the Department of Justice.

14 Q Right. The matters that were brought to the U.S. attorney for D.C., I mean,  
15 the statute of limitations -- was running on those cases, and so there came a point in time  
16 where you couldn't bring those cases anymore. Isn't that -- isn't that correct?

17 Mr. Rillotta. Hold on a second. Hold on a second. I'm going to instruct -- first  
18 of all, the statute of limitations is always running except when it's tolled. And there's --

19 Mr. Castor. About to expire. Sorry. About to expire.

20 Mr. Rillotta. And then, where -- that's where I'm going to instruct you not to  
21 answer, because it involves characterizations of evidence or potential relevance of claims  
22 or defenses in future litigation.

23 BY MR. CASTOR:

24 Q Let's go back to the June 15th meeting. Do you remember who called that  
25 meeting? Was it DOJ Tax, or was it the U.S. attorney in Delaware, or was it IRS?

1 A I don't recall specifically. I don't recall.

2 Q And who presented during that meeting? Is it fair to say that the DOJ Tax  
3 Division lawyers were doing the presenting that day?

4 A I remember DOJ Tax presenting.

5 Q And was there a difference of opinion displayed between DOJ Tax and other  
6 people in the room?

7 Mr. Rillotta. You can answer whether there was a difference of opinion  
8 expressed.

9 Mr. Waldon. Yes.

10 BY MR. CASTOR:

11 Q And do you remember the FBI asking questions -- the FBI officials, the special  
12 agent in charge?

13 A I remember -- yes.

14 Q And how about the assistant special agent in charge, did she ask any  
15 questions?

16 A I don't recall.

17 Q And can you say -- were the FBI officials aligned with IRS?

18 Mr. Rillotta. Hold on a second. I don't want you to get into discussion of who  
19 took what position at this meeting. I'm instructing you not to answer.

20 It's just getting too close to the line for my comfort, Counsel.

21 Mr. Castor. And is your issue that this would affect the ongoing investigation  
22 or --

23 Mr. Rillotta. My concern is, as I've stated, that the answer to the question -- the  
24 answer you're eliciting would disclose tactical discussions that may be relevant to the  
25 ongoing criminal investigation and potential future litigation.

1 BY MR. CASTOR:

2 Q Did you have any communications with the FBI special agent in charge at  
3 that meeting as a sidebar?

4 A I don't recall any substantive conversations. Just kind of, hey, how's it  
5 going?

6 Q Was the back and forth between the DOJ Tax attorneys and the FBI officials  
7 professional and collegial, or was there a heated difference of opinion?

8 A I don't recall that there being anything heated. You know, I don't -- I don't  
9 recall that.

10 Q Do you recall hearing or learning about Special Agent Shapley reporting that  
11 the FBI official, Mr. Sobocinski, said that the issues raised by DOJ Tax that might result in  
12 not charging are nonsense?

13 Mr. Rillotta. I'm going to instruct the witness not to answer for the same reason  
14 stated previously.

15 BY MR. CASTOR:

16 Q So the question is: Do you know the answer to that question?

17 A Yes, I know the answer to the question.

18 Q Okay. And did you witness that firsthand or did you learn about it from a  
19 third person or from another person?

20 Mr. Rillotta. Did you witness the discussion firsthand or did you hear about it  
21 from someone else?

22 Mr. Waldon. I believe I heard it from somebody else.

23 BY MR. CASTOR:

24 Q Okay. So you didn't see it happen in the room that day?

25 A I don't recall that, no.



1           Mr. Clerget. We're close to wrapping up here.

2                           BY MR. CLERGET:

3           Q     I just want to go back very quickly to the discussion of guidance within the  
4     IRS about blowing the whistle.

5                   We referenced earlier a May email from the Deputy Commissioner issuing  
6     guidance, and I believe you testified that you recall that email. Is that right?

7           A     That's correct.

8           Q     Okay. And so are you aware that the Office of Special Counsel, which is  
9     distinct from the special counsel status that Mr. Weiss has, just to -- for -- I don't know  
10    why they're the same name, but just to be clear -- the Office of Special Counsel directed  
11    the IRS to correct the May guidance? Are you aware of that?

12          A     I was not aware of that.

13          Q     Okay. And do you recall receiving updated guidance on July 7th from the  
14    IRS commissioner that included a reference to the ability of IRS employees to blow the  
15    whistles to oversight committees in Congress?

16          A     I vaguely remember -- I don't remember who it came from or the date, but I  
17    do remember that language -- coming across that language.

18          Q     All right. So you recall receiving updated guidance about --

19          A     If that was updated guidance -- I don't recall when it came. Like I said, I  
20    don't have a clear distinction, because I didn't know it was a correction, if you will.

21          Q     Understood. But you remember receiving this communication that I'm  
22    referring to?

23          A     Yes.

24          Q     Okay.

25          Mr. Clerget. That's all I've got.

1 Mr. Mandolfo. I have nothing else.

2 MINORITY COUNSEL 1. I have a quick thing. Well, a quick three things.

3 BY MINORITY COUNSEL 1:

4 Q I just want to quickly turn to some recent congressional responses that  
5 Mr. Weiss provided to the Congress, different Members of Congress about his authority  
6 in the case. We had talked a lot about that going back and forth, what was said at the  
7 meeting. I just want to take a look at what he said.

8 On June 7, 2023, Mr. Weiss responded to a congressional inquiry about an  
9 unnamed ongoing investigation in his district.

10 MINORITY COUNSEL 1. I would like to introduce that June 7, 2023, response as  
11 exhibit 11.

12 [Waldon Exhibit No. 11

13 Was marked for identification.]

14 BY MINORITY COUNSEL 1:

15 Q The second paragraph of that letter reads, quote, While your letter does not  
16 specify by name the ongoing investigation that is the subject of the Committee's  
17 oversight, its content suggests your inquiry is related to an investigation in my district. If  
18 my assumption is correct, I want to make clear that, as the Attorney General has stated, I  
19 have been granted ultimate authority for this matter, including responsibility for deciding  
20 where, when, and whether to file charges and for making decisions necessary to preserve  
21 the integrity of the prosecution, consistent with Federal law, the principles of Federal  
22 prosecution, and departmental regulations.

23 Is that correct?

24 A That's correct.

25 Q Okay. I want to turn to the last paragraph in that letter, which is on page 3.

1 That paragraph reads, quote, In February 2021, I asked to remain as United States  
2 attorney for the District of Delaware to continue my oversight of this matter. Since that  
3 time, I have fulfilled my responsibilities, consistent with the Department practices and  
4 procedures, and will continue to do so. Throughout my tenure as U.S. attorney, my  
5 decisions have been made -- and with respect to the matter that must be made -- without  
6 reference to political considerations.

7 Is that correct?

8 A That's correct.

9 Q Thank you.

10 Following Mr. Weiss' June 7, 2023, letter, he sent a second letter in response to  
11 another congressional inquiry, and I want to introduce that June 30, 2023, response as  
12 exhibit 12.

13 [Waldon Exhibit No. 12

14 Was marked for identification.]

15 Mr. Waldon. Thank you.

16 BY MINORITY COUNSEL 1:

17 Q The third paragraph of this letter reads, quote, First, the Department of  
18 Justice did not retaliate against, in quotes, an Internal Revenue Service, IRS, criminal  
19 supervisory special agent and whistleblower, as well as his entire investigative team, for  
20 making protected disclosures to Congress.

21 Is that correct?

22 A That's correct.

23 Q Thank you.

24 Finally, on July 10, 2023, Mr. Weiss sent a third letter regarding his authority in the  
25 case and responds to another congressional inquiry. I want to introduce this response

1 as exhibit 13.

2 [Waldon Exhibit No. 13

3 Was marked for identification.]

4 BY MINORITY COUNSEL 1:

5 Q In the second paragraph, Mr. Weiss' July 10 letter states, quote, To clarify an  
6 apparent misconception and to avoid future confusion, I wish to make one point clear:  
7 In this case, I have not requested special counsel designation pursuant to 28 CFR 600.  
8 Rather, I had discussions with departmental officials regarding potential appointment  
9 under 28 U.S.C. 515, which would have allowed me to file charges in a district outside my  
10 own without the partnership of the local U.S. attorney. I was assured that I would be  
11 granted this authority if it proved necessary. And this assurance came months before  
12 the October 7, 2022, meeting referenced throughout the whistleblowers' allegations.

13 Is this correct?

14 A That's correct.

15 MINORITY COUNSEL 1\_ Okay. Thank you. That's all I have.

16 Mr. Clerget. I have a quick followup.

17 BY MR. CLERGET:

18 Q So when you answered counsel's questions, you said, "That's correct."  
19 Were you referring to the fact that she was correctly reading the document to you?

20 A That's correct.

21 Q Okay.

22 A Yes. Sorry.

23 Q I just want to make that clarification on the record.

24 Mr. Clerget. And I think that's all I have.

25 Okay. We can go off the record -- or, actually, if we could go back on the record.

1 I want to say thank you for appearing here. And I want to thank counsel from  
2 the IRS and personal counsel and for all the discussions that we've had to get to this point  
3 to have you here voluntarily. We really appreciate it. We know it's not probably how  
4 you wanted to spend your day, being questioned. But we appreciate you being here  
5 answering our questions and thank you for your service.

6 Mr. Waldon. Thank you.

7 Mr. Rillotta. Thank you, Counsel.

8 MINORITY COUNSEL 1. Thank you.

9 Mr. Rillotta. And if there are additional issues that you want me to respond, I  
10 think this has been very productive, and I encourage you to reach out to us.

11 Mr. Clerget. Absolutely. We'll continue that. Thank you.

12 We'll go off the record.

13 [Whereupon, at 2:13 p.m., the interview was concluded.]

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Certificate of Deponent/Interviewee

I have read the foregoing \_\_\_\_ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

---

Witness Name

---

Date

Exhibits:

Ex 10

EXHIBIT  
1

**From:** [Waldon Darrell J](#)  
**To:** [Shapley Gary A Jr](#); [Batdorf Michael T](#)  
**Subject:** RE: Sportsman Meeting Update  
**Date:** Tuesday, October 11, 2022 7:27:14 AM  
**Attachments:** [image001.png](#)

Good morning, all –

Thanks, Gary. You covered it all. I am taking care of referral to TIGTA.

Mike – let me know if you have any questions.  
Darrell

*Darrell J. Waldon*  
*Special Agent in Charge*  
*Washington, D.C. Field Office*  
(C) [REDACTED]

**From:** Shapley Gary A Jr <[REDACTED]>  
**Sent:** Friday, October 07, 2022 6:09 PM  
**To:** Batdorf Michael T <[REDACTED]>  
**Cc:** Waldon Darrell J <[REDACTED]>  
**Subject:** Sportsman Meeting Update

Mike,

Darrell asked me to shoot an update from todays meeting. Darrell – feel free to comment if I miss something.

1. Discussion about the agent leak – requested the sphere stay as small as possible
  - a. DOJ IG will be notified
  - b. FBI – HQ is notified and they refer it to their Counter Intelligence squad in a field office for investigation
  - c. IRS-CI – We need to make a referral to TIGTA – What do you need from me on this action item?
2. Weiss stated that he is not the deciding person on whether charges are filed
  - a. I believe this to be a huge problem – inconsistent with DOJ public position and Merrick Garland testimony
  - b. Process for decision:
    - i. Needs DOJ Tax approval first – stated that DOJ Tax will give “discretion” (We explained what that means and why that is problematic)
    - ii. No venue in Delaware has been known since at least June 2021
    - iii. Went to D.C. USAO in early summer to request to charge there – Biden appointed USA said they could not charge in his district
      1. USA Weiss requested Special counsel authority when it was sent to D.C and Main DOJ denied his request and told him to follow the process

EXHIBIT  
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- iv. Mid-September they sent the case to the central district of California – coinciding with the confirmation of the new biden appointed USA – decision is still pending
- v. If CA does not support charging USA Weiss has no authority to charge in CA –
  - 1. He would have to request permission to bring charges in CA from the Deputy Attorney General/Attorney General (unclear on which he said)
- vi. With DOJ Tax only giving “discretion” they are not bound to bring the charges in CA and **this case could end up without any charges**
- 3. They are not going to charge 2014/2015 tax years
  - a. I stated, for the record, that I did not concur with that decision and put on the record that IRS will have a lot of risk associated with this decision because there is still a large amount of unreported income in that year from Burisma that we have no mechanism to recover
  - b. Their reason not to charge it does not overcome the scheme and affirmative acts – in my opinion
- 4. FBI SAC asked the room if anyone thought the case had been politicized – we can discuss this is you prefer
- 5. No major investigative actions remain
- 6. Both us and the FBI brought up some general issues to include:
  - a. Communication issues
  - b. Update issues
  - c. **These issues were surprisingly contentious**

Always available to discuss. Have a great weekend!

Text Description automatically generated



**WARNING:**

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## 9.4.1.6.2 (10-15-2021)

**Initiating a Subject Criminal Investigation**

- (1) To initiate an SCI, certain information is required to be entered into the CIMIS database by the initiating special agent. The information will then be reviewed and approved by the appropriate management official(s) prior to the investigation being authorized as an SCI. IRM Part 9 Chapter 9, CIMIS should be consulted for instructions regarding the specific information required in order to initiate an SCI.
- (2) For narcotics cases, an SCI will be initiated from an OCDETF PI once a financial component is developed and specific subjects are identified. Each such SCI must contain the OCDETF-issued investigation number when initiated in CIMIS. Instructions for proper formatting of the OCDETF-issued investigation number are found in CI Connections.
- (3) If the subject of the investigation resides in another field office's territory, concurrence of the SAC for the territory in which the subject resides is necessary before the SCI can be initiated.
- (4) Request a preliminary deconfliction query or cases and contacts through the OFC.

**9.4.1.6.3 (12-02-2013)****Approving a Subject Criminal Investigation**

- (1) Any non-sensitive Title 26 SCIs may be approved by the field office SAC or ASAC.
- (2) Any non-sensitive SCI involving violations of 18 USC 1956, 1957, 1960, 371T and/or Title 31 may be approved by the field office SAC, or the ASAC upon local delegation of authority from the SAC.
- (3) All sensitive Title 18, 26, and 31 SCIs must be approved by the Chief, Criminal Investigation upon request of the SAC through the respective Director, Field Operations.
- (4) A sensitive investigation is defined as one involving:
  - a. currently serving elected Federal officials;
  - b. currently serving Article III Judges;
  - c. currently serving high-level Executive Branch Officials (for the Treasury Department, this is defined as items d through g listed below);
  - d. all individuals within the Treasury Department Serving in Executive Levels I through V;
  - e. all individuals within the Treasury Department serving in the Senior Executive Service grades GS-16 and above;
  - f. all individuals within the IRS grade GS-15 serving in positions centralized in the IRS Executive Resources Board;
  - g. all individuals within the Treasury Department (other than IRS) in grade GS-15 which the Deputy Secretary may designate;
  - h. currently serving elected statewide officials;
  - i. currently serving members of the highest court of the states;
  - j. mayors currently serving populations of 250,000 or more;
  - k. perjury in the US Tax Court;
  - l. Exempt Organizations;
  - m. publicly traded companies;
  - n. companies with annual gross revenues exceeding \$10,000,000,000.

**Note:** A publicly traded company is defined as a company that has issued securities through a public offering and which are traded on the open market.

## 9.4.9.3.3.2 (10-05-2007)

**Director, Field Operations Concurrence**

- (1) The SAC is required to obtain written concurrence from the respective Director, Field Operations, for the execution of a search warrant in a sensitive investigation (as defined in IRM 9.4.1 (see Approving a Subject Criminal Investigation)).
- (2) The SAC will obtain written concurrence from the respective Director, Field Operations, when a search warrant which targets an individual requiring DOJ, Tax Division approval is being considered (see subsection 9.4.9.3.3.3 below). Criminal Tax Counsel review is required prior to forwarding the search warrant to the Director, Field Operations for concurrence.

## 9.4.9.3.3.3 (03-17-2011)

## Department of Justice, Tax Division Approval

- (1) Pursuant to DOJ, Tax Division, Directive No. 52, the local United States Attorneys Office can approve most Title 26 and tax-related Title 18 search warrants. However, DOJ, Tax Division retains exclusive authority to approve Title 26 and tax-related Title 18 search warrants directed at offices, structures, or premises owned, controlled, or under the dominion of a subject of an investigation who is:
- an accountant
  - a lawyer
  - a physician
  - a local, state, Federal, or foreign public official or political candidate
  - a member of the clergy
  - a representative of the electronic or printed news media
  - an official of a labor union
  - an official of an organization deemed to be exempt under 26 USC §501(c)(3)
- (2) It should be expected that due to the sensitivity of these professions, this additional scrutiny may require a longer period of review. As soon as possible, the SSA should consult with a CT Counsel and DOJ, Tax Division attorney for general guidance on questions regarding the language and details of the affidavit. General questions that can be resolved early will facilitate the review process. However, the specifics of the investigation cannot be disclosed to the DOJ, Tax Division attorney until the SAC makes a referral to the DOJ, unless the case is being investigated by a grand jury.
- (3) Once the SAC concurs with the search warrant (signed the EARF) and advises the Director, Field Operations of the proposed action, the following documents will be forwarded to DOJ, Tax Division as a referral:
- Cover letter from the SAC referring the application for a Search Warrant to DOJ, Tax Division for review
  - Affidavit for Search Warrant
  - Division Counsel/Associate Chief Counsel's (Criminal Tax) Review Memorandum

**Note:** A simultaneous referral to the local US Attorneys Office can facilitate the process.

9.4.9.3.2.4.1 (02-09-2005)

#### Executing Searches of Attorney's Offices

- (1) The DOJ policy places additional procedures on situations pertaining to the search of the premises of any attorney who is engaged in the practice of law on behalf of clients. The policy is detailed in the United States Attorney's Manual, Title 9, §13.420.
- (2) Searches of attorney's offices involve extensive cooperation between CI, CT Counsel, DOJ, and the local US Attorney for the government to ensure compliance with this policy. Additional resources outside the local area may be required that will call for coordination by the SSA.
- (3) The policy establishes the use of a "privilege team" consisting of special agents and attorneys who are not directly involved in the underlying investigation. The purpose of the privilege team is to prevent exposing the investigating special agents and prosecuting attorney(s) for the government to privileged material not covered by an exception. Supervisory Special Agent involvement is critical in the early stages to ensure adequate resources. A predetermined set of instructions is given to the privilege team and documented in the search warrant to prevent and limit the exposure to privileged communications, and to ensure that the privilege team does not disclose any information, unless authorized by a privilege attorney, to the investigating special agent(s) and attorney(s) for the government. The privilege team conducts the search and reviews all attorney material that may be privileged. It then determines what materials can be provided to the investigating special agent(s) and prosecuting attorney(s) for the government.

## Information and returns

pay is less than the annual rate of basic pay specified for positions subject to section 5316 of title 5, United States Code.

(5) **Reporting requirements.** Within 30 days after the close of each calendar quarter, the President and the head of any agency requesting returns and return information under this subsection shall each file a report with the Joint Committee on Taxation setting forth the taxpayers with respect to whom such requests were made during such quarter under this subsection, the returns or return information involved, and the reasons for such requests. The President shall not be required to report on any request for returns and return information pertaining to an individual who was an officer or employee of the executive branch of the Federal Government at the time such request was made. Reports filed pursuant to this paragraph shall not be disclosed unless the Joint Committee on Taxation determines that disclosure thereof (including identifying details) would be in the national interest. Such reports shall be maintained by the Joint Committee on Taxation for a period not exceeding 2 years unless, within such period, the Joint Committee on Taxation determines that a disclosure to the Congress is necessary.

(h) **Disclosure to certain Federal officers and employees for purposes of tax administration, etc.**

(1) **Department of the Treasury.** Returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes.

(2) **Department of Justice.** In a matter involving tax administration, a return or return information shall be open to inspection by or disclosure to officers and employees of the Department of Justice (including United States attorneys) personally and directly engaged in, and solely for their use in, any proceeding before a Federal grand jury or preparation for any proceeding (or investigation which may result in such a proceeding) before a Federal grand jury or any Federal or State court, but only if—

(A) the taxpayer is or may be a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability in respect of any tax imposed under this title;

(B) the treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding or investigation; or

(C) such return or return information relates or may relate to a transactional relationship between a person who is or may be a party to the proceeding and the taxpayer which affects, or may affect, the resolution of an issue in such proceeding or investigation.

(3) **Form of request.** In any case in which the Secretary is authorized to disclose a return or return information to the Department of Justice pursuant to the provisions of this subsection—

(A) if the Secretary has referred the case to the Department of Justice, or if the proceeding is authorized by subchapter B of chapter 76, the Secretary may make such disclosure on his own motion, or

(B) if the Secretary receives a written request from the Attorney General, the Deputy Attorney General, or an Assistant Attorney General for a return of, or return information relating to, a person named in such request and setting forth the need for the disclosure, the Secretary shall disclose return or return information so requested.

(4) **Disclosure in judicial and administrative tax proceedings.** A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only—

(A) if the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of

such civil liability, in respect of any tax imposed under this title;

(B) if the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding;

(C) if such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding; or

(D) to the extent required by order of a court pursuant to section 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure, such court being authorized in the issuance of such order to give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

However, such return or return information shall not be disclosed as provided in subparagraph (A), (B), or (C) if the Secretary determines that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(5) **Withholding of tax from social security benefits.** Upon written request of the payor agency, the Secretary may disclose available return information from the master files of the Internal Revenue Service with respect to the address and status of an individual as a nonresident alien or as a citizen or resident of the United States to the Social Security Administration or the Railroad Retirement Board (whichever is appropriate) for purposes of carrying out its responsibilities for withholding tax under section 1441 from social security benefits (as defined in section 86(d)).

(6) **Internal Revenue Service Oversight Board.**

(A) In general. Notwithstanding paragraph (1), and except as provided in subparagraph (B), no return or return information may be disclosed to any member of the Oversight Board described in subparagraph (A) or (D) of section 7802(b)(1) or to any employee or detailee of such Board by reason of their service with the Board. Any request for information not permitted to be disclosed under the preceding sentence, and any contact relating to a specific taxpayer, made by any such individual to an officer or employee of the Internal Revenue Service shall be reported by such officer or employee to the Secretary, the Treasury Inspector General for Tax Administration, and the Joint Committee on Taxation.

(B) Exception for reports to the Board. If—

(i) the Commissioner of the Treasury Inspector General for Tax Administration prepares any report or other matter for the Oversight Board in order to assist the Board in carrying out its duties; and

(ii) the Commissioner or such Inspector General determines it is necessary to include any return or return information in such report or other matter to enable the Board to carry out such duties,

such return or return information (other than information regarding taxpayer identity) may be disclosed to members, employees, or detailees of the Board solely for the purpose of carrying out such duties.

(i) **Disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration.**

(1) **Disclosure of returns and return information for use in criminal investigations.**

(A) In general. Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under subparagraph (B), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal agency who are personally and directly engaged in—

EXHIBIT

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9.3.1.17 (06-05-2015)

#### Protecting Records From Unauthorized Disclosure

- (1) The Chief, CI; Directors, Field Operations; SACs, and ASACs, are responsible for safeguarding CI records maintained in their respective offices. They will take adequate precautions, by arranging for safe storage facilities and the installation of necessary security devices, to guard against the loss or unauthorized disclosure of these records. The Physical Security Program, IRM 10.2, lists the minimum protection required for the various kinds of CI records and documents.
- (2) Special agents and other CI personnel are responsible for the safeguarding of CI records in their custody against loss, destruction, or unauthorized access, and against unauthorized disclosure of information. To prevent unauthorized access or disclosure, documents and records in their possession, when not in use, will be provided with three protection points in accordance with IRM 10.2.

9.3.1.18 (04-13-2005)

#### Protecting Taxpayer Records Against Unauthorized Access

- (1) Unauthorized Access (UNAX) is the willful unauthorized access or inspection of any return or return information. This does not include accidental or inadvertent access or inspection of a return or return information.
- (2) Special agents and other CI personnel are not allowed to access or inspect taxpayer records when involvement in the matter could cause a possible financial conflict of interest or when there is a personal relationship or an outside business relationship that could raise questions about impartiality in handling the tax matter.
- (3) Unauthorized Access (UNAX) covers both paper and electronic records of returns and return information, including local databases with return information.
- (4) The Office of the Treasury Inspector General for Tax Administration, has full responsibility for the investigation of all allegations of UNAX.



## 10.5.1.2.4 (12-31-2020)

## Federal Tax Information (FTI)

- (1) The term tax information, or Federal Tax Information (FTI), refers to a taxpayer's return and return information protected from unauthorized disclosure under IRC 6103. This law defines return information as any information the IRS has about a tax or information return, liability, or potential liability under Title 26. This return information includes, but is not limited to, a taxpayer's:
  - a. Identity.
  - b. Income, payments, deductions, exemptions, or credits.
  - c. Assets, liabilities, or net worth.
  - d. Tax liability investigation status (whether the IRS ever investigates or examines the return).
- (2) Redacting, masking, or truncating tax information does not change its nature. It is still tax information.
- (3) Tax information in IRS business processes comes under many names, such as FTI, IRC 6103-protected information, 6103, taxpayer data, taxpayer information, tax return information, return information, case information, SBU data, and PII. The term "live data" should not be used to describe tax information, unless it is in a production environment as discussed in the Sensitive But Unclassified (SBU) Data section in *IRM 10.5.1.2.2*.
- (4) Tax information is SBU data. IRC 6103 protects tax information from unauthorized disclosure. When tax information relates to an individual, that SBU data is also PII. [IRC 6103(b)(2)]
- (5) Submit a Privacy and Civil Liberties Impact Assessment (PCLIA) for any system using SBU data (including PII and tax information). Refer to *IRM 10.5.2* for more information about PCLIA's.
- (6) See also these subsections in this IRM for more information:
  - Protecting and Safeguarding SBU Data and PII, *IRM 10.5.1.6.1*.
  - SBU data, *IRM 10.5.1.2.2*.
  - PII, *IRM 10.5.1.2.3*.
- (7) For more information about return information and a definition, refer to *IRM 11.3.1*, Disclosure of Official Information, Introduction to Disclosure.

## 10.5.1.2.8 (12-31-2020)

## Need To Know

- (1) Restrict access to SBU data (including PII and tax information) to those IRS personnel who have a need for the information in the performance of their duties.
- (2) The term "need to know" describes the requirement that personnel may access SBU data (including PII and tax information) only as authorized to meet a legitimate business need, which means personnel need the information to perform official duties. See examples later in this section for explanations of how need to know applies to duties.  
**Note:** See Unauthorized Access of SBU Data, *IRM 10.5.1.2.6*, and UNAX, *IRM 10.5.1.2.5*.
- (3) Personnel (including current employees, rehired annuitants, returning contractors, etc.) who change roles or assignments may access only the SBU data (including PII and tax information) for which they still have a business need to know to perform their duties. If you no longer have a business need to know, you must not access the information. This policy includes, but is not limited to, information in systems, files (electronic and paper), and emails, even if technology does not prevent access.  
**Example:** A compliance case has a litigation hold or similar request in place. Even if in a new assignment, you may retain and access old case files from your earlier role if you need to retrieve them for a litigation hold or similar request.  
**Example:** A former employee now works for a vendor who has a contract with the IRS. The former employee may not access old files in email or on their laptop from their earlier role with the IRS, even if those files are archived under their SEID. The IRS will supply any information necessary to perform the current contract on a need-to-know basis.  
**Note:** To determine applicability of employee duties, based on sensitivity of information, refer to the position description or contact Labor Relations.
- (4) You must ensure your own adherence to this need-to-know policy.
- (5) This standard is less stringent than a "cannot function without it" test. For each use, consider whether the information is needed to perform official duties properly, efficiently, or appropriately. Necessary for official duties in this context does not mean essential or indispensable, but rather appropriate and helpful in obtaining the information sought.

- (6) Personnel who have a need to know must be informed of the protection requirements under the law by management and must have an appropriate level of clearance through a background investigation, typically covered by the onboarding and training process.
- (7) Need to know supports the "relevant and necessary" aspect of the Purpose Limitation Privacy Principle and the Privacy Act. It conveys the statutory restrictions to disclose protected information to those who have an authorized need for the information in the performance of their duties. The Strict Confidentiality Privacy Principle requires this, as does the NIST Privacy Control for Privacy Monitoring and Auditing and Security Controls in the Access Control family. [PVR-02; PVR-05; Privacy Act; IRC 6103 and 7803(a)(3); UNAX; Treasury's Privacy and Civil Liberties Impact Assessment (PCLIA) Template and Guidance; NIST SP 800-53]
- (8) Access to NSI requires more stringent controls outlined in IRM 10.9.1, Classified National Security Information.
- (9) Refer to IRM 11.3.22, Disclosure of Official Information, Disclosure to Federal Officers and Employees for Tax Administration Purposes, for information about Access by IRS Employees Based on Need To Know.



## U.S. Department of Justice

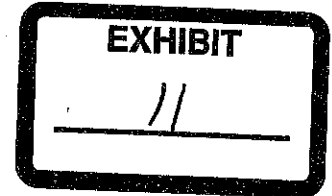
United States Attorney's Office  
District of Delaware

Hercules Plaza  
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Wilmington, Delaware 19899-2046

(302) 573-6277  
FAX (302) 573-6220

June 7, 2023

The Honorable Jim Jordan  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515



Dear Chairman Jordan:

Your May 25<sup>th</sup> letter to Attorney General Garland was forwarded to me, with a request that I respond on behalf of the Department.

While your letter does not specify by name the ongoing investigation that is the subject of the Committee's oversight, its content suggests your inquiry is related to an investigation in my District. If my assumption is correct, I want to make clear that, as the Attorney General has stated, I have been granted ultimate authority over this matter, including responsibility for deciding where, when, and whether to file charges and for making decisions necessary to preserve the integrity of the prosecution, consistent with federal law, the Principles of Federal Prosecution, and Departmental regulations.

Your letter references recently-announced staffing determinations in the matter and the Committee's concern that those decisions intersect with whistleblower protections. I agree wholeheartedly that whistleblowers play an integral role in promoting both civil servant accountability and good government practices. Federal law protects whistleblowers from retaliation, as well it should.

The information sought by the Committee concerns an open matter about which the Department is not at liberty to respond. As then-Deputy Attorney General Rod Rosenstein wrote in 2018 in response to a request for information from the Honorable Charles Grassley, Chairman of the Senate Committee on the Judiciary:

Congressional inquiries during the pendency of a matter pose an inherent threat to the integrity of the Department's law enforcement and litigation functions. Such inquiries inescapably create the risk that the public and the courts will perceive undue political and Congressional influence over law enforcement and litigation decisions. Such inquiries also often seek

records and other information that our responsibilities for these matters preclude us from disclosing.<sup>1</sup>

Accordingly, and consistent with longstanding Department of Justice policy and practice,<sup>2</sup> I must respectfully decline the Committee's request for documents and information at this time to protect confidential law enforcement information from disclosure.

This response fully recognizes that the Committee's oversight efforts are an important part of its legislative process. As then-Assistant Attorney General Robert Raben noted in 2000:

Congressional committees need to gather information about how statutes are applied and funds are spent so that they can assess whether additional legislation is necessary either to rectify practical problems in current law or to address problems not covered by current law. By helping Congress be better informed when it makes legislative decisions, oversight promotes the accountability of government.<sup>3</sup>

Across administrations, therefore, the Department's policy has been to:

... comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch[.] [T]he Department's goal in all cases is to satisfy legitimate legislative interests while protecting Executive Branch confidentiality interests.<sup>4</sup>

The confidentiality interests implicated by the Committee's instant request include legally protected materials (including grand jury information, protected by Rule 6(e) of the Federal Rules of Criminal Procedure, and taxpayer information, protected by 26 U.S.C. Section 6103); information the disclosure of which might compromise open criminal investigations or prosecutions or constitute an unnecessary invasion of privacy;

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<sup>1</sup> Letter from Deputy Attorney General Rod Rosenstein to Hon. Charles Grassley, Chairman, Committee on the Judiciary, U.S. Senate, at 10 (June 27, 2018) *quoting* Robert Raben, Assistant Attorney General, "DOJ View Letters on Subcommittee on Rules and Organization of the House testimony on 'Cooperation, Comity, and Confrontation: Congressional Oversight of the Executive Branch,'" July 15, 1999, *available at* <https://www.justice.gov/media/962176/dl?inline> (last accessed June 2, 2023).

<sup>2</sup> *See* Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations, Memorandum Opinion for the Chairman Investigations/Law Enforcement Committee President's Council on Integrity and Efficiency, March 24, 1989, *available at* <https://www.justice.gov/file/24181/download> (last accessed June 2, 2023).

<sup>3</sup> Letter from Assistant Attorney General Robert Raben to The Honorable John Linder, Chairman, Subcommittee on Rules and Organization of the House, Committee on Rules, House of Representatives, at 2 (January 27, 2000), *available at* <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/linder.pdf> (last accessed June 2, 2023).

<sup>4</sup> *Id.* at 2.

and, just as importantly here, pre-decisional deliberative communications. By way of illustration, the Department has a broad confidentiality interest in protecting materials that reflect its internal deliberative process, at least to ensure that Departmental litigation decisions are products of independent legal and factual assessments, free from external political influences. Here, any documents or information responsive to the Committee's request would fall within deliberative communications regarding an ongoing criminal investigation.


As then-Deputy Attorney General Rosenstein recognized:

We cannot fulfill requests that would compromise the independence and integrity of investigations ... or create the appearance of political interference. We need to follow the rules. It is important for the Department of Justice to follow established policies and procedures, especially when the stakes are high.<sup>5</sup>

I share then-Deputy Attorney General Rosenstein's "commitment to the Department's longstanding traditions, [which] carries with it an obligation to ensure that we keep pending law enforcement matters separate from the sphere of politics and that there be no perception that our law enforcement decisions are influenced by partisan politics or pressure from legislators."<sup>6</sup> Here, that requires that I respectfully protect from disclosure the confidential law enforcement information the Committee seeks. My ongoing work would be "seriously prejudiced by the revelation of the direction of [the matter], information about evidence obtained, and assessments of the strengths and weaknesses of various aspects of [the matter]."<sup>7</sup>

In February 2021, I was asked to remain as United States Attorney for the District of Delaware to continue my oversight of the matter. Since that time, I have fulfilled my responsibilities, consistent with Department practices and procedures, and will continue to do so. Throughout my tenure as U.S. Attorney my decisions have been made-- and with respect to the matter must be made-- without reference to political considerations.

Sincerely,



David C. Weiss

United States Attorney

cc: The Honorable Jerrold L. Nadler, Ranking Member

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<sup>5</sup> Letter from Deputy Attorney General Rod Rosenstein to Hon. Charles Grassley, Chairman, Committee on the Judiciary, U.S. Senate, at 6, available at <https://www.justice.gov/media/962176/dl?inline> (last accessed June 2, 2023).

<sup>6</sup> *Id.* at 7.

<sup>7</sup> *Id.* at 4.



# U.S. Department of Justice

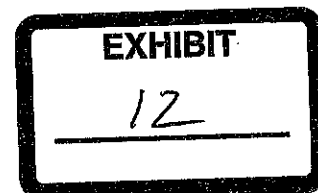
United States Attorney's Office  
District of Delaware

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1313 North Market Street  
P.O. Box 2046  
Wilmington, Delaware 19899-2046

(302) 573-6277  
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June 30, 2023

The Honorable Jim Jordan  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515



Dear Chairman Jordan:

This is in response to your June 22, 2023, letter,<sup>1</sup> wherein you renew your request for materials related to whistleblower allegations made in connection with the investigation into Robert H. Biden, and request additional information related to my response<sup>2</sup> to your initial letter on this topic.

At the outset, I would like to reaffirm the contents of the June 7 letter drafted by my office and reiterate that I am not at liberty to provide the materials you seek. The whistleblowers' allegations relate to a criminal investigation that is now being prosecuted in the United States District Court for the District of Delaware. At this juncture, I am required to protect confidential law enforcement information and deliberative communications related to the case. Thus, I will not provide specific information related to the Hunter Biden investigation at this time. But I will provide some general insight on two issues.

First, the Department of Justice did not retaliate against "an Internal Revenue Service ("IRS") Criminal Supervisory Special Agent and whistleblower, as well as his entire investigative team... for making protected disclosures to Congress."<sup>3</sup>

Second, in my June 7 letter I stated, "I have been granted ultimate authority over this matter, including responsibility for deciding where, when and whether to file charges and for making decisions necessary to preserve the integrity of the prosecution, consistent with federal law, the Principles of Federal Prosecution, and Departmental regulations."<sup>4</sup> I stand by what I wrote and wish to expand on what this means.

<sup>1</sup> Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Hon. David C. Weiss, U.S. Att'y, District of Delaware (June 22, 2023) (hereinafter, "the June 22 letter").

<sup>2</sup> Letter from Hon. David C. Weiss, U.S. Att'y, District of Delaware to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 7, 2023) (hereinafter, "the June 7 letter").


<sup>3</sup> June 22 letter at 1.

<sup>4</sup> Id. at 1.

As the U.S. Attorney for the District of Delaware, my charging authority is geographically limited to my home district. If venue for a case lies elsewhere, common Departmental practice is to contact the United States Attorney's Office for the district in question and determine whether it wants to partner on the case. If not, I may request Special Attorney status from the Attorney General pursuant to 28 U.S.C. § 515. Here, I have been assured that, if necessary after the above process, I would be granted § 515 Authority in the District of Columbia, the Central District of California, or any other district where charges could be brought in this matter.

At the appropriate time, I welcome the opportunity to discuss these topics with the Committee in more detail, and answer questions related to the whistleblowers' allegations consistent with the law and Department policy. It is my understanding that the Office of Legislative Affairs will work with the Committee to discuss appropriate timeline and scope.

Sincerely,

A handwritten signature in black ink, appearing to read "David C. Weiss", written in a cursive style.

David C. Weiss  
United States Attorney

cc: The Honorable Jerrold L. Nadler, Ranking Member





# U.S. Department of Justice

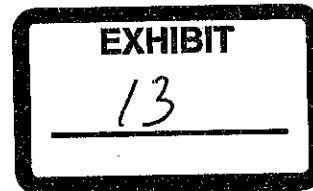
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July 10, 2023

The Honorable Lindsey O. Graham  
Ranking Member  
Senate Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510



Dear Senator Graham:

This is in response to your June 28, 2023, letter.<sup>1</sup>

As I recently explained to the Honorable Jim Jordan,<sup>2</sup> since the whistleblowers' allegations relate to a criminal investigation that is currently being prosecuted in the United States District Court for the District of Delaware, I have a duty to protect confidential law enforcement information and deliberative communications related to the case. As I likewise indicated, I welcome the opportunity to respond to these claims in more detail at the appropriate future time, as authorized by the law and Department policy.

To clarify an apparent misperception and to avoid future confusion, I wish to make one point clear: in this case, I have not requested Special Counsel designation pursuant to 28 CFR § 600 *et seq.* Rather, I had discussions with Departmental officials regarding potential appointment under 28 U.S.C. § 515, which would have allowed me to file charges in a district outside my own without the partnership of the local U.S. Attorney. I was assured that I would be granted this authority if it proved necessary. And this assurance came months before the October 7, 2022, meeting referenced throughout the whistleblowers' allegations. In this case, I've followed the process outlined in my June 30 letter and have never been denied the authority to bring charges in any jurisdiction.

<sup>1</sup> Letter from Sen. Lindsey O. Graham, Ranking Member, S. Comm. on the Judiciary, to Hon. David C. Weiss, U.S. Att'y, District of Delaware (June 28, 2023) (hereinafter, "the June 28 letter").

<sup>2</sup> Letter from Hon. David C. Weiss, U.S. Att'y, District of Delaware to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 30, 2023) (hereinafter, "the June 30 letter").

The Honorable Lindsey O. Graham  
July 10, 2023

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Your questions about allegations contained in an FBI FD-1023 Form relate to an ongoing investigation. As such, I cannot comment on them at this time.

Sincerely,

A handwritten signature in black ink, appearing to read "David C. Weiss", written in a cursive style.

David C. Weiss  
United States Attorney

cc: The Honorable Richard J. Durbin, Chairman