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COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: MICHAEL BATDORF

Tuesday, September 12, 2023

Washington, D.C.

The interview in the above matter was held in Room 5480, O'Neill House Office Building, commencing at 9:53 a.m.

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2 Appearances:

3

4

5 For the COMMITTEE ON WAYS AND MEANS:

6

7 SEAN CLERGET, CHIEF OVERSIGHT COUNSEL

8 STEVE CASTOR, COUNSEL

9 MOLLY FROMM, GENERAL COUNSEL AND PARLIAMENTARIAN

10 BRITTANY HAVENS, SENIOR PROFESSIONAL STAFF MEMBER, OVERSIGHT

11 CAROLINE JONES, DEPUTY PARLIAMENTARIAN AND PROFESSIONAL STAFF MEMBER,

12 OVERSIGHT

13 JAMES MANDOLFO, COUNSEL

14 [REDACTED], MINORITY COUNSEL

15 [REDACTED], MINORITY COUNSEL

16 [REDACTED], MINORITY COUNSEL

17 [REDACTED], MINORITY COUNSEL

18

19

20 For the INTERNAL REVENUE SERVICE:

21

22 JOSEPH RILLOTTA, COUNSELOR TO IRS COMMISSIONER,

23 OFFICE OF CHIEF COUNSEL

24 PAUL T. BUTLER, DEPUTY DIVISION COUNSEL

25 (STRATEGIC LITIGATION), OFFICE OF CHIEF COUNSEL

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

2 Good morning.

3 Mr. Batdorf. Good morning.

4 Mr. Clerget. This is a transcribed interview of Internal Revenue Service Criminal
5 Investigation, or CI, Director of Field Operations Michael Batdorf. Chairman Smith has
6 requested this interview as part of the Committee's oversight of the IRS.

7 Could the witness please state your name for the record?

8 Mr. Batdorf. Michael Thomas Batdorf, B-a-t-d-o-r-f.

9 Mr. Clerget. And could agency counsel please state your names for the record?

10 Mr. Butler. Paul Butler.

11 Mr. Rillotta. Joseph Rillotta for the IRS.

12 Mr. Clerget. And, Mr. Batdorf, do you understand that agency counsel has a
13 primary fiduciary duty to the agency and not to you individually?

14 Mr. Batdorf. I do.

15 Mr. Clerget. And are you okay to proceed without personal counsel present?

16 Mr. Batdorf. I am.

17 Mr. Clerget. And on behalf of the Committee, I want to thank you for appearing
18 to answer our questions today, and the chairman appreciates your willingness to appear
19 voluntarily. Chairman Smith initially issued a deposition subpoena to secure your
20 testimony. I'm going to withdraw that subpoena to proceed today and see what we can
21 learn and then go from there.

22 Mr. Batdorf. Absolutely.

23 Mr. Clerget. My name is Sean Clerget. I'm with Chairman Smith's staff.

24 And I'll now have everyone else from the Committee who is here at the table
25 introduce themselves as well.

1 Mr. Mandolfo. James Mandolfo, Ways and Means majority.

2 Mr. Castor. Steve Castor with the Ways and Means majority.

3 Minority Counsel 1. [REDACTED], Ways and Means minority.

4 Minority Counsel 2. [REDACTED], Ways and Means minority.

5 Minority Counsel 3. [REDACTED], Ways and Means minority.

6 Mr. Clerget. I want to go over a few ground rules and guidelines that we'll follow
7 during today's interview.

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

12 We typically take a short break at the end of each hour, but if you'd like a break
13 any other time, just jump in and let us know.

14 As you can see, there is an official court reporter taking down everything we say to
15 make a written record. So we ask that you give us verbal responses to our questions.

16 Do you understand that?

17 Mr. Batdorf. Yes.

18 Mr. Clerget. And so the court reporter can get a clear record, we'll do our best to
19 limit the number of people asking questions. We'll try not to bounce around too much
20 between different questioners. And we'll all try to speak clearly and make sure not to
21 interrupt each other or talk over each other as best we can.

22 We want you to answer our questions in the most complete and truthful manner
23 as possible, so we'll take our time. If you have any questions or you don't understand
24 one of our questions, please just let us know.

25 If you honestly don't know the answer to a question or do not remember, it's best

1 not to guess. Please give us your best recollection. And it's okay to tell us if you
2 learned information from someone else. Just indicate how you came to know the
3 information.

4 If there are things you don't remember, just say so, and please inform us who, to
5 the best of your knowledge, might be able to provide a more complete answer to the
6 question.

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

9 And someone with your background I'm sure knows all of this. We go through
10 this with all of our witnesses.

11 You should understand that by law you're required to answer questions from
12 Congress truthfully.

13 Do you understand that?

14 Mr. Batdorf. Absolutely.

15 Mr. Clerget. And this also applies to questions posed by congressional staff in an
16 interview.

17 Do you understand this?

18 Mr. Batdorf. Yes, sir.

19 Mr. Clerget. And witnesses that knowingly provide false testimony could be
20 subject to criminal persecution for making false statements under 18 U.S.C. 1001.

21 Do you understand this?

22 Mr. Batdorf. Yes.

23 Mr. Clerget. Is there any reason you're unable to provide truthful answers to
24 today's questions?

25 Mr. Batdorf. No.

1 Mr. Clerget. And finally, I'd like to note that the content of what we discuss
2 today here we like to keep confidential. We ask that you don't speak about what we
3 discuss in this interview to anyone outside to preserve the integrity of our investigation.
4 And for the same reason, any exhibits that we mark today we'll just take back at the end.

5 I think that's the end of my preamble.

6 Is there anything that my colleagues would like to add?

7 Minority Counsel 1. No.

8 We'd like to welcome you today, and we look forward to hearing your testimony.

9 Mr. Batdorf. Thank you. I appreciate it.

10 Mr. Rillotta. Counsel, would you do me the indulgence of putting this statement
11 on the record?

12 Mr. Clerget. Of course.

13 Mr. Rillotta. So obviously this is going to track my statement from our prior
14 proceeding.

15 Again, I want to express appreciation for the Committee staff's engagement with
16 us in the spirit of accommodation.

17 It is difficult to write rules of the road for a proceeding like this one where the
18 subject matters of the Committee's inquiry overlap with those of an ongoing criminal
19 investigation and potential future tax enforcement litigation.

20 The IRS' goal is to ensure that this investigation and future tax adjudications
21 proceed with integrity and in accordance with the law. Of course we recognize that the
22 Committee's work is also important, and we are trying to enable meaningful oversight
23 here today. As I stated last week, I think we're getting at the right balance of all of these
24 considerations.

25 Generally speaking, with regard to testimony on the criminal investigation today,

1 we are drawing the same distinctions we drew last week between procedural questions,
2 as to which the witness may testify, and substantive questions, which we submit should
3 be reserved as appropriate for proceedings before a court of law and as to which,
4 therefore, the witness is instructed not to testify.

5 This is reflected in detail in Mr. Batdorf's testimonial authorization, and I will
6 provide a copy of that to the Committee shortly. And this will be the basis for my
7 instructions to him as he testifies today.

8 So, as with last week, what this means, as a practical matter, is that the witness
9 will be instructed not to testify in the manner that characterizes the evidence in the
10 underlying investigation or that discloses in detail deliberations or strategic discussions
11 among IRS or Department of Justice investigators.

12 On the other hand, the witness may testify as to processes and procedures
13 relating to the underlying investigation, including regarding the respective roles and
14 authorities of the roles of IRS and DOJ personnel. The witness may also testify as to IRS
15 personnel and employment matters.

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

19 As with last week, I anticipate a broad ambit of testimony today, and, again, to the
20 extent we reach an impasse in real time in these proceedings, I encourage staff to
21 continue to work with us offline. Where at all possible, we want to find a way to give
22 you what you need.

23 Mr. Clerget. Thank you.

24 Okay, it's 10 a.m. We'll start the first round of questioning.

25

EXAMINATION

1 BY MR. CLERGET:

2 Q When did you join the IRS?

3 A I reported to the Federal Law Enforcement Training Center in May of 2001.

4 Q Okay. And what's your current position?

5 A My current position is director of field operations for the southern area.

6 Q And were you in that same position on October 7th, 2022?

7 A I was.

8 Q What area does the southern area cover?

9 A So it covers seven different field offices: the Washington, D.C., Field Office,
10 the Charlotte Field Office, the Atlanta Field Office, Tampa, Miami, Dallas, and Houston.

11 Q And what are your roles and responsibilities in your current position?

12 A My primary -- there's a lot of different roles. I'm the liaison between the
13 field and headquarters. I'm the liaison between the field and the chief's office.
14 Investigators. Investigative actions that are taken that the chief needs to be apprised of,
15 that the commissioner may ask him questions on, I make sure that he's up to speed on
16 everything that we're doing.

17 I mentor seven different special agents in charge to offer them some leadership
18 and some guidance on their next steps into the government, including the ASAC level as
19 well.

20 I work with the other two DFOs to ensure that we're consistent across the country
21 in the actions that we're taking and the leadership that we're providing, develop
22 commitments and goals for special agents in charge, and then work on issues that
23 are -- emerging issues that we have coming up from the southern area to see if it's also
24 happening in the west or if it's happening in the north to make a more national scope
25 project of any emerging issues that we're seeing in tax enforcement or money laundering.

- 1 Q And who do you report up to directly?
- 2 A Directly is the deputy chief.
- 3 Q And who is that?
- 4 A Guy Ficco.
- 5 Q And how long has he been in that position, approximately?
- 6 A Approximately 2 years.
- 7 Q And who was your direct report before that, if you remember?
- 8 A Jim Robnett was the previous deputy chief.
- 9 Q Okay. And who is the chief now?
- 10 A James Lee.
- 11 Q And who was the prior chief?
- 12 A Don Fort.
- 13 Q Okay. And you know Darrell Waldon?
- 14 A I do, yes.
- 15 Q And he was special agent in charge, Washington Field Office, until I believe
- 16 February 2023. Does that sound right?
- 17 A I believe so, yeah.
- 18 Q When was the last time you talked to him?
- 19 A Yesterday.
- 20 Q Okay. Did you talk to him about your testimony here today?
- 21 A I did not.
- 22 Q Did you talk to him about his testimony before the Committee?
- 23 A I did not.
- 24 Q You were talking to him on a completely different matter?
- 25 A Passed each other in the hallway and said, "Hi. How you doing?" It was

1 not an in-depth conversation.

2 Q Okay, understood.

3 Okay. Do you know Gary Shapley?

4 A I do.

5 Q Do you know Joseph Ziegler?

6 A I do.

7 Q And you're aware that they provided testimony to the Ways and Means
8 Committee?

9 A Absolutely.

10 Q And have you read the transcripts of their testimony?

11 A I have.

12 Q And did you watch them when they testified publicly before the House
13 Oversight and Accountability Committee?

14 A As much as I could. I didn't catch it all.

15 Q So you understand generally kind of the nature of the topics they have
16 raised. Is that right?

17 A Absolutely.

18 Q So part of what we're trying to understand, having received that testimony,
19 is -- well, there's a number of things, but where I want to start is the relationship between
20 IRS CI and the Department of Justice and how that works.

21 So we've gotten some testimony. We spoke to Mr. Waldon. But we want to
22 understand it from your perspective?

23 So can you actually just start, in your role, how do you interact with the
24 Department of Justice?

25 A I have limited interaction with the Department of Justice because I don't

1 lead investigative steps anymore, investigators. I leave that to the special agents in
2 charge and the assistant special agents in charge.

3 I do have interaction more so with DOJ Tax concerning policy, procedures that we
4 want to try to follow, or anything that we want to implement from a CI perspective or get
5 their thoughts on would they support this sort of initiative.

6 But day-to-day interaction, I do not have day-to-day interaction with U.S.
7 Attorney's Offices or line attorneys at DOJ.

8 Q Okay. And I should have asked you this before. But before you became
9 director of field operations, what positions did you hold at the IRS?

10 A So if you'll give me a minute. I started -- I spent -- I graduated from FLETC
11 in November of '01, reported to my first post of duty to Charlotte POD, Charlotte, North
12 Carolina. I spent about eight years there working investigations, all kinds of -- joint
13 terrorism task force, tax investigations, money laundering.

14 Became a supervisory special agent in Columbus, Ohio. Was there from '09 to
15 '13. I also did a stint as a DFO senior analyst, which is a role that we like to encourage
16 future leaders to take to understand program areas.

17 Assistant special agent in charge in the Chicago Field Office, downtown Chicago;
18 special agent in charge of the Oakland Field Office out in California. I was out there
19 for -- from '13 to '15 -- '13 to '16.

20 Mr. Rillotta. As an ASAC or a SAC.

21 Mr. Batdorf. A special agent in charge of the Oakland Field Office.

22 Moved the family back to the D.C. area in June of 2018. I was the deputy
23 director of operations, policy and support.

24 And then I think it was about November of '19, I was the executive director of
25 refund and cyber crime until I became in this position in January of 2021.

1 BY MR. CLERGET:

2 Q Okay. That's a long career. Thank you for that.

3 A Twenty-two and a half years.

4 Q Thank you for that service.

5 And I'm hoping you can help us kind of understand what's going on here with
6 Shapley and Ziegler and what happens in a typical case versus what's going on here.

7 And it sounds like you've held the position that Ziegler has. Is that right?

8 A Yes.

9 Q The position Shapley has. You've held that position.

10 A Yes.

11 Q Mr. Waldon, you've held that position as well.

12 So what is the typical way -- who up and down the chain of command would
13 typically be the main point of contact with DOJ on an active criminal investigation in
14 which CI is partnering with DOJ?

15 A The day-to-day contact is the assistant U.S. attorney and the special agents.
16 That is who is working the investigation.

17 And it's a grand jury matter, IRS special agents are there to assist the AUSA on
18 their grand jury investigations. Even in training we introduce ourselves differently when
19 it's a grand jury investigation versus an admin investigation.

20 But day-to-day operations, it's those two.

21 Q Okay.

22 And when a case originates at CI, you open an investigation, what's the standard
23 for when it -- when you go -- when you take it to a U.S. Attorney's Office? When do you
24 engage DOJ on a typical case? What's the threshold?

25 A So you're talking a standard tax case or money laundering?

1 Q A tax case.

2 A Tax case, okay.

3 A standard tax case, we have our internal CT counsel that reviews the numbering
4 package, if you will. And it's really -- you have to have some evidence to support that
5 going to the grand jury matter is the best route for the investigation, whether you believe
6 witnesses are going to be difficult to interview and the grand jury would be better off,
7 being able to serve a subpoena and have the subpoena power of the grand jury for that
8 interview.

9 You also have to be able to detail why you believe there's a tax crime committed.
10 Sometimes we disagree on where that bar is set.

11 But from there, CT reviews it. They either concur or not concur with us
12 requesting a grand jury. And then it would go to DOJ Tax, same review, same level of
13 review, and then it will be kicked to a U.S. Attorney's Office.

14 Most times the U.S. Attorney's Office will say, "Yes, let's work the grand jury
15 together. We can bring the FBI in. Let's bring DEA in." Not usually on a tax case.

16 But there's also other times where the U.S. Attorney's Office will say, "Hey, we're
17 way too busy for this." DOJ Tax can then take the lead on that prosecution.

18 Mr. Rillotta. Counsel, I'm concerned that you might have asked about one
19 procedure and he's explaining another.

20 What he just explained is the procedure for referring a matter to DOJ Tax for
21 authorization of a grand jury investigation. Is that what you intended to ask about?

22 Mr. Clerget. Understood. Is there another way in which --

23 Mr. Rillotta. Well, there's also referral to DOJ for approval of charges.

24 Mr. Clerget. Just focused on the grand jury piece for now. Thank you. I
25 appreciate the clarification.

1 BY MR. CLERGET:

2 Q So you said special agent day-to-day contact with the AUSA. When would a
3 supervisory special agent interact with a prosecution team?

4 A If there's any issues that arise, if there's any conflict or, "Hey, we need to
5 work something out," or just regular meetings. We encourage our supervisors to meet
6 with the AUSAs on a regular basis to make sure that they have an understanding of where
7 a case is, where it's going, are there investigative steps that we want to take that they
8 don't want to take, vice versa, and work through those issues.

9 Q Okay. And what about a special agent in charge?

10 A They would meet with either the U.S. attorney or the first assistant. That is
11 their level of --- and the ASAC would meet with the first assistant or some of the branch
12 chiefs, white collar chiefs, you know, [inaudible] chief, stuff like that.

13 Q In the matter that we're looking into, the Hunter Biden investigation,
14 Mr. Shapley testified that he became the day-to-day contact or the regular contact for the
15 U.S. attorney and interacted directly with U.S. Attorney Weiss on a regular basis rather
16 than the special agent in charge.

17 Is that your understanding of what happened procedurally in this case?

18 A Procedurally in this case, yes.

19 Q Okay. And why was that?

20 A I think David Weiss had a more hands-on approach to this investigation than
21 a normal U.S. attorney would with a hundred AUSAs and a thousand criminal cases. I
22 think this was his focus and his AUSAs that were working this investigation, and he
23 attended the meetings regularly.

24 Q Okay. And do you know how frequently Mr. Waldon attended
25 investigation meetings?

1 A I do not.

2 Q Who at DOJ Tax would you most typically interact with?

3 A The branch chief for the southern area is Karen Kelly. DOJ Tax and CI's
4 regions don't align. So the Washington, D.C., Field Office, and there's a couple other
5 ones, but like the D.C. Field Office is split and some of it reports to Jason Poole at DOJ Tax,
6 and some of it is Karen Kelly. And if I call on Karen Kelly about something, she would try
7 to direct me or correct me.

8 Q Where you need to go, okay.

9 And have you talked to Stuart Goldberg, DOJ Tax?

10 A I have, yes.

11 Q Okay. And do you talk to him about ongoing cases, matters?

12 A I've only spoken to Stuart Goldberg one time.

13 Q Okay. When was that?

14 A That was in June, I don't know the exact date, June of 2022, when we had a
15 meeting at the Department of Justice regarding this investigation.

16 Q Okay. And what was the nature of that conversation?

17 A That was --

18 Mr. Rillotta. And I'll instruct you in answering to refrain from characterizing
19 evidence or disclosing deliberations regarding strategy or tactic. You may answer
20 generally.

21 Mr. Batdorf. That was a meeting with David Weiss, DOJ Tax, IRS CI, FBI to discuss
22 this investigation.

23 BY MR. CLERGET:

24 Q This is the June 15th, 2022, meeting?

25 A It may be June 15th, yeah.

1 Q Okay.

2 Who presented at that meeting?

3 A Agent Ziegler, Agent Shapley, myself were presenting to David Weiss.

4 Q Okay.

5 A To argue for our investigation.

6 Q Did DOJ Tax also present?

7 A Yes.

8 Q Okay.

9 And was there a disagreement at that meeting?

10 A Yes.

11 Q And was that disagreement about the nature of charges to be pursued?

12 Mr. Rillotta. You can answer yes or no.

13 Mr. Batdorf. Yes.

14 BY MR. CLERGET:

15 Q And you attended that meeting in person, right?

16 A Correct.

17 Q Okay. Did you attend any other prosecution meetings in person?

18 A I don't believe so, no.

19 Q Okay. Why did you attend that meeting?

20 A Agent Shapley and Agent Ziegler and SAC Darrell Waldon requested that I
21 attend that meeting with their -- to show support from an executive level of IRS CI for this
22 investigation.

23 Q Who called that meeting?

24 A I believe it was Agent Shapley that requested that meeting from DOJ.

25 Q Do you have a sense of why?

1 A I believe at the time my sense of what was going on is that DOJ Tax was
2 having taxpayer conferences with defense counsel.

3 Q Do you know how many times they had conferences with defense counsel?

4 A More than two. And I cannot remember if they were trying to plan their
5 third or their fourth.

6 Q In a typical -- is it typical in a tax investigation to meet with defense counsel
7 two, three, four times?

8 A No.

9 Q Do you know why they met with them this many times in this case?

10 Mr. Rillotta. Hold on a second, Agent Batdorf. If you can answer that question
11 without getting into the details of strategy or characterizing evidence, you can do so.

12 Mr. Batdorf. Can you repeat the question one more time? I'm sorry.

13 BY MR. CLERGET:

14 Q Do you know why prosecutors met with defense -- had a conference, had
15 multiple conferences with defense counsel on this matter?

16 A I do not.

17 Q Would it be typical for IRS CI agents working the case to participate in those
18 conferences?

19 A The ones that I've seen before, no, it would not be typical.

20 Q Have they ever participated in those conferences?

21 A I can't answer that with certainty. I would imagine at some point in our
22 history we've attended a meeting.

23 Q But do you know of any?

24 A I do not know of any.

25 Q And you're aware that IRS CI issued a Special Agent Report in February 2022

1 recommending charges in this case?

2 A I am, yes.

3 Q And you're aware that that recommendation included both misdemeanor
4 and felony tax counts?

5 A Correct.

6 Q Do you know if there was a conference with defense counsel in this matter
7 between IRS issuing the SAR and the June 15th meeting?

8 A Yes. That would typically be when defense counsel meetings happen.

9 Q Okay.

10 A It's after we recommend -- there's two different ways you can do it. In an
11 admin, an administrative tax case, where we're not working with the grand jury, the
12 special agent in charge can offer the taxpayer, the taxpayer's defense, a taxpayer
13 conference; or after we recommend to DOJ Tax, DOJ Tax can either offer or defense
14 counsel can then ask for a taxpayer conference.

15 Q Okay.

16 When an SAR is completed by IRS, is it sent to DOJ Tax? Is that the process?

17 A So to walk through the entire process, a special agent will finish their special
18 agent's report. It will go to the supervisor for review. That supervisor will review it
19 and send it to CCR, which is our central case review, dotting i's, crossing t's, making sure
20 that evidence 7 point -- 7-1, that is Bank of America, is actually 7-1 Bank of -- like, they're
21 really just making sure it's put together correctly, giving some feedback.

22 From there, CCR will send it back to the supervisor. Agent supervisor will make
23 any corrections or additions or any work that needed to be done.

24 Then it's sent to CT counsel, our internal tax counsel, for their review. They will
25 ask questions, follow up, and then they will offer a concur or nonconcur of moving

1 forward with the charges. It's simply advisory. It's not -- they cannot stop a case from
2 going forward.

3 From there, it would go to DOJ Tax.

4 Q Okay. And in this case, the report went to DOJ Tax?

5 A Yes, it did.

6 Q And do you have a sign-off role in that process?

7 A As director of field operations, typically I do not.

8 On occasion, on occasion when CT does not concur with charges, the special agent
9 in charge has the ability to then override and move forward. On occasion, they come to
10 me and ask for advice, "Hey, this is the issues that we see. Here's what I'm seeing.
11 Here's my recommendation. What do you think?"

12 Q Did that happen in this case?

13 A It did.

14 Q Okay. And did you sign off or advise to move forward with the Special
15 Agent Report?

16 A Yes, I did.

17 Q So did you agree with the recommendations of the report?

18 A Can I ask my counsel?

19 Mr. Rillotta. You can answer.

20 Mr. Batdorf. Yeah, I did. I agreed with all the charges recommended.

21 BY MR. CLERGET:

22 Q Okay.

23 So moving from there back to the June 15th meeting, as best you can recall, do
24 you recall who exactly was at that meeting?

25 A Agent Ziegler, Agent Shapley, myself, SAC Darrell Waldon. I do not recall if

1 Lola Watson was there. Lola was the ASAC at the time. David Weiss was there.

2 Stuart Goldberg was there. Mark Daly was there from DOJ Tax.

3 I believe the AUSA line attorneys were there. I don't remember exactly their -- I
4 don't remember their names. But there were two prosecutors there. I'm not sure if
5 that was Lesley Wolf and someone else.

6 Q Shannon Hanson?

7 A It may have been. I don't recall.

8 And then I believe the FBI SAC was there as well.

9 Q And who was that?

10 A I don't remember his name.

11 Q Is it Tom Sobocinski?

12 A Yes, that name, that last name sounds familiar.

13 Q I probably pronounced it wrong.

14 Jack Morgan from DOJ Tax, was he there?

15 A Jack Morgan? Because there's another guy with the last name Kane, and
16 I'm getting those two confused.

17 Q John Kane?

18 A John Kane. I'm getting those two confused on which one was there.

19 Q One of them was there?

20 A I believe one or maybe both were there.

21 Q Okay.

22 And just to be clear, do you remember Lesley Wolf being there?

23 A No.

24 Q Okay. So she might have been?

25 A She may have been.

1 Q Okay.

2 And what about Shawn Weede from the U.S. Attorney's Office?

3 A I don't remember that name.

4 Q Anyone else from what we call Main DOJ?

5 A Not that I can recall.

6 Q Was Bradley Weinsheimer there?

7 A I don't remember the name, no.

8 Q So you haven't had any interactions with him?

9 A No, not that I recall.

10 Q And is it fair to say that the IRS team, including yourself, were advocating for,
11 in favor of the charges you had just recommended in February?

12 A Absolutely.

13 Q Okay. And so was DOJ Tax presenting an opposing view?

14 Mr. Rillotta. You can answer generally.

15 Mr. Batdorf. Yes, they were.

16 Mr. Clerget. And what was the nature of their view?

17 Mr. Rillotta. So let me offer this advice here, Agent Batdorf.

18 You've worked in litigation. You know what a privilege log is, right?

19 Mr. Batdorf. Yes.

20 Mr. Rillotta. Okay. I think I'd like for you to answer this question at a privilege
21 log level, which is to say when you're talking about a communication or an exchange, you
22 can identify the people who were involved and the general subject matter. Okay?

23 Mr. Batdorf. Okay.

24 Mr. Rillotta. All right.

25 Counsel, I don't know if you want to re-ask the question. I thank you for your

1 indulgence.

2 Mr. Clerget. Yeah, of course.

3 BY MR. CLERGET:

4 Q What was the nature of DOJ Tax's view that they were presenting on at the
5 June 15th meeting?

6 A I mean, this type of meeting occurs, and it's almost as if they're playing
7 devil's advocate to our investigation and presenting to David Weiss all the pros and cons
8 moving forward.

9 Q Was DOJ Tax presenting pros and cons or just cons in this meeting?

10 A It was mostly cons.

11 Q So IRS was presenting pros and DOJ Tax was presenting cons?

12 A Correct.

13 Q And did anything that DOJ Tax presented in that meeting make you change
14 your position as to your view of the charges that IRS had recommended?

15 A Absolutely not.

16 Q Were there any other meetings like the June 15th meeting after that date?

17 A Not that I was involved in, no.

18 Q Okay. Any that you were aware of?

19 A The October 7th meeting. That was the next one that I was I think -- I
20 mean, I may have gotten an email saying, "Hey, we just and no substantive." But the
21 October 7th was the next bigger meeting.

22 Q Okay. So at the time of the June 15th meeting, so the meeting we've just
23 been discussing, was it your view that David Weiss had the authority to bring this case,
24 any charges he wanted, in any jurisdiction he wanted?

25 A It was my view that -- well, DOJ Tax had not authorized any charges at that

1 time. So DOJ Tax would have to authorize charges prior to David Weiss recommending
2 an indictment or prosecution.

3 Q Okay.

4 A And that was part of why the June meeting happened, was to see where
5 we're at with those authorizations.

6 It was my understanding that --- I'm not sure about any judicial district. My
7 understanding is that David Weiss could request special counsel if he needed to, or he
8 could prosecute in the district that he needed to related to this case, and there were
9 venue issues.

10 Q Okay. And I just want to get your understanding at that time. So was it
11 your understanding that he could ask for special counsel status to be able to file in a
12 jurisdiction outside of Delaware, which is his jurisdiction?

13 A His jurisdiction is Delaware.

14 My understanding was that he could -- I'm trying to think back to the June date
15 and what my understanding was at that June date. I mean, he had the ability to ask
16 other judicial districts to prosecute in their district or request special counsel.

17 Q Okay. But at this stage, at the June time frame, we're still talking about
18 getting DOJ Tax sign-off --

19 A Correct.

20 Q -- before that step would happen?

21 A Yeah.

22 Q Okay.

23 Okay. And you're not aware of any other -- well, you didn't participate in any
24 prosecution team meetings until -- or were aware of them until the October 7th meeting?

25 A October, yeah. I'm trying to remember if anything -- not a meeting. I

1 know we had some investigative actions to take after the June meeting. I don't
2 remember what specifically those were. But those were completed at some point.

3 Q Okay.

4 So I was asking you your understanding of Mr. Weiss' charging authority at that
5 June time period.

6 Did your view of that change?

7 A No. I was trying to remember if I knew it back in June --

8 Q Oh, okay.

9 A -- or if I learned it over the last 7, 8, 9 months.

10 Q Okay. So your understanding about the steps he would take has stayed
11 consistent through --

12 A Correct.

13 Q Okay.

14 Did you learn at some point that Mr. Weiss had sought to bring the case in D.C.
15 and partner with the U.S. attorney in D.C.?

16 A I believe I've learned that, yes. I believe that was after the October 7th
17 meeting.

18 Q Okay. You learned that after the October 7th meeting?

19 A Well, the report out of the October 7th meeting.

20 Q Okay, which we're going to talk about here in a minute.

21 Okay. And same thing, California, Central District of California, did you learn at
22 some point that --

23 A Yes.

24 Q -- he tried to partner with the U.S. attorney in that district? Okay.

25 A Yes.

1 Q And in both cases, those U.S. attorneys declined to partner?

2 A That is my belief, yes.

3 Q Okay.

4 Okay. And do you know whether prior to, let's say, just in 2022, whether U.S.
5 Attorney Weiss requested to be designated as a special counsel or a special attorney?

6 A In 2022? Throughout 2022?

7 Q Yes.

8 A The only time I heard that he may have done that was from Gary's email.
9 He did not -- not to my knowledge. He never told me, and I don't believe he told Darrell
10 either.

11 Q Okay. We can go ahead and talk about that.

12 Mr. Clerget. So if we can mark this as exhibit 1.

13 [Batdorf Exhibit No. 1

14 Was marked for identification.]

15 BY MR. CLERGET:

16 Q Have you seen this document before?

17 A I have, yes.

18 Q And can you just describe your understanding of it? What is it?

19 A This is an email from SSA Gary Shapley to me at the request of Darrell
20 Waldon on the notes and topics of the meeting that occurred on October 7th.

21 Q Okay. And this exhibit, you'll see it has the number 10 on it. It was
22 marked as exhibit 10 to Mr. Shapley's testimony.

23 A Okay.

24 Q It'll be exhibit 1 for our purposes.

25 Okay. So let me start with the sort of process leading up to the October 7th

1 meeting.

2 When did you learn that this meeting was going to occur?

3 A I believe it was late September. There were some emails going around
4 between the prosecution team and Agent Shapley, Agent Ziegler, trying to schedule a
5 meeting with the FBI involved. And if I recall correctly, there was an email that Agent
6 Shapley was going to be out of the country for a week, and they wanted to make sure he
7 was there. So they made it for when he was coming back.

8 Q Okay. And did you know in advance of Mr. Shapley's report here why the
9 meeting was being called, what the purpose of it was?

10 A Just a prosecution team update. I mean, I don't know. There was no
11 agenda sent out prior to or anything like that.

12 Q Okay. And you didn't understand it to be about some new breaking issue?
13 You didn't -- it was just in your view like a --

14 A The day prior to there was a leak reported at the agent level, and Gary sent
15 an email saying this is probably going to be discussed tomorrow. So that --

16 Q Fair enough. But the meeting was -- they were working to schedule the
17 meeting before that leak?

18 A I believe so, yes.

19 Q Okay.

20 And at the top of this document, Mr. Waldon, Special Agent in Charge Waldon
21 replies and says, "Thanks, Gary. You covered it all. I'm taking care of the referral to
22 TIGTA." Do you see that?

23 A Yep.

24 Q Okay. And do you remember if you responded to this email?

25 A I believe I did. I think I responded to -- it was after Darrell's email. I

1 believe I responded and just said, "Thanks for the update, keep up the good work," or
2 something like that.

3 Q Okay.

4 Let's walk through some of the topics in here from Mr. Shapley's notes here.

5 So the first item you just mentioned the discussion about an agent leak. So was
6 that matter ultimately referred to TIGTA?

7 A Yes, I believe so, assuming Darrell's line up here saying he made the referral,
8 that we reported.

9 Q And were you involved with investigations or pursuit of that issue down the
10 line from --

11 A At one point I was interviewed, a phone interview by TIGTA.

12 Q Okay. Do you know if they reached a conclusion?

13 Mr. Rillotta. You can answer yes or no.

14 Mr. Batdorf. No, I don't. No, I don't know.

15 Mr. Clerget. You don't know, okay.

16 And so have you seen a report of TIGTA, like a report of investigation or something
17 memorializing their work on this matter?

18 Mr. Batdorf. Same?

19 Mr. Rillotta. Yes.

20 Mr. Batdorf. No, I have not seen that.

21 BY MR. CLERGET:

22 Q Okay.

23 Number 2: "Weiss stated that he is not the deciding person on whether charges
24 are filed."

25 And we just talked about that he would need DOJ Tax approval or to ask for

1 special attorney, special counsel status. So this statement in number 2, was that
2 consistent with your understanding at the time?

3 A That he is not the deciding person? I mean, my understanding would be
4 that DOJ Tax has to authorize it first. So, I mean, my understanding is that, I mean, he
5 can't make that decision without DOJ Tax authorization.

6 Q Okay. You see 2a here where Mr. Shapley says, "I believe this to be a huge
7 problem -- inconsistent with DOJ public position and Merrick Garland testimony." Do
8 you see that?

9 A Yep.

10 Q Okay. What was your understanding of that piece of this from
11 Mr. Shapley?

12 A At that point in time, I was not fully aware of Merrick Garland's testimony.
13 Since then I have been made aware of it, but at that point I didn't realize that -- I mean, I
14 understand Gary's problem and his issue with that statement, but I didn't fully
15 understand Merrick Garland's testimony.

16 Q Okay, understood.

17 So as far as talking about DOJ Tax approval and requesting special attorney or
18 special counsel status, was it your understanding at the time that that is how this case
19 was proceeding and that was consistent with the typical case?

20 A My understanding is that is how the case was proceeding.

21 Q Okay.

22 Moving to 2b. We talked about DOJ Tax need for approval.

23 Small ii: "No venue in Delaware has been known since at least June 2021." Is
24 that consistent with your understanding in this case?

25 Mr. Rillotta. Just hold on one second. Give us a minute.

1 Mr. Clerget. We can go off the record.

2 [Discussion off the record.]

3 Mr. Rillotta. We can go back on.

4 Mr. Clerget. Okay. Back on the record.

5 Mr. Rillotta. I'm instructing the witness not to answer insofar as the question
6 calls for a characterization of evidence relevant to a claim of defense and potential future
7 litigation.

8 Mr. Clerget. There are venue issues in this case. Is that fair?

9 Mr. Rillotta. You can answer yes or no.

10 Mr. Batdorf. Yes.

11 BY MR. CLERGET:

12 Q And let me just take a step back. What is typically venue in a tax evasion or
13 a tax case?

14 A Typically in a normal tax case venue is derived by where the crime occurred.
15 In most tax cases we look at where they resided, where their tax return was prepared,
16 where it was mailed from. A lot of times there is a line. You live in D.C. -- or you live in
17 Northern Virginia. Your tax will be prepared in Northern Virginia and sent up from
18 Northern Virginia. It's going to be a Northern Virginia tax case.

19 A lot of times we have part of our Special Agent Reports identify the venue in case
20 there is an issue where you reside in one place or you've moved or your tax return
21 preparer is someone that your dad has used for 27 years in Oklahoma and you live in
22 Washington. We work on those things, and we find a venue where prosecution should
23 take place.

24 Q Okay, understood.

25 So b 3, or small iii: "Went to D.C. USAO in early summer to request to charge

1 there -- Biden appointed USA said they could not charge in his district." Do you see
2 that?

3 A Yes.

4 Q So we started to talk about this earlier. Is this when you learned that the
5 U.S. attorney in D.C. had declined to partner with Mr. Weiss?

6 A Yes.

7 Q Okay. Did you ever learn why they would not partner with Mr. Weiss?
8 Mr. Rillotta. Hold on a second.

9 Answer if you can without characterizing evidence or disclosing strategic
10 discussions. If you're unable to answer without doing so, please don't answer.

11 BY MR. CLERGET:

12 Q I can restate my question here, which is, did you ever learn why the D.C. U.S.
13 attorney would not partner with Mr. Weiss?

14 A No, I don't believe so.

15 Q Did you ever develop an opinion as to why the D.C. U.S. attorney would not
16 partner with Mr. Weiss?

17 A No, I don't -- I mean, an opinion? No, I don't -- I've talked to Gary, I've
18 talked to other people about it, but I don't develop my own opinion because I didn't know
19 why.

20 Q Okay. Understood.

21 Same question for California. You learned at some point that the Central District
22 of California U.S. attorney was not going to partner with Mr. Weiss on this matter. Do
23 you know when you learned that?

24 A I believe that was the mid to late December phone call I had with David
25 Weiss and Darrell Waldon.

1 Q Okay. And did you learn -- did you ever learn why the Central District of
2 California U.S. attorney would not partner with Mr. Weiss?

3 Mr. Rillotta. You can answer yes or no.

4 Mr. Batdorf. No.

5 BY MR. CLERGET:

6 Q Mr. Weiss didn't tell you why?

7 A He just said that they had declined and he had to make the decision on
8 where he was going to go.

9 Q Okay. Was Mr. Weiss frustrated by that decision?

10 A I mean, it's hard to tell what his mental --

11 Q Did you think he was frustrated?

12 A I don't know if he was frustrated or if he -- I mean, I was frustrated. So was
13 it me just feeling the -- he was probably a little frustrated. I would assume he
14 had -- because he now had to make some decisions on what he was going to do. And
15 that's what we talked about in that phone call.

16 Q Okay. On that phone call when you were talking about California, did you
17 ever discuss the D.C. decision?

18 A I don't believe so.

19 Q Do you know when the case was presented in D.C.?

20 A I do not.

21 Q Okay. Was it in 2022?

22 A I believe so, yeah. It would have had to have been after we recommended
23 charges.

24 Q Okay. And we'll come back to the December phone call.

25 2b iii 1: "USA Weiss requested Special counsel authority when it was sent to D.C.

1 and Main DOJ denied his request and told him to follow the process."

2 Do you see that?

3 A I do.

4 Q Was that the first time you learned about a request for special counsel
5 authority?

6 A Yes.

7 Q Did you discuss that with Mr. Shapley further?

8 A I don't believe so, no.

9 Q Did you discuss it with Mr. Waldon?

10 A Yes, I do believe so.

11 Q Okay. What was the nature of that discussion?

12 A That was a follow-up to after he emailed me. We had a phone call just
13 talking about the contents of this meeting.

14 Q And so did this issue of a request for special counsel authority ever come up
15 again after that phone call with Mr. Waldon?

16 A No, it did not. Not that I recall.

17 Q And you don't have any reason to doubt what Mr. Shapley wrote here, do
18 you?

19 A I do not, no.

20 Q Did you ever discuss -- you talked about the December 22nd phone call with
21 Mr. Weiss. He had to -- you discussed California declining to partner. Here we know
22 D.C. had declined to partner and he had to think of next steps. Presumably special
23 counsel was one of those potential options. Is that fair?

24 A I mean, that's my understanding, yes.

25 Q Did he discuss that potential with you, that potential option with you?

1 A No.

2 Q So when he spoke about next steps on that phone call, was he speaking
3 generally? Can you give us some more color on the nature of that phone call?

4 A It was -- investigative-wise, it was, looking at everything that he knows, can
5 he and his team prosecute in Central California without the help of the U.S. Attorney's
6 Office, without knowing judges out there? Could he and his team do that? It was not
7 whether if it was special counsel or special attorney.

8 I'm not -- those are DOJ processes. So he did not mention special counsel. He
9 just mentioned, could him and his team prosecute it with everything?

10 Q Okay. So he was talking more about their ability to prosecute? Is that
11 fair?

12 A Their ability, yeah.

13 Q To succeed? Okay. Is that a yes?

14 A Yes.

15 Q Okay.

16 Was that discussion, Delaware, California, travel, et cetera, was he concerned
17 about resources?

18 A No, I don't believe it was a resource issue.

19 Q He's got a full U.S. Attorney's Office to run, right? Big caseload. No
20 resource concerns, sending prosecutors out to California to --

21 A Okay, yeah, as far as like the travel and sending -- having prosecutors be out
22 there for months at a time, I mean, yeah, that was brought up.

23 Q As a concern?

24 A As a concern.

25 Q And that was with regard to California. Did you ever have any similar

1 discussion with him about D.C.?

2 A I did not.

3 Q Okay. And you didn't discuss D.C. on that December phone call?

4 A We did not.

5 Q Okay. Is that because the statute of limitations had expired?

6 Mr. Rillotta. Hold on. I'm instructing you not to answer on account of the
7 question calls for a characterization of evidence that's potentially relevant to future
8 litigation.

9 BY MR. CLERGET:

10 Q Do you know the answer to my question?

11 A Yes.

12 Q If we turn to the next page of Mr. Shapley's report.

13 We just talked about California.

14 Roman numeral v, or 5 here, at the top of the page: "If California does not
15 support charging U.S. Attorney Weiss has no authority to charge in California."

16 Number 1 under that: "He would have to request permission to bring charges in
17 California from the Deputy Attorney General or Attorney General (unclear on which he
18 said)."

19 Do you see that?

20 A I do.

21 Q Okay. And is that consistent with what we discussed earlier about
22 requesting special counsel status or special attorney status based on your understanding?

23 A Based on my understanding, it's -- I'm not sure that -- I'm not sure the
24 statement that "USA Weiss has no authority to charge in California" is accurate to the
25 point of -- that's Gary's understanding. And that he would have to ask permission is

1 Gary's understanding.

2 I don't know the DOJ process of how he would go about partner -- not partnering
3 anymore -- but charging in a district that he's not part of the U.S. Attorney's Office.

4 Q Okay. So you don't know whether he would need approval for that?

5 A I do not know that.

6 Q Okay.

7 And then let's jump to number 3: "They are not going to charge 2014/2015 tax
8 years."

9 Do you see that?

10 A I do.

11 Q Okay. And then Mr. Shapley details under sub-bullet a that he does not
12 concur. He stated that he did not concur with that decision and that there's "a large
13 amount of unreported income in that year from Burisma that we have no mechanism to
14 recover."

15 Do you see that?

16 A Yes.

17 Q And the 2014 and 2015 tax years were included in the Special Agent Report
18 from IRS CI. Is that right?

19 A That's correct.

20 Q Okay. And that included at least one felony count. Is that right?

21 A I believe so, yeah. Yep.

22 Q And you said you agreed with the IRS recommendation?

23 A Correct.

24 Q So were you surprised to learn in this email from Mr. Shapley that
25 prosecutors were not going to charge 2014 and 2015?

1 Mr. Rillotta. I'm going to instruct the witness not to answer. We're getting
2 close to discussions that inherently calls for a characterization of evidence.

3 Mr. Clerget. Whether he was surprised by that?

4 Mr. Rillotta. You can answer whether you were surprised.

5 Mr. Batdorf. Based on my supporting of the case all the way through, yes, I was
6 surprised.

7 Mr. Clerget. And were you frustrated by that?

8 Mr. Rillotta. You can answer.

9 Mr. Batdorf. Yeah. Of course there was some level of frustration, yes.

10 Mr. Clerget. Did you take any steps after getting this report from Mr. Shapley to
11 speak with anyone about why this decision was being made?

12 Mr. Rillotta. You can answer yes or no.

13 Mr. Batdorf. Yes.

14 Mr. Clerget. Who did you speak with about it?

15 Mr. Rillotta. You can answer.

16 Mr. Batdorf. I spoke with Special Agent in Charge Darrell Waldon, and I let the
17 deputy chief know that the decision was made on '14 and '15.

18 BY MR. CLERGET:

19 Q Okay. And that was Guy Ficco?

20 A Correct.

21 Q Do you know if he took any steps to speak to anyone at DOJ or the U.S.
22 Attorney's Office?

23 A I do not.

24 Q Do you know if he reported that up to the chief or to the IRS commissioner?

25 A I do not.

1 Q Did you talk to anyone else outside your chain of command, like DOJ, U.S.
2 Attorney's Office, about this decision not to charge '14, '15?

3 A I did not.

4 Q Anyone at FBI?

5 A No.

6 Q Okay.

7 Did you have interactions with -- directly with FBI on this matter?

8 A I did not.

9 Q Do you know if Mr. Waldon did?

10 A I'm assuming. I mean, I take that -- by direct interaction, I was in that
11 meeting in June with the FBI SAC.

12 Q Sure. Outside of that.

13 A Outside of that? I don't know if Darrell Waldon had direct interaction with
14 the FBI regarding -- on this one.

15 Q Okay.

16 3b: "Their reason not to charge it does not overcome the scheme and
17 affirmative acts -- in my opinion."

18 Do you see that?

19 A I do.

20 Q Okay. And do you agree with Mr. Shapley's opinion there?

21 Mr. Rillotta. You can say yes or no.

22 Mr. Batdorf. Yes.

23 BY MR. CLERGET:

24 Q Okay. Number 5. I'm going to skip number 4 for a second.

25 Number 5: "No major investigative actions remain."

1 So Mr. Shapley is stating that, reporting on this meeting from 10/7/2022. Is that
2 consistent with your understanding at the time?

3 A That there were no more investigative actions? Yes, that is.

4 Q Okay.

5 So I want to step back to page 1. DOJ Tax approval.

6 So you send a Special Agent Report to DOJ Tax. They review it, do their analysis.
7 Do they write a report?

8 A I believe they do, yes.

9 Q Okay. Do you know if they did write a report in this case?

10 A I do not know that.

11 Q Have you seen any -- let me rephrase that.

12 At the June 15th meeting, did they have a slide deck?

13 A I don't recall. I know, because I was briefed the day prior to by our agents
14 and we had a slide deck. I don't recall if they had a slide deck as well.

15 Q Okay. So IRS did. DOJ Tax you don't recall?

16 A I don't recall.

17 Q Okay.

18 So you believe DOJ Tax writes a report or a memo after they received the IRS
19 charging recommendations, but you don't know if they completed one in this case?

20 A I mean, my understanding of the procedure would be we recommend the
21 charges to DOJ Tax. They would either respond to us via memo saying they don't
22 authorize tax charges, they can offer a supplemental grand jury, or they can write a pros
23 report to the U.S. Attorney's Office.

24 Q Okay.

25 A I did not see any writing come back from DOJ Tax.

1 Q Either way?

2 A Yes.

3 Q So is a pros report to the U.S. Attorney's Office, does that mean they're
4 agreeing with charges and recommending?

5 A Normally that's what it would say. It's a standard letter. I don't know if
6 I've ever seen one. But AUSAs will say they got authorization to prosecute.

7 Q And if they were declining authorization, would they send a letter to the
8 prosecution team or is it administrative and it doesn't go up, if you know?

9 A I think -- I believe it would go to both, because if it was a grand jury
10 investigation they would say they're declining and then let the agency know as well that
11 they're not moving forward.

12 Q Okay. And so if they -- and if they decline, if they did not authorize, then
13 there is no way to go forward in the case, you need -- because you need DOJ Tax
14 approval?

15 A You need DOJ Tax approval.

16 Q So Mr. Weiss couldn't bring charges without first getting DOJ Tax approval?

17 A No. Not -- to the best of my knowledge, no.

18 Q Okay.

19 Okay. Back to page 2, number 4: "FBI SAC asked the room if anyone thought
20 the case had been politicized -- we can discuss this if you prefer."

21 Did you discuss that further after receiving this report?

22 A I did not.

23 Q Okay. Did you get a readout from Mr. Shapley, Mr. Waldon about this topic
24 of politicization?

25 A I did not.

1 Q Okay. Do you know what this note is referring to specifically?

2 A No.

3 Q Number 6: "Both us and the FBI brought up some general issues to include:
4 communication issues, update issues. These issues were surprisingly contentious."

5 Do you see that?

6 A I do.

7 Q And were you aware of communications and update issues on this case?

8 A Yes, I was.

9 Q Okay. And was that -- what were the nature of those issues?

10 A I think our investigative agents wanted to be more included on the
11 prosecutorial review of the case and they weren't getting -- maybe -- I think they may
12 have had monthly meetings prior to during the investigation, but now this was this
13 deliberative process that David Weiss was taking with his team to review the evidence.
14 And my feeling was that our agents were not getting the feedback that they were looking
15 for on a regular basis.

16 Q Did you think that those concerns from your agents were fair?

17 A I mean, no, not fair. They were taking their process to review the evidence.
18 I mean, they can ask us questions. To have regular meetings just to have a meeting,
19 we're wasting time. Why have a meeting if there's not going to be anything brought up
20 besides we're still reviewing the evidence?

21 So were they frustrated? Yeah, they were frustrated throughout the entire
22 investigation, some parts of it. So I'm not sure why these would be surprisingly
23 contentious. I mean, my phone call with Darrell after this, I mean, he -- if you look at his
24 email and why his talk with me, I mean, he disarmed some of.

25 Gary has a tendency to go to level like grade 7 five-alarm alarm fire on everything.

1 Darrell, being a senior leader with experience, kind of, "Hey" -- if Darrell would have
2 wrote, "Oh, my God, this happened, we got to talk immediately," okay. But him and I
3 talked and we talked through some of this, and there was a statement that he didn't even
4 remember being made, and I said, "Okay, let's work through this and figure out what we
5 need to do."

6 Q Which statement was that?

7 A I do not recall which statement it was. I'm racking my head about it, and I
8 have not talked to Darrell and asked him.

9 Q Okay. And on the -- it sounds like you're saying Mr. Waldon sort of was
10 bringing down the temperature on sort of maybe the tone of this report?

11 A Correct.

12 Q Okay. And when he was doing that, was he addressing specifically this idea
13 of the issues were surprisingly contentious?

14 A It was more on -- this isn't the only investigation that Gary Shapley and Joe
15 Ziegler and his team were working. I mean, they were working many investigations.

16 And Gary is a fantastic agent. He's a bulldog. He will get to the bottom of it.
17 But, again, he has the mindset that he should report directly to a DFO or a chief, all his
18 investigations rise to this level. He has a mindset that if you don't agree with him, I
19 mean, "You're just incompetent, and I'll cut you out and I'll go straight to the DFO."

20 And we're working through those issues. So this isn't the first email I got where
21 everything is on fire and we need to figure it out.

22 So Darrell has done a good job of being that barrier between the two, and that
23 was more the conversation, not necessarily the specifics of why it was contentious.

24 Q Okay.

25 A I believe Darrell and I just briefly talked about it was: Why aren't we having

1 these meetings? And the prosecution team saying: We're just going through our
2 process? There's nothing to meet on.

3 And I think that's when it got contentious.

4 Q Okay. Fair enough.

5 So when you spoke -- so Mr. Waldon's response to this email says, "You covered it
6 all."

7 So in your response in the follow-up conversation you had, did he say that
8 anything in here was not true?

9 A No, he did not.

10 Q Okay. He didn't say anything in here was a lie?

11 A No. He acknowledged -- I mean, in this email, I look at it, he says, "You
12 covered it all," means you're acknowledging these are the topics that were generally
13 discussed during the meeting. He made a comment of, "I don't remember that being
14 said," but it was never, "He never said that," or, "That is a lie." It was he didn't
15 remember.

16 Q Okay. And if he remembered that something was a lie or there was an
17 error, that Mr. Shapley heard it incorrectly, you would expect him to report that to you.
18 Is that fair?

19 A That's fair.

20 Q Okay. So he wouldn't tell you -- he reports directly to you, right?

21 A Correct.

22 Q Okay. So he wouldn't tell you that Gary covered it all without any
23 corrections if there were corrections to be made?

24 A Yeah, that's accurate. In the email portion, yeah.

25 Q Okay.

1 So I'm going to step back and -- I've got just a couple minutes before my round is
2 up -- and talk about the timing on this case and kind of what -- you know, Mr. Shapley and
3 Mr. Ziegler have talked about how the Department of Justice has handled this case.

4 So IRS recommended charges in February 2022. Is that right?

5 A Correct.

6 Q And Shapley's notes say no venue has been known since -- in Delaware since
7 June 2021. That's what his notes say. Is that right?

8 A That's what his notes say. Correct.

9 Q And does IRS typically recommend charges, including felony counts, before
10 completing its investigative process?

11 A I'm not sure I understand the question.

12 Q Do you reach a certain threshold before recommending felony charges in an
13 investigation?

14 A Once we believe we've gathered enough evidence to prove a felony charge,
15 we usually -- at some point, yes. We can probably go on an investigation forever
16 because it's ongoing sometimes.

17 Once we believe we've reached enough evidence to recommend charges, we
18 write a Special Agent's Report.

19 Q Okay. And presumably that threshold for recommending charges for a
20 felony crime would be fairly substantial. Is that fair?

21 A That's fair.

22 Q And the October 7th, 2022, meeting was about 8 months after IRS charges
23 were recommended. Were you surprised about how --- the speed at which prosecutors
24 were moving on this case?

25 A I'm trying to make sure I understand your question. No, I don't -- I mean,

1 our charges are typically reviewed -- I mean, 8 months is not a long time to wait for an
2 indictment in an IRS tax case.

3 Q Okay.

4 So Mr. Waldon moved to a new position in February 2023. That's about 1 year
5 after IRS had recommended charges.

6 Had this case moved towards conclusion at that point and then -- there hadn't
7 been an indictment, right?

8 A No, not that I'm aware of.

9 Q Mr. Shapley testified before our Committee in May. The testimony was
10 released in June. Two days before that prosecutors announced a plea deal about
11 16 months after the IRS recommendations.

12 The plea deal collapsed in July, about 17 months after IRS recommendations, and
13 now we are in September, which is about 18, 19 months after the IRS recommended
14 felony charges, and there has been no indictment on any tax charges in this case.

15 Aren't you frustrated by that?

16 A Sure. I mean, yeah. I mean, it's been -- I believed in our investigation. I
17 believed in the evidence. I recommended that prosecution be taken after CT counsel
18 nonconcurred. I met with prosecutors in DOJ Tax in June.

19 There is always some level of frustration. Mine is a little bit more removed. I'm
20 not the day in, day out, you know, working the case.

21 But I do understand that it does take time in some of these cases. Some of our
22 cases are years in the making. And I don't want to go any further with why this may take
23 time, but --

24 Q But they tried to move forward a plea agreement. So presumably they
25 were at a stage to move forward in this case. That's now fallen apart.

1 It's got to be frustrating that we're at this point and nothing has happened in
2 September. We're in September now and still nothing has happened. Is that fair, that
3 you're frustrated by that?

4 A Can I have a quick minute?

5 Q Sure. We can go off the record.

6 [Discussion off the record.]

1

2 [11:03 a.m.]

3 Mr. Clerget. Okay. We can go back on the record.

4 Mr. Batdorf. So, to answer the question if I'm frustrated, I'm not, because I don't
5 generally agree with the fact that nothing is going on right now.

6 Mr. Clerget. Okay.

7 Mr. Batdorf. And I'm not at liberty to discuss any further on -- on that.

8 Mr. Clerget. Do you understand how Mr. Shapley or Mr. Ziegler might be
9 frustrated by the pace of this process?

10 Mr. Batdorf. Sure.

11 Mr. Clerget. Okay. My hour is up.

12 Minority Counsel 1. Great. Let's take a break.

13 Mr. Clerget. Take a quick break, and -- 5 to 10 minutes.

14 [Recess.]

15 Minority Counsel 1. Back on the record.

16 Thank you very much for answering the questions in the first hour.

17 EXAMINATION

18 BY MINORITY COUNSEL 1:

19 Q I wanted to talk a little bit more about the structure of reporting inside of CI.
20 You talked a little bit about this in the last hour, but could you tell us, starting from the
21 special agent level, who each person reports to and then where you fit in. So it's special
22 agent, and then they report to?

23 A So a special agent will report to a supervisory special agent. Supervisory
24 special agent has anywhere between eight to 12 special agents in their group.

25 A supervisory special agent reports to the assistant special agent in charge. That

1 assistant special agent in charge usually oversees four to six SSAs, supervisory special
2 agents. That assistant special agent in charge will report to a special agent in charge.

3 Special agent in charge, in most of our field offices, have two to three assistant
4 special agents in charge. And then those special agents in charge report to a director of
5 field operations.

6 The director of field operations reports to the deputy chief, chief's office,
7 one -- not one and the same, but chief and deputy chief are very -- very much on the
8 same page.

9 Q The director of field operations, about how many individuals in total are
10 supervised through your various levels of agents that are below you?

11 Mr. Rillotta. How good are you at multiplication?

12 Mr. Batdorf. Exactly.

13 There are -- I mean, there are roughly 27-, 2,800 special agents nationwide. Add
14 on top of that, 1,200 or 1,300 support staff. I probably oversee 1,000 people -- 750 to
15 1,000. So 800 to 1,000, somewhere in there.

16 BY MINORITY COUNSEL 1:

17 Q About how many of those would you say are special agents, so not the
18 support staff? How much is the support staff of that thousand, roughly?

19 A Yeah. We -- usually around 30 percent of our staffing is professional staff.
20 So I would probably oversee 525 special agents and 150, 200 support staff, and then I
21 have my own staff as well.

22 Q For supervisory special agents, so the SSAs, how many of those do you have
23 regular conversations with? The SSAs, so down a few levels?

24 A When you say regular conversation --

25 Q Where they have an issue and they come to you directly. How many?

1 A One.

2 Q Who is that one SSA?

3 A Supervisory Special Agent Gary Shapley.

4 Q How many cases has he come to you about in number?

5 A Just a small handful of cases.

6 Q So more than one case?

7 A More than one case, correct.

8 Q And Supervisory Special Agent Shapley, when he comes to you, has it been
9 one special agent in charge the entire time that he has skipped over to talk to you
10 directly, or have there been other SACs that he's talked to you about?

11 A Most of this occurred when it was Special Agent in Charge Darrell Waldon.

12 Q And are you familiar with Matthew Kutz --

13 A I know the name, yes.

14 Q -- K-u-t-z?

15 A I know the name.

16 Q Was he once Mr. Shapley's supervisor, SSA, before Mr. Waldon?

17 A Mr. Kutz, I believe, was Mr. Shapley's supervisor. I know Mr. Kutz to be a
18 supervisory special agent. I'm not exactly sure that Shapley was in his group, but I
19 believe that to be the --

20 Q When Mr. Shapley has approached you about a handful of cases, has there
21 always been a complaint about how he views the case differently than maybe others that
22 are reviewing the case? Have there been disagreements? Is that why he's coming to
23 talk to you?

24 A For the most part, yes. Gary also had some reporting to the chief through
25 the J5, who is a J -- member of the J5. So he did have some reporting to the chief on

1 some of those J5 cases during monthly meetings or something of that nature. It was
2 those investigations where he believed he was reporting to the chief or to the DFO and
3 would -- if something -- he didn't agree with something that the ASAC or SAC did, he
4 could come directly to the DFO, to me, or the chief, and say, Hey, this is the issues I'm
5 having now.

6 Q Excluding the J5, the other cases that he came to you about, were there
7 disagreements? Is that why he came to talk to you?

8 A Yeah. I mean, I -- I'm trying to think of what the case is. I believe they
9 were mostly J5 cases. I don't know if there was another one -- other ones that were
10 outside the J5. Yeah. I mean, yes. So I -- I take that back. There was -- yes. The --

11 Q In the last hour, you mentioned that sometimes there's a belief by either the
12 SA or the SSA, that everything has risen to the level of -- I think you said like an alarm of X
13 number fire, and that isn't always the case in your opinion.

14 Has Mr. Shapley regularly come to you with cases where it appears -- not
15 necessarily this case, but other cases where you're basing your opinion on the fact that
16 when he comes to you, it always seems to be a high-alarm level issue of disagreement?

17 A Can you repeat that? I know it was a long question. Can you repeat the
18 premise one more time? I'm trying to make sure I answer this correctly.

19 Q I'm trying to understand what the basis is for the statement that you made
20 in the last hour that it seems like everything arises to a five-, seven-alarm fire. My
21 question really is: When it comes to Mr. Shapley and all the cases that you've talked to
22 him about, is it that every case is at the same level of disagreement?

23 A No. Not every case is at the same level. There is minor disagreements.
24 There are things -- when there's travel requests that his ASAC or SAC may have asked a
25 question about, and he's like, "We just need to get this done, it has to be done now, it has

1 to be done so we can get our agents to where they need to go, then he'll come to me
2 with that," instead of, like, "Let's work it through and answer the SAC and ASAC's
3 questions and let's come to an agreement."

4 It's automatically to me saying they don't know what they're doing, this just needs
5 to be approved, the chief's approved it. And the chief hasn't -- the chief doesn't
6 approval travel for agents to go on investigative actions.

7 So those kind of things that -- but it's not in the level -- they're not always
8 five-alarm fires, but he -- Gary is extremely passionate about what he does. And I
9 respect that, and I like Gary Shapley. He is extremely good at what he does.

10 They're -- in my experience, going from five different field offices around the
11 country and in my leadership experience, there are nuances to everything we do
12 on -- like, not everything that someone disagrees with you on make them incompetent.
13 We can have discussions. We can have disagreements. And you're -- as a leadership
14 role, there is a chain of command that is there for a reason.

15 Q In this chain of command that he had, do you know if Mr. Waldon shared his
16 same level of alarm with respect to exhibit 1 and the topics that were listed in exhibit 1
17 generally?

18 A Generally speaking, and in my conversations with Darrell, he did not have
19 the same level of alarm in regards to exhibit 1.

20 Q And then, also looking at -- in exhibit 1 on page -- really at the beginning, he
21 mentions in here on number 5, which is on page 2, that there are no investigative steps
22 that need to be taken.

23 Once there are no investigative steps that need to be taken, what is the role of IRS
24 CI with respect to DOJ? What do your agents do at that point typically?

25 A Typically, they would check in to make sure that they have everything that

1 they need, if they need anything else regarding whether they move forward with the
2 prosecution or not. We don't -- I mean, yeah, they're just -- they're letting the
3 prosecution decide when and if they're going to bring charges.

4 Q Would they at that point -- when there is no investigative steps that are
5 needed, would they sit in additional meetings with DOJ?

6 A They could. They could if DOJ asked them to sit in those meetings or
7 they -- DOJ wanted to update those meetings.

8 Q Would they perform any additional investigative tasks once all the steps had
9 been taken?

10 A I don't believe so, no.

11 BY MINORITY COUNSEL 3:

12 Q I'd like to ask a few questions about exhibit 1.

13 A Okay.

14 Q The email there.

15 First, just to clarify, there are statements in the email where Mr. Shapley says, "I
16 believe." Did you interpret Mr. Waldon's sort of cursory approval of that email to
17 represent that he shared all of the beliefs expressed by Mr. Shapley in the email?

18 A No. I didn't believe -- the editorialized comments -- I'm -- editorialized, I'm
19 not sure I'm saying that word correctly. Those comments, there's a difference between
20 facts and the editory comments in here.

21 Q Right. So you understood that, although Mr. Waldon broadly suggested
22 that the email was accurate, that there is a lot of gloss in that email that belongs to
23 Mr. Shapley and only to Mr. Shapley?

24 A Yeah, correct.

25 Q I'd like to ask a question about the point 2a in the email, where, under the

1 heading, Weiss stated he is not the deciding person on whether charges are filed, and, in
2 a statement, says, "I believe this to be a huge problem -- inconsistent with DOJ public
3 position and Merrick Garland's testimony."

4 Leaving aside the truth or falsity of the latter point as to whether it is, in fact,
5 inconsistent with DOJ's public position and Merrick Garland's testimony, what did you
6 understand Mr. Shapley to mean when he said, "I believe this to be a huge problem"?

7 A It was our understanding leading up to this that, with DOJ Tax approval,
8 David Weiss would be the deciding official on who is bringing -- on who -- what charges
9 would be brought, if charges are brought.

10 Q Did Mr. Shapley -- one way or the other -- let's say he watched
11 Merrick Garland testify on television. Would Mr. Shapley change his investigative
12 behavior in any way, shape, or form based on that testimony?

13 A I don't believe so, but I'm not -- Mr. Shapley would have to answer that
14 question on whether -- I don't believe he would.

15 Q Based on your experience, you don't believe that an IRS CI would change
16 how they conduct their investigation based on the level of approvals that Mr. Weiss
17 needs to go through in order to bring charges?

18 A No. I believe a special agent with IRS CI would follow the evidence and
19 gather the evidence, follow the facts to determine whether there was -- it wouldn't
20 matter who -- what was stated.

21 Q From Mr. Shapley's perspective, then, there was no problem with respect to
22 how he conducted his investigation as a result of -- whether -- the potentiality of
23 Mr. Weiss' decision being relatively inconsistent or consistent with his -- with
24 Merrick Garland's testimony, correct?

25 A I'm not sure what you're -- if you're asking if I think the investigation by our

1 agents was handled properly, yes, I do think they investigated it following the evidence.

2 Q Well, I'm trying to understand why Mr. Shapley says, "This is a huge
3 problem," because it seems to me like his job function is the same regardless of
4 Merrick Garland's testimony, correct?

5 A Yeah. I mean, this is a comment made by SSA Shapley. I don't know
6 where this perspective come -- came from to make that comment in his email. Your job
7 did not change from --

8 Q No. Is it normal for an IRS CI to concern themselves with the testimony of
9 the Attorney General in the conduct of their investigation, the conduct of their duties?

10 A In my experience, normal, no, because the testimony of the AG doesn't
11 necessarily come up very often in any of our investigations.

12 Q Is it normal for an IRS CI to concern themselves with the reputation, for
13 instance, of the DOJ in the conduct of their investigation?

14 A No. I mean, no, I don't think -- I mean, the general awareness of what is
15 going on in your investigation, sure. But I don't know to -- to concern yourself with the
16 DOJ reputation or testimony that's being provided -- I mean, I --

17 Q So you would say it's generally a concern that's sort of outside the lane of
18 your standard IRS CI?

19 A Of your standard IRS CI agent?

20 Q Yeah.

21 A Yeah. I mean, it would generally be outside the lane, and -- but, if it has -- it
22 has tentacles into your investigation, I hope my agents are aware of everything that's
23 going on in their investigation.

24 Q And what about if we go further down in the email to 2b iii, where
25 Mr. Shapley says: "Went to D.C. USAO in early summer to request change there -- Biden

1 appointed USA said they could not charge in his district."

2 And then, going further to iv, "Mid-September they sent the case to the central
3 district of California -- coinciding with the confirmation of the new Biden appointed
4 USA -- decision is still pending."

5 When you generally interact with CIs under your supervision, do they refer to the
6 President who appointed the AUSA when referring to them?

7 A No, they do not.

8 Q And, in fact, if regularly in conversation, receiving updates on cases, if
9 someone, for instance, said, Well, I talked to the Biden AUSA, and they were, blah, blah,
10 blah, or if I talked to the Trump AUSA, and they were blah, blah, blah, would you, in fact,
11 reprimand them or correct them that -- as to not refer to the President who appointed
12 the AUSA?

13 A Would I reprimand them? No, because I didn't reprimand Gary Shapley
14 on -- for writing this email and including Biden AUSA. So, no, I wouldn't reprimand
15 them.

16 Q Has it ever happened before?

17 A Not that I'm aware of, no.

18 Q Yeah. Would you think it was unusual to refer to the President who
19 appointed the AUSA in referring to that individual, or would you think it's appropriate?

20 A It's unusual. I mean, it has happened before, especially during changes of
21 administration, where you say, Hey, the new U.S. attorney has reported. You take that
22 to mean the new President has appointed a new U.S. attorney. But it's still a little
23 unusual to talk about -- to classify it as what President assigned or nominated them for
24 the position.

25 Q And that's because individuals who work for the IRS are supposed to

1 generally perform their duties without regard to the political leanings of the individuals
2 who are appointed in their supervisory roles or what have you, correct?

3 A Yes, absolutely. We're supposed to be a nonpolitical organization.

4 Q And attaching the name of the President who appointed the individual as an
5 adjective to describe that individual has the flavor of assigning a political leaning to that
6 individual, correct?

7 A Yeah. It would -- it may have that flavor. It may be what he was going for
8 in this email.

9 Q Right.

10 Minority Counsel 3_ I have no further questions, [REDACTED].

11 Minority Counsel 2_ Just a few follow-up questions.

12 BY MINORITY COUNSEL 2:

13 Q I think you had said earlier about the June 15th meeting that CI was giving
14 the pros of pursuing this case. Is that correct?

15 A Correct.

16 Q Is it normal for IRS CI to only give the pros, or do they give pros and cons in
17 these prosecution meetings?

18 A It would be normal for us to represent the pros. We represent our
19 evidence. Now, if there are known defenses or there are known issues with evidence
20 that we could overcome, we would -- in any case, we would -- here is the evidence that
21 we have, and then, here are some defenses that may come up, whether they have
22 a -- there's a willfulness argument, or they have a -- sorry -- depending on counsel
23 argument.

24 We talk those through and say, is why we think the evidence would overcome
25 that. We -- but normally we would talk about the evidence that we collected.

1 Q Okay. For DOJ, is it normal for them to take the devil's advocate approach,
2 or not?

3 A I mean, in extremely sensitive investigations, you want to -- we want to have
4 all our evidence beat up. Beat it up, and let's get to the bottom line of whether we
5 believe we have enough to prosecute or not. You want to -- you don't want that to
6 happen in front of a jury, right? You want -- you actually want to have the strongest
7 case you can have going forward.

8 So I'm not -- I would -- I'm not sure about the normal course of business for DOJ
9 Tax. That's a DOJ Tax initiative. But certainly, during their review, they look at
10 everything and bring up, We think there's issues here, here, and here, and then we have
11 to either rebut that, or go to the U.S. Attorney's Office and say, Hey, we think there's still
12 enough evidence there.

13 Minority Counsel 2_ Okay. Thank you.

14 BY MINORITY COUNSEL 1:

15 Q Okay. I want to talk a little bit more about the sensitive cases. And you
16 mentioned that this one is an extremely sensitive case. And you mentioned also that
17 there are other cases that take years.

18 I wanted to get some sense as to how long your sensitive cases might take. What
19 have you seen in terms of the range of how long cases may take?

20 A I mean, I'm not sure about -- I don't know if I have the data just on sensitive
21 cases. I mean, our investigations can take anywhere between -- well, the short -- very
22 short, short ones conclude in a couple days. But our average tax case is probably
23 anywhere between 18 months to 3 years of investigative time.

24 Q Are there reasons that cases would take longer than the average --

25 A Yeah. Absolutely. I mean, there's investigative reasons. If

1 you're -- you're trying to collect evidence via MLAT, treaty agreements, international
2 evidence; if you have a huge witness list that you need to interview; if you have -- I mean,
3 if evidence is around the country where you need to go and -- I mean, there are reasons
4 why things take longer.

5 There are very complex cases, layering, offshore accounts. I mean, those take a
6 bit longer if you try to piece together the evidence to prove that -- to prove that
7 recommended charges.

8 Q What about cases that you're working with DOJ Tax, or that you plan to send
9 to DOJ Tax? Are there approvals that would make the process take longer that are
10 needed?

11 A I'm not aware of -- I mean, when you're talking about working with DOJ Tax
12 and DOJ, it --

13 Q Like, are there levels -- you mentioned that there's CT counsel and that
14 issues go through CT counsel. Does that take time and add time to your cases as you're
15 trying to move them forward?

16 A Absolutely. Their review of the case will take -- whether it's 30 to 60 days,
17 I'm not sure what their average is right now. I know -- I think they like to be below
18 30 days. But, yeah, their review will add on time to your investigation, correct.

19 Q Are there particular instances where you have to seek DOJ approval before
20 you take certain steps in an investigation; for instance, like a search warrant, or are there
21 any steps like that that you may need to take?

22 A On a grand jury, or an administrative case?

23 Q On a grand jury.

24 A On a grand jury investigation? Yeah, I mean, they have -- the grand jury
25 investigation is owned by the U.S. Attorney's Office and the district court that is in that

1 jurisdiction. When we work a grand jury case, I mean, even though, again, the way we
2 introduce ourselves as special agents, we're assisting United States Attorney's Office in a
3 grand jury matter regarding whatever it may be.

4 That's one of the -- that's one of the drawbacks of making an administrative tax
5 case a grand jury case. We lose some control over the investigative steps, because we
6 are now utilizing and leveraging the grand jury to work our investigation, not necessarily
7 just our own administrative investigation where the special agents control what they do.

8 Q Is it common when you have a grand jury investigation that you work closely
9 with the U.S. attorneys and that they approve, or at least discuss with you what steps you
10 plan to take during your investigation?

11 A Yes. All the CI special agents should be working closely with their AUSAs
12 and working -- and agree on the investigative steps to be taken in any investigation.

13 Minority Counsel 1. Okay.

14 Mr. Clerget. We can take a break, or we can push through.

15 Mr. Rillotta. Sure. We can -- well --

16 Mr. Batdorf. I'm good to keep going.

17 Mr. Clerget. You're doing okay? Okay. We'll go ahead and start the next
18 hour. One second.

19 BY MR. CLERGET:

20 Q Is this case a typical case?

21 A The -- this case of the --

22 Q The Hunter Biden case.

23 A The Hunter Biden case? It was a typical tax case with a -- of the sensitive
24 subject.

25 Q And the subject was sensitive because of his relationship to the

1 now-President of the United States?

2 A Correct. It did not meet the sensitive definition of -- we have an IRM,
3 Internal Revenue Manual, and there's definitions of what sensitive is. There's also a
4 definition in common sense of what my chief needs to know about.

5 Q And this would fall into that common sense?

6 A That's correct.

7 Q This was a pretty high-profile case?

8 A It's a high-profile case.

9 Q Okay.

10 A And, just like any professional athlete, actor or actress, they don't meet the
11 sensitive cases, but they are high-profile enough where it's going to draw media.

12 Q Yeah. And we've been talking about some of the concerns that Mr. Shapley
13 raised and Mr. Ziegler also raised.

14 When did you first learn that either of those two individuals had concerns about
15 DOJ's actions in this case?

16 A That was probably the March/April 2021 time frame, when I became DFO.
17 A lot to get up to speed on, and this was one of the sensitive investigations where they
18 said, Mike, we should probably brief you on what's going on in this case and where we're
19 at and where we're going.

20 Q Okay. And who briefed you on that?

21 A Agent Ziegler, Agent Puglisi, SSA Shapley. I believe the ASAC and SAC were
22 in the room as well. They were all together in the conference room.

23 Q Okay. And they articulated the concerns that they had?

24 A They articulated some concerns that they had, yes.

25 Q Okay. And those concerns were about activities or -- let's just say decisions

1 made on specific investigative steps by U.S. Attorney's Office or Department of Justice?

2 A Correct.

3 Q All right. Do you know how far back those concerns extended -- 2018,
4 2019, 2020? Any sense of the timeline of when their concerns kind of started?

5 A I'm trying to remember exact dates. I mean, I know --

6 Q You can ballpark if --

7 A It was -- the main one that I remember them briefing me on was 2020, late
8 2020, in that area.

9 Q Okay. 2020 was a Presidential election year?

10 A Correct.

11 Q Okay. Are you familiar with what the investigators called the day of action?

12 A Yes.

13 Q Okay. Was that one of -- did they raise concerns about what happened on
14 that day?

15 A I was not the DFO at the time of the day of action. So they raised -- their
16 concerns were, Mike, here is the briefing. Here is the evidence we have to date. Here
17 is where we're going. Oh, and these things have happened in the past. One of those
18 was the day of action, correct.

19 Q Fair enough. And -- so you got briefed on -- in sometime spring 2021?

20 A I believe so, yes.

21 Q Okay. About those past concerns. On a -- going forward, kind of the time
22 period we've been talking about, spring 2021 through -- let's say through 10/7/2022, so
23 roughly an 18-month period -- were additional concerns raised to you that happened in
24 that 18-month period?

25 A There was some concerns on -- again, I'm trying to put the time frame right

1 in my head. There was concerns on the ability to interview witnesses and getting
2 approvals to do that. And we -- they'd set up travel a lot and interview somebody, but
3 yet it wasn't approved yet. What's going on? Like, there were some concerns that
4 way, yes.

5 Q Okay. And we'll dive into some of the specifics there in a minute, but -- so
6 they had concerns going back as far as 2020, into 2021, maybe into 2022? Is that fair?

7 A Yeah. I mean, yeah, because we were -- in 2022, we were talking about the
8 prosecution recommendation and -- yeah, absolutely.

9 Q As they continued to express those concerns, did they raise the concern
10 about the nature of the subject -- the subject's relationship to the President being at least
11 a potential basis for the problems they were seeing on the case?

12 A I'm trying to remember if they specifically said that we believe this is related
13 to Hunter Biden being the son, or the inference was there on -- coming from them.

14 Q So the inference was there at least? It was understood that that might
15 be -- that may be a reason why these decisions are being made? That was their view?

16 A It was their view. I mean, again, I don't want to speak and testify to what
17 they thought or their view at the time. I mean, I could see how they were trying to
18 make that inference in some of the stuff that they were --

19 Q Okay.

20 A Yeah.

21 Q And so, by the time we get to the 10/7 meeting and he says -- we -- you were
22 asked about him using the term the Biden-appointed U.S. attorney, right? Remember
23 that questioning?

24 A Yeah.

25 Q Biden is the last name of the subject, right?

1 A Correct.

2 Q Hunter Biden? So his father is the President of the United States. That's
3 sort of why we're here, right? Like, this was a very sensitive case, the son of the
4 President of the United States.

5 You know, we have concerns about -- what seems to us to be a very obvious
6 conflict of interest, to have the President's own Justice Department investigating his son,
7 people that ultimately report up a chain that ends with the President of the United States
8 making decisions about whether his son could face jail time, for example. Those are
9 concerns that we have.

10 Given the concerns that Shapley and Ziegler raised to you when you were first
11 briefed and across that time period, isn't this relevant, at least as far as -- in that context
12 and the concerns and the type of case we're dealing with, like -- you said it hadn't come
13 up before, but isn't it particularly relevant to this case? Whether their concerns are to
14 prove out to be accurate or not, isn't that relevant here?

15 A Well, it's relevant to the point of you have a David Weiss who is -- he
16 remained as U.S. attorney during a Presidential shift in administration. So I -- it would
17 be relevant that the fact of the matter is that those are not -- those are not remaining
18 United States attorneys, they are newly appointed United States attorneys.

19 Q And, given the whole discussion about what authority he had or didn't have,
20 part of the reason that he might have been given special authority, or even now, has been
21 named a special counsel is so that he wouldn't have to deal with -- he wouldn't have to
22 worry about that potential conflict of interest that a U.S. attorney appointed by
23 President Biden would have to decide to partner or not partner on a case against the son
24 of the person that appointed them. Is that fair?

25 A Yeah, that's probably fair.

1 Q I want to go back to the December phone call that you mentioned with
2 Mr. Weiss. How did that phone call come about?

3 A So there was -- in October, I was made aware of a request from the
4 U.S. Attorney's Office in Delaware for -- to -- for Gary Shapley to turn over updated
5 memos and emails and reports that he may have -- that he had emails to the
6 U.S. Attorney's Office for potential discovery purposes. That -- I think it was in October.
7 Took a minute for that to happen.

8 And then there was a -- an email from David Weiss to Darrell Waldon in
9 mid-November in regards to those documents that he had not received yet, and he was
10 frustrated by how long it was taking.

11 And then, once those documents were received and I think other discovery was
12 reviewed, David Weiss had some concerns with some of the -- with Gary Shapley and
13 wanted to talk to Darrell and I.

14 Q Okay. And, when you say "discovery," can you explain what that's related
15 to?

16 A Discovery would be moving forward if -- if the case were to be prosecuted,
17 we have the obligation as the prosecution in the United States to turn over discovery
18 items, what we relied upon, both good and bad -- Brady, Jencks, all the other -- all the
19 other laws that apply there. We had the obligation to turn that over to defense counsel
20 on how we came to our recommendation for charges.

21 Q Okay. And so that's standard practice in a case that's moving forward?

22 A Yes.

23 Q And you said Weiss had concerns. So what -- so he had concerns. Is that
24 why he set up a phone call?

25 A Yes, I believe so.

1 Q Okay. And did he discuss those concerns with you?

2 A He did.

3 Q Okay. And can you tell us what his concerns were?

4 Mr. Rillotta. In answering the question, please refrain from getting into the
5 evidence of the case, potential concern -- the specifics of what discovery concerns he
6 might have had, okay? Keep it at a general level.

7 Mr. Batdorf. At a very general level, David Weiss had concerns with Gary
8 Shapley's ability to remain objective in the investigation.

9 BY MR. CLERGET:

10 Q Okay. Do you know if he was concerned that Gary Shapley was going to
11 blow the whistle on the case?

12 A I do not know that.

13 Q Okay. When did Mr. Shapley tell you that he was planning to blow the
14 whistle?

15 A He officially told me that he had filed a whistleblower -- I mean, action, or
16 whatever he had filed on January 6 of 2023.

17 Q Okay.

18 A I had -- go ahead.

19 Q No, please.

20 A I had received emails prior to -- I think I've turned over an email prior to
21 where I understood his concerns. And while I didn't officially know that he was going to
22 file a whistleblower complaint, I think you could look at it and say that he had some
23 frustrations that he wanted to figure out.

24 Q Okay. And did you review materials before today's testimony to prepare
25 for your testimony?

1 A Yes.

2 Q Did you look at emails?

3 A I looked at all my emails --

4 Q Okay.

5 A -- which I -- referring back to, yes.

6 Q Okay. Anything else? Memos, files, anything like that?

7 A Sure. Whatever I had on my -- on my end, yeah.

8 Q Okay. And, when you were doing that prep, were you -- did you have your
9 authorization in hand from the agency before doing that review?

10 A No.

11 Q Okay. And so how did you know what to review, what topics?

12 Mr. Batdorf. Can I consult with my attorney?

13 Mr. Clerget. Sure. We'll go off the record.

14 Mr. Rillotta. I'm not your attorney.

15 Mr. Batdorf. I know. I know. I'm sorry.

16 [Discussion off the record.]

17 BY MR. CLERGET:

18 Q Mr. Shapley and Mr. Ziegler's testimony was released in late June 2022. Is
19 that right, or is your understanding?

20 A That's my understanding, yeah.

21 Q Okay. And you said you've reviewed that?

22 A I have.

23 Q Okay. And are you aware that Mr. Shapley has alleged that he's been
24 retaliated against for blowing the whistle to Congress?

25 A I am.

1 Q Okay. And, given that we talked about the concerns that he had raised to
2 you previously in connection with this or any other proceedings, have you reviewed
3 emails, materials, memos, anything like that related to Shapley and Ziegler's testimony?

4 A I have.

5 Q Okay. And who did you talk to about your testimony here today in advance
6 of the testimony?

7 A General Legal Service, counsel for the agency.

8 Q Okay. Anyone else?

9 A In preparation for today?

10 Q Uh-huh.

11 A No. I mean, as far as documents and review of the evidence?

12 Q Uh-huh.

13 A No. I've talked to friends that, Hey, do your best. Go get them. How
14 you talk to other people, just like that, but not as a review of the evidence in preparation
15 for.

16 Q Okay. Did you have any conversations with U.S. Attorney's Office, DOJ Tax
17 officials, anyone like that?

18 A Prior to this and for this, for today? No.

19 Q Related to this.

20 A No, I did not.

21 Q Okay. Did you talk to any people like that after Shapley's and Ziegler's
22 testimony about Shapley and Ziegler's testimony?

23 A No. And -- not in specific detail of what they testified to. In generalities
24 of, yes, there was testimony provided and that, yes.

25 Q Okay. Did you talk to Mr. Waldon about that testimony? Both your

1 names are mentioned in it.

2 A Yeah. I mean, I think we talked, like, Hey, we read it -- who read it, and we
3 knew our names were mentioned in it. We didn't talk about specifics in preparation for
4 today or what we agreed or disagreed with in that testimony.

5 Q Okay. So was there a point in time where Mr. Shapley told you that he was
6 going to blow the whistle to Congress?

7 A He told me on -- well, he may -- he sent me an email on January 5th, I
8 believe, asking for some time. And, I talked to him on January 6th.

9 Q Okay.

10 A And he mentioned that he blew the whistle and reported it to several
11 committees and OSC and TIGTA and I think a couple other --

12 Q Okay. And did you share that information up your chain of command?

13 A I did.

14 Q Okay. And did you share that information with Mr. Waldon?

15 A I did.

16 Q Okay. And when -- did you do that close in time? When did you --

17 A I think it was a week later.

18 Q A week later --

19 A Yeah.

20 Q And for all of those? For Mr. Waldon and up your chain?

21 A I told my deputy chief and chief that day, I believe.

22 Q Okay.

23 A I think it was a Friday. If it was -- if it was a Friday, it was a Monday
24 morning.

25 Q Okay. So, January 6th, you talked to Shapley -- Mr. Shapley. About a

1 week later, you informed Mr. Waldon?

2 A I believe so.

3 Q Okay. Did you inform anyone else?

4 A Lola Watson as well, the ASAC.

5 Q Okay. Okay. Anyone else?

6 A I don't recall telling anyone else. I'm -- I'm not sure if I told GLS at that
7 time.

8 Q That GLS is General Legal Service?

9 A General Legal Service. I don't recall doing it at that time, but --

10 Q Okay. Did you at some point?

11 A At some point, I had conversations with GLS, yes.

12 Q Okay. You can't remember around what time frame?

13 A It was probably somewhere close to that time frame. Things -- it was
14 probably somewhere close, I talked to GLS.

15 Q Okay. Okay. So back to the December phone call.

16 What else was discussed on that phone call?

17 A The phone call was -- well, leading up to that phone call was
18 obviously -- there was very little, if any, communication from the prosecution team to
19 Gary Shapley and team. Actually, I think their testimony said that they stopped talking
20 to him on October 6th or 7th after this meeting.

21 There was an email that David Weiss had sent to Darrell Waldon, who forwarded
22 me as a, you know, FYI, for your awareness, on the steps they were taking at that time.
23 The -- it basically said that he's no longer going to talk to Gary Shapley because he's
24 wasting his time, he's not going to respond to him, and that he was going to go above our
25 heads to figure out why it was taking so long for discovery.

1 Once that discovery was done, we met in December. We talked about the items
2 that had been turned over in discovery.

3 Prior to that, we talked with CT counsel. Darrell and I talked to our -- Darrell and
4 I talked to our CT counsel. We talked about the items in that discovery, any concerns.

5 We did talk about the Central District of California saying no. We talked about
6 what it would take for him and the list of concerns that he has of going out to the Central
7 District of California. And we talked about moving forward -- if there was going to be an
8 investigation or prosecution moving forward, would Gary Shapley and team be part of
9 that?

10 Q Okay. As far as the substance of discovery, Mr. Shapley has documented a
11 number of concerns about DOJ's conduct in this case. He's reported at least some of
12 them to you. Has he reported -- you said you were briefed. You were aware of some
13 other concerns. Were any of those other concerns provided to you in writing?

14 A During the course of the investigation?

15 Q Uh-huh.

16 A I'm sure there were. I'm sure there were --

17 Q You believe there was?

18 A I'm sure there were monthly case reports that their concerns -- I'm sure
19 there was stuff provided to me.

20 Q Okay. Would those reports, that information, be included in the discovery
21 provided to prosecutors given that they're relevant to the case?

22 Mr. Batdorf. Am I allowed to --

23 Mr. Rillotta. Can we go off the record for a second?

24 Mr. Clerget. Sure. Off the record.

25 [Discussion off the record.]

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

2 Mr. Batdorf. Those -- I believe those case reports, some of those monthly case
3 reports were in the discovery that Gary had turned over.

4 BY MR. CLERGET:

5 Q Okay. And some of those reports had concerns of his --

6 A Correct.

7 Q -- in there? Okay.

8 Would this email -- this exhibit 1 we've been talking about -- would this be a type
9 of email that would be included in discovery?

10 A I don't recall if this one was in there --

11 Q Okay.

12 A -- this email was in that discovery. I do not recall.

13 Q But, if case reports were in there, I mean, this is a report to you on a matter
14 in the case, is it possible that it would be in the discovery.

15 Mr. Rillotta. I think -- counsel, I mean, just to prevent miscommunication here,
16 he's talking about a particular type of document.

17 Mr. Clerget. Like a formal case report?

18 Mr. Rillotta. Case report.

19 Mr. Clerget. Okay.

20 Mr. Rillotta. Is that right?

21 Mr. Batdorf. Yeah. It was a formal monthly case report that would have went
22 up through the chain of command.

23 Mr. Clerget. Okay.

24 BY MR. CLERGET:

25 Q Discovery would have included Mr. Shapley's emails. Is that right?

1 A I would -- I would think so, yes.

2 Q Okay. So it's possible that the email marked as exhibit 1 could have been
3 included in discovery?

4 A It could have been, yes.

5 Q And emails like it that he may have sent previously could be included. Is
6 that right?

7 A That's fair, yes.

8 Q Is it generally -- the agents working on the case, when they turn over
9 discovery, is the scope of that discovery anything related to the case, generally speaking?

10 A Generally speaking, yes. Anything case-related should be turned over,
11 yeah.

12 Q Okay. And that would include expressing concerns about the case, right?

13 A I would think so, yes.

14 Q Okay. So, when Mr. Weiss was pushing to get discovery in mid-November,
15 or late October, and then following up in mid-November, he was pushing to get
16 information from Mr. Shapley that would include Mr. Shapley reporting about concerns
17 he had about Mr. Weiss' conduct in this matter. Is that fair?

18 A Yeah. If it was in that time frame he's requesting, yes. Yes, it's fair.

19 Q So, when Mr. Weiss talked to you in December about concerns he had, he
20 did that after receiving discovery. Is that right?

21 A Yes, I believe so.

22 Q Okay. So he would have then seen that Mr. Shapley had documented a
23 number of concerns about not just Mr. Weiss -- Lesley Wolf, other members of the
24 prosecution team, and steps taken or not taken in this case. So that is -- is that right
25 that, in the time frame he would have received the discovery, presumably he looked at it

1 before he talked to you. Is that your understanding?

2 A My understanding would be yes.

3 Q And so, he would have learned about a number of the concerns that
4 Mr. Shapley had with DOJ's conduct in this case. Is that right?

5 A If they were in part of that discovery, yes.

6 Q Okay.

7 Mr. Rillotta. Can I interject for a second with your indulgence just to make sure
8 that we're clear about something, if I may?

9 Agent Batdorf, when you're talking about discovery, are you talking about material
10 that would be turned over to, say, defense counsel in the event of an adverse case, or are
11 you talking about material that the prosecution would refer -- would review -- excuse
12 me -- to see if it should be produced to defense counsel?

13 Mr. Batdorf. These are documents that should be reviewed that could be turned
14 over to defense counsel?

15 Mr. Rillotta. Okay. All right. I wasn't sure if that was clear. I appreciate the
16 opportunity to clarify.

17 Mr. Clerget. Appreciate the clarification. Okay.

18 BY MR. CLERGET:

19 Q Anything else discussed on that phone call that we haven't spoken about?

20 A Not that I can recall, no.

21 Q And did you have any subsequent phone calls with Mr. Weiss on this matter?

22 A I don't believe so.

23 Q So was that the --

24 A I am --

25 Q Was that the last time you spoke to him?

1 A Yeah. I believe so.

2 Q And that was -- do you remember the date or -- I think you said
3 December 2022?

4 A I believe it was -- if I -- I think it was 12/22. I think it was December 22nd of
5 2022.

6 Q Of 2022?

7 A I think it was the 22nd.

8 Q Okay. Understood.

9 Mr. Waldon testified on Friday that, as he was leaving his position as special agent
10 in charge, Washington Field Office, that he had suggested, or recommended, or discussed
11 Gary Shapley being removed from the case team.

12 Do you recall anything about that?

13 A Yeah. I recall having discussions on December 22nd of 2022 about
14 removing Gary Shapley's investigative team from the investigation.

15 Q Okay. With Mr. Weiss? You had conversations about removing him from
16 the team with Mr. Weiss?

17 A With Mr. Weiss and Mr. Waldon.

18 Q On the same phone call?

19 A On the same phone call, and then following up with Darrell Waldon.

20 Q Okay. Do you recall Mr. Waldon making -- Mr. -- sorry -- Mr. Waldon
21 making that recommendation again on his own in February?

22 A In February, yes.

23 Q Okay. What can you tell me about that conversation?

24 A It was the -- I think it was the email. There may have been -- I know there
25 was an email to me memorializing, as he was leaving, this was the decision that we were

1 going to make, so the new special agent in charge, Kareem Carter, had the information
2 that we had discussed, when the decision to move the case -- if the case was going
3 forward or not, when that decision was made, what we were going to do.

4 Q Okay. And so, at that point, when Mr. Waldon sends the email to
5 Mr. Carter, who replaced him in that position -- can you confirm -- Mr. Kareem Carter
6 replaced Darrell Waldon as special agent in charge. Is that right?

7 A Correct.

8 Q Okay. In February 2023?

9 A Yes.

10 Mr. Rillotta. Are you testifying about an email that was sent to Mr. Carter by
11 Mr. Waldon, or --

12 Mr. Batdorf. I'm aware of that email. I'm not -- I don't think I received that one
13 in my inbox. I'm aware of that email.

14 Mr. Rillotta. Okay.

15 BY MR. CLERGET:

16 Q Okay. So you're aware that Mr. Waldon prepared an email to Mr. Carter as
17 part of his transition out of the position?

18 A Uh-huh.

19 Q Okay. Was that email a update of -- on this case, or was it broader than
20 that?

21 A I don't remember if --

22 Q Okay.

23 A A full context of that email.

24 Q Okay. But you know that there were details about this Hunter Biden case
25 in that email?

1 A Correct.

2 Q Okay. And that included his, at that point, recommendation that
3 Mr. Shapley be removed from the case?

4 A Yeah. I mean, the decision to remove Mr. Shapley was made by Darrell and
5 I in December, when we knew there was an issue -- potential issue going forward. We
6 just had not expressed that. It was not official as far as we hadn't told Gary, because
7 there was no -- there's no investigative steps to be taken.

8 There was no -- the time period between December and whenever that was, I
9 mean, it would have been a waste of resources to assign a new investigative team to get
10 up to speed on an entire investigation and then not have it go anywhere. There was no
11 reason for -- to waste those resources, and there was no reason -- quite frankly, there
12 was -- if the case wasn't going to go forward, we would end it the way we would
13 always -- we'd end the case. There was not a reason to engage Gary Shapley on that
14 until we knew the case was going to go forward.

15 Q Okay. And so, if you made that decision in December 2022, was that
16 decision -- I mean, Mr. Shapley testified that, after the 10/7 meeting, that -- he called it
17 his red line meeting, right?

18 A Correct.

19 Q So his frustrations had reached a level -- a certain level. He was moving
20 forward. He told you in January he was blowing the whistle.

21 So your decision to remove him, was that because of his concerns and, therefore,
22 relationship issue with the prosecution team?

23 A I mean, if he -- starting in October, there was no communication with the
24 prosecution team and the investigative agents.

25 In November, the U.S. Attorney stated he's no longer communicating with

1 investigative agents. In my 22.5 years of experience and all the different field offices
2 and leadership positions I've been in, that is not a good sign. That is extremely
3 troubling.

4 So, when we talked in December and we talked about removing the investigative
5 team, I mean, again, I've stated all along I have agreed with the evidence in this case and
6 pushed it forward. So, if -- with no investigative actions to take -- can you repeat the
7 question one more time just so I answer -- make sure I'm answering what --

8 Mr. Rillotta. I think he's asking you in a nutshell why you decided to remove
9 Gary Shapley from the team.

10 Is that fair, Counsel?

11 Mr. Clerget. Absolutely.

12 Mr. Batdorf. So there were clearly issues with communication starting in
13 October. Focusing on the mission that we have as IRS Criminal Investigation, my job is
14 to get the cases to the goal line. If removing the investigative team that had no more
15 investigative work to be done would get that case to the goal line and get it prosecuted,
16 that was what -- that was -- I'm willing to take that -- I'm willing to remove that
17 investigative team and get that case prosecuted.

18 BY MR. CLERGET:

19 Q Understood. But you didn't have him removed for misconduct, did you?

20 A No. That was not my -- that was not my intent. I understood the
21 concerns of David Weiss and CT counsel and others that we talked about. My concern
22 was getting the case to the finish line.

23 Q Right. And Mr. Weiss had just reviewed discovery, seeing that Mr. Shapley
24 had concerns and might even be considering blowing the whistle about DOJ's conduct.
25 Is that fair?

1 A He had reviewed that discovery, yes.

2 Q Which included Mr. Shapley's concerns, we think?

3 A Presumably, yes. I'm trying to remember all the discovery items, but yes.

4 Q Okay. What about Mr. Ziegler?

5 A There were more discussions, but Mr. Ziegler and Mr. Shapley are -- I mean,
6 for lack of a better term, they're one and the same. I mean, he is his supervisor.

7 Q Could we have put Mr. Ziegler in a new group with a new SSA? Potentially, yes.

8 But, having an objective set of eyes -- complete objective set of eyes on the case where
9 the new investigative team came in and the case is good, the evidence is good, that was
10 something that we just said, Let's -- we removed the cooperating revenue agent that was
11 doing our tax calculations. We just got an entire new investigative team in there.

12 Q And why did it take 6 months for the team to be removed?

13 A That was -- we were waiting -- we were waiting for the U.S. Attorney's Office
14 to decide if they were going to move forward with the investigation.

15 Q And are you aware that Mr. Shapley's attorneys first sent a letter to
16 Congress on April 19th, 2023?

17 A I'm aware of some letters. I don't know the exact date, but I'm aware
18 of -- if that's what you're saying, yes.

19 Q Okay. And so, Mr. Shapley, along with the entire team, were removed on
20 May 15th, 2023. Mr. Shapley had expressed his interest in -- through counsel, expressed
21 an interest in testifying, providing information to Congress on April 19th, 2023. He
22 eventually did testify on May 25th, and Mr. Ziegler testified on June 1st.

23 Q Were you aware on May 15th that Mr. Shapley was going to testify before
24 Congress?

25 A What day did he testify? I remember getting an email from him stating

1 that he was going to testify. If he testified on the 16th, I got it on -- I --

2 Q He testified on May 25th.

3 Mr. Castor. 26th?

4 Mr. Clerget. 26th?

5 Mr. Batdorf. On the 26th?

6 Mr. Clerget. I believe.

7 Mr. Batdorf. So, on May 15th, I probably did not know that he was going to
8 testify. I think it was the night before he said he was going to testify.

9 Mr. Clerget. Okay. But you knew back in January that he was --

10 Mr. Batdorf. A whistleblower?

11 Mr. Clerget. -- going to blow the whistle, yeah.

12 Mr. Batdorf. I knew that he had filed a whistleblower complaint, action,
13 whatever it may be, with -- on January 6th.

14 Mr. Castor. Can I just --

15 Mr. Clerget. Yeah, jump in.

16 BY MR. CASTOR:

17 Q So, as I understood what you testified to, you didn't need to effectuate the
18 change in the investigative team because nothing was happening?

19 A Nothing was happening. Go ahead. Sorry.

20 Q And nothing, in fact, happened until May --

21 A That's my understanding, correct.

22 Q -- this year?

23 A Yes.

24 Q And that was only after the whistleblower -- the disclosure of the
25 whistleblower testimony had occurred?

1 A That's -- that's --

2 Q Or that Shapley had indicated that he was coming forward through his
3 lawyers?

4 A Correct.

5 Q I mean, what's the thinking inside of IRS that the case was essentially
6 dormant until the whistleblowers came -- became public?

7 Mr. Rillotta. In answering, please no disclosure of strategic discussions about the
8 case, if any.

9 Mr. Batdorf. We were simply waiting for the U.S. Attorney's Office to make the
10 decision if they were moving forward with the case, and I believe that happened in
11 May -- early May.

12 BY MR. CASTOR:

13 Q Right.

14 A So there wasn't -- yeah.

15 Q So it's fair to say, had the whistleblowers not come forward, this case may
16 still be dormant?

17 A It could be. They may -- you -- David Weiss made his decision to go forward
18 in May. I'm not sure what drove that decision.

19 Q Taking a step back, some of the facts involved here are pretty outrageous,
20 aren't they?

21 A I'm not -- what specific facts? I mean, there's a ton of facts in the
22 investigation. I'm -- I don't want to just overly classify that -- what -- is there specific
23 facts that I can answer?

24 Q Well, in the 2018 tax year, for example, there is testimony that Hunter Biden
25 was expensing sex clubs.

1 Mr. Rillotta. I'm instructing you not to answer if the question is about the
2 evidence in the underlying investigation.

3 Mr. Castor. Are you aware of the testimony that, in 2018, Hunter Biden was
4 expensing sex clubs?

5 Mr. Rillotta. Are you asking him if he's aware --

6 Mr. Castor. Is he aware of it?

7 Mr. Rillotta. If he's aware of --

8 Mr. Castor. Of the testimony.

9 Mr. Rillotta. -- Agent Shapley's testimony --

10 Mr. Castor. Yep.

11 Mr. Rillotta. -- before Congress?

12 Mr. Castor. Uh-huh.

13 Mr. Rillotta. Are you aware of Mr. Shapley testifying before Congress about the
14 evidence in the case?

15 Mr. Batdorf. Yes.

16 Mr. Rillotta. Okay.

17 Mr. Castor. Now, are you aware of any testimony that Gary Shapley provided to
18 Congress that is false, inaccurate, misleading?

19 Mr. Rillotta. Hold on one second, please.

20 [Discussion off the record.]

21 Mr. Rillotta. Are we still on the record?

22 Okay. Counsel, there's a little bit of concern in asking this witness to affirm
23 testimony that's rendered by Mr. Shapley. I'm not sure if that's what your question is
24 eliciting, but that's not something that --

25 Mr. Castor. Let me --

1 Mr. Rillotta. -- Agent Batdorf is in a position to do, because some of the
2 testimony that you're referencing, to the extent you're asking him to ratify it, concern
3 subject matters beyond his testimony authorization.

4 So I instruct you not to answer, Agent Batdorf.

5 Mr. Castor. Let me ask it this way: Did you have communications with anyone
6 at IRS that Shapley's testimony was inaccurate?

7 Mr. Rillotta. Did you have communications, in other words, about the accuracy
8 of Mr. Shapley's testimony with anybody at IRS? You can answer yes or no.

9 Mr. Batdorf. Yes.

1

2 [12:17 p.m.]

3 Mr. Rillotta. And, anticipating the next question, you can answer with whom
4 these conversations were, if you remember.

5 Mr. Batdorf. The one conversation I had was with CT counsel.

6 Mr. Castor. Are you aware of any investigation of whether Mr. Shapley is being
7 investigated for inaccurate testimony to Congress?

8 Mr. Rillotta. If there were such an investigation, it would be outside the scope of
9 his testimony. So I'm going to instruct the witness not to answer.

10 Mr. Castor. You're aware that Mr. Shapley testified that pretty much every stage
11 of the investigation, the investigative actions were curtailed by the U.S. Attorney's Office
12 in Delaware, correct?

13 Mr. Batdorf. I'm aware of Agent Shapley's testimony, correct.

14 Mr. Castor. And you were aware of many of those allegations before you heard
15 his testimony at the Committee hearing or before you read the transcript, correct?

16 Mr. Rillotta. You can answer yes or no whether Agent Shapley raised concerns
17 about not being able to undertake investigative steps.

18 Mr. Batdorf. Yes, he raised those concerns.

19 Mr. Castor. Okay. So you were aware that Agent Shapley was frustrated with
20 the ability to get a search warrant for Joe Biden's guest house where Hunter Biden was
21 staying, even though the U.S. Attorney's Office confirmed that there was more than
22 enough probable cause for a physical search warrant?

23 Mr. Rillotta. Hold on one second. This is the same issue we ran into yesterday
24 in that you're packing a lot into the question. I don't know that, number one, it's
25 necessary.

1 But if he answers in a way that ratifies your characterization, then that is going to
2 be the characterization of the evidence in the case.

3 So I think what I suggest is we proceed as we did yesterday, general topics,
4 without characterization.

5 Search warrant. Did he express frustrations about the search warrant? You
6 asked that question yesterday -- or last time with the prior witness. You can ask those
7 same questions of Agent Batdorf if you'd like.

8 Mr. Castor. Were you aware of Agent Shapley's frustrations with regard to a
9 search warrant for Joe Biden's guest house?

10 Mr. Batdorf. Yes, I was made aware. I was not the DFO at the time that those
11 frustrations happened, but I was made aware after.

12 Mr. Castor. Were you aware of Agent Shapley's frustrations with being denied
13 the ability to speak to certain witnesses that the investigative team believed were crucial?

14 Mr. Rillotta. You can answer yes or no.

15 Mr. Batdorf. Yes.

16 Mr. Castor. Were you aware of Agent Shapley's concerns about the ability to
17 access a storage unit containing documents relevant to the case?

18 Mr. Rillotta. You can answer whether you were aware of Agent Shapley
19 expressed concerns about a storage unit without any comment about what was within
20 the storage unit.

21 Mr. Batdorf. Yes, I was aware of his concerns.

22 Mr. Castor. Were you aware of an email sent by Lesley Wolf to Gary Shapley and
23 the team stating that, "It will get us into hot water if we interview the President's
24 grandchildren"?

25 Mr. Rillotta. I instruct you not to answer for the reasons previously stated.

1 Mr. Castor. I'm just asking if you're aware of an email that Lesley Wolf stated
2 that, "It will get us into hot water if we interview the President's grandchildren."

3 Mr. Rillotta. Are you aware of an email with AUSA Wolf on the subject matter of
4 Hunter Biden's grandchildren?

5 I think that's essentially the same question, counsel.

6 Mr. Batdorf. I don't recall -- I'm aware of it now with the testimony.

7 Mr. Castor. Okay.

8 Mr. Batdorf. I don't recall at that time --

9 Mr. Castor. Okay.

10 Mr. Batdorf. -- that part being -- that email being brought up.

11 BY MR. CASTOR:

12 Q But is it fair to say from your interactions with Agent Shapley that he's been
13 frustrated for the length of this case at being unable to take what he believes are the
14 appropriate actions?

15 A I'm aware of numerous frustrations that Gary Shapley had, yes.

16 Q But despite those frustrations, the investigative team was still able to build a
17 case where you recommended prosecution, despite all those frustrations, despite being
18 curtailed in numerous instances, or at least in Agent Shapley's words.

19 A Yeah, in Agent Shapley's words, curtailed. But there are disagreements
20 with the investigative steps that were taken. So curtailed I don't agree with, but, yeah,
21 we were absolutely able to prove and recommend charges in the investigation.

22 Q Okay.

23 Was there a concern that because the target of this case, or the subject, Hunter
24 Biden, because he's the son of the President, that political appointees at DOJ were not
25 going to be looking at this case faithfully, that they were going to be doing their best to

1 make this case go away?

2 Mr. Rillotta. Counsel, point of clarification. Are you asking the witness if he
3 was concerned?

4 Mr. Castor. If there were concerns from the investigative team.

5 Mr. Rillotta. You can answer.

6 Mr. Batdorf. Yeah. I mean, I think we've talked about some of the inferences
7 that were made from the investigative team.

8 BY MR. CASTOR:

9 Q And before Agent Ziegler put together the Special Agent Report, it's our
10 understanding, and correct me if I'm wrong, but that DOJ Tax agreed that Agent Ziegler
11 was going to move forward with the Special Agent Report.

12 A Yeah, that's my understanding. I'm trying to answer this in a way that
13 doesn't -- my understanding is that Special Agent Ziegler was supposed to write the
14 prosecution recommendation and that it would not be immediately declined by DOJ Tax.
15 They knew about the evidence, and they knew -- whether the charging was different,
16 understood. But in generalities, we don't usually recommend prosecution if DOJ is not
17 on board with the grand jury investigation.

18 Q So Agent Ziegler prepares the report. I believe it was in February of '22. It
19 goes to DOJ Tax. DOJ Tax then turns it around and writes their own report. I believe
20 it's been described as a 99-page report or a 90-page report. Are you familiar with that?

21 A I'm familiar with the testimony of a 98-, 99-page report. I have not seen it.

22 Q Prepared by DOJ Tax?

23 A Yes.

24 Q And so heading into the June 15th meeting, Agents Ziegler and Shapley have
25 testified that they thought DOJ Tax was on board and that everybody was of the same

1 mindset. Is that your understanding as well?

2 A My understanding of their --

3 Q That heading into the -- you had a meeting with them on the 14th, you said.

4 They briefed you up on June 14th, right?

5 A Before that meeting, yes.

6 Q Was it your understanding that everybody was on the same page, that DOJ

7 Tax was on the same --

8 A On June 14th?

9 Q Yeah.

10 A No, that was not my understanding.

11 Q Okay. So at what point in time did you learn that DOJ Tax had concerns?

12 A I'm trying to remember specific dates, but it was during the time that

13 defense counsel was meeting with DOJ Tax, presenting their defenses.

14 Q Okay. So it was after -- is it fair to say it's after they met with the defense
15 lawyers?

16 A Yes, fair to say, yes.

17 Q And have you heard the report that during one of those meetings defense
18 counsel instructed the DOJ lawyers that if you move forward with this case, it's career
19 suicide?

20 A Can you ask the first part of that? Am I aware of that?

21 Q Yes.

22 A I'm aware from the testimony that I reviewed. I was not aware at the time.

23 Q You were not aware at the time? That wasn't reported to you in real time?

24 A I do not believe so, no.

25 Q Okay.

1 Were you surprised at all on June 15th that DOJ Tax had changed their tune?

2 Mr. Rillotta. Hold on. I'm not sure that the premise of that question reflects
3 Mr. Batdorf's testimony. Maybe it would be best to rephrase the question.

4 Mr. Castor. Okay.

5 Agents Shapley and Ziegler have testified that they were surprised when they got
6 to that June 15th meeting that DOJ Tax had, in their view, seemed to have really changed
7 their mind about the prosecutorial decision here; that they -- while ordinarily DOJ Tax
8 may be playing devil's advocate, may be articulating cons of a prosecution, that for the
9 June 15th meeting they really felt like DOJ Tax had become an advocate, an advocate for
10 not prosecuting.

11 And I guess the question is, did that come as a surprise to you as well, that they
12 were so forceful -- forcefully against?

13 Mr. Rillotta. Wait a minute. You're asking him if Agent Shapley's
14 characterizations were a surprise to him?

15 Mr. Castor. No, I'm asking him whether you were surprised that DOJ Tax had
16 really changed their perspective on this case so forcefully.

17 Mr. Rillotta. Why not ask him whether he perceived DOJ Tax to have changed
18 their tune?

19 Mr. Castor. Okay.

20 Mr. Rillotta. You can answer without getting into the substance of the
21 deliberation. Did you perceive DOJ Tax to change their tune?

22 Mr. Butler. At the June 15th meeting.

23 Mr. Batdorf. At the June 15th meeting.

24 I'm trying to go back to that February to June time frame.

25 I was never briefed by DOJ Tax that they were fully supportive of these charges?

1 BY MR. CASTOR:

2 Q Okay.

3 A That was presented to me through my case agents and through Darrell.

4 Q Darrell, too. Okay.

5 A Yes. So I don't know if that characterization from my investigative team, if
6 that was 100 percent that they were on board.

7 So going into that meeting, I knew there were concerns by DOJ Tax. That's why
8 we were having the meeting. If we didn't need the meeting, we would move forward
9 with the prosecution.

10 Q Okay.

11 A So I don't know their starting points. I don't know if they changed their
12 tune. My understanding of going into that meeting was David Weiss -- we wanted an
13 opportunity to speak directly with DOJ Tax and David Weiss regarding the evidence that
14 we had and to try to overcome any concerns we had that was brought up by the defense
15 counsel.

16 Q Do you think you were successful?

17 A Yes, I do, because Agent Shapley emailed me afterwards and said he felt
18 pretty good, and he talked to David Weiss after that meeting, and we had some
19 investigative steps to take, but we felt pretty good leaving that meeting.

20 Q When did the relationship between Weiss and Shapley deteriorate?

21 A I don't know the exact time. I mean, I know what -- it started in October.
22 That's when I knew. I don't know the exact timing from before then or not.

23 Q In exhibit 1, Shapley references something being contentious, an aspect of
24 that meeting being surprisingly contentious.

25 What did Agent Waldon tell you about that?

1 A I'm trying to remember our conversation specifically.

2 It was more of, again, a disagreement on the amount of communication that was
3 going to happen moving forward. I don't know if he used the word "contentious." It
4 was Gary wanted to meet a certain amount of times on a regular basis, and the U.S.
5 Attorney's Office said, "No, we don't need to meet."

6 "Surprisingly contentious" is --

7 Q Okay. Fair enough.

8 Was that the first time that you became aware that Weiss may have had an issue
9 with Shapley and Ziegler, or were there previous --

10 A Yeah. I mean, I'm not even sure that there was an issue. I mean, again,
11 disagreements happen all the time in our investigations with prosecutors and we disagree
12 all the time. So just because they were contentious, I'm not so sure that I read into
13 David Weiss having an issue with my agents.

14 Q Okay.

15 Are you aware that Weiss called Waldon relatively around the same time period?

16 A After this meeting?

17 Q Yes. When did Weiss first ask -- maybe you told us earlier today, but we've
18 had a bunch of different witnesses on this topic. I might have lost track of specifically
19 what you testified to.

20 Like, when is the first time you heard Weiss recommend that Shapley needed to
21 be off the case, or he wasn't going to speak to him anymore, that type of issue?

22 A Darrell shared with me the November 20 -- I don't know the date of the
23 email in November -- mid-November email from David Weiss to Darrell Waldon. He
24 forwarded it to me as FYI.

25 Q Okay. Was that the first time that you became aware that Weiss was no

1 longer going to be working with Shapley?

2 A From Weiss' side, yes. From Gary's side, I believe there is a sensitive case
3 report that came up that said there's no more communication going on with IRS CI, and
4 that's not accurate. We were still having communications at our level. Gary was not
5 having communications at his level. So I think that was -- whether it was October,
6 November, December, that did come through at one point. Again, I don't know the
7 exact date.

8 Q Okay.

9 Did Gary say anything in this meeting that made Weiss angry? Or what was the
10 tipping point where Mr. Weiss decided that he wanted to communicate to IRS that he
11 wasn't going to be responding to any more of Shapley's emails?

12 Mr. Rillotta. Counsel, to be clear, Agent Batdorf was not at this meeting.

13 Mr. Castor. I'm aware of that.

14 Mr. Batdorf. I don't know. I don't know what he said at this meeting or what
15 triggered that event.

16 Mr. Castor. So Waldon didn't tell you anything about it?

17 Mr. Batdorf. Not that I recall.

18 Mr. Castor. Okay.

19 Mr. Clerget. If Mr. Shapley had conducted himself in a manner that would cause
20 a U.S. attorney to cut off contact with him at a meeting, would you expect Mr. Waldon to
21 report that to you, if it was obvious?

22 Mr. Batdorf. If it was obvious that he did something illegal, unethical, like, yes, it
23 would be -- actions would be taken by Darrell Waldon and his ASAC to correct that or
24 make any corrective action needed.

25 Mr. Clerget. And he didn't report anything like that to you after the 10/7

1 meeting?

2 Mr. Batdorf. Not that I recall, no.

3 BY MR. CASTOR:

4 Q Waldon recommended that Shapley be removed from the team?

5 A Yeah. In our conversations, yes.

6 Q Now, was that because he believed Shapley had done anything wrong, or
7 was that simply because David Weiss wanted him off the team?

8 A I don't know what Darrell Waldon was thinking at that time in that moment.
9 I don't remember having a conversation with Darrell that Gary Shapley did anything
10 wrong.

11 Q Okay.

12 A Yeah, I don't.

13 Q Okay. And so to the extent you're you're just trying to support the AUSA
14 who, in a sense, is a client of yours. Is that fair to say? That IRS is providing a
15 resource?

16 A We provide resources to assist the United States Attorney's Office in grand
17 jury investigations.

18 Q Okay. And so to the extent David Weiss, for any reason or no reason,
19 wanted Shapley off the team, that's something that you would consider?

20 A Sure. We consider it in many investigations when things come up. We've
21 asked for AUSAs to be removed from investigations, whether it's things
22 that -- disagreements.

23 Q Was it ever communicated to Shapley that you didn't think he did anything
24 wrong, that simply just trying to comply with the request from the U.S. Attorney's Office?

25 A I never had that conversation with SSA Shapley. I'm not sure what Kareem

1 Carter and Lola Watson discussed with him during that phone call or meeting. I'm not
2 sure -- it was in May when that decision was communicated.

3 Q Just going back to the leak that was discussed at the October 7th meeting.
4 The leak related to a Washington Post story from the day before on October 6th.

5 A Yep.

6 Q We haven't seen any evidence that Mr. Shapley was the source of that leak.
7 Have you?

8 Mr. Rillotta. Hold on. This could pertain to the future litigation. I'm going to
9 ask you not to characterize the evidence, and, therefore, I'm going to instruct you not to
10 answer the question.

11 Mr. Castor. Okay. Are you aware that Mr. Shapley has denied that he was the
12 source of any leak relating to the Washington Post story on October 6th, 2022? Are you
13 aware Mr. Shapley has denied that he --

14 Mr. Rillotta. You can answer that.

15 Mr. Batdorf. I am aware of his testimony in which he denied having any
16 involvement.

17 Mr. Castor. Okay. Are you aware that he also affirmatively notified the
18 reporter in question that to the extent Gary Shapley, to the extent he was a source for
19 that reporter, that he instructed the reporter to disclose that, that fact? He basically
20 told the reporter that: To the extent I'm a confidential source for you, I approve of you
21 disclosing that. Are you aware of that?

22 Mr. Rillotta. Of Mr. Shapley's testimony?

23 Mr. Castor. Of Mr. Shapley being a source for the story on October 6th.

24 Mr. Rillotta. You're asking him if he's aware of Mr. Shapley's testimony to that
25 effect?

1 Mr. Batdorf. I don't remember that in Mr. Shapley's testimony.

2 Mr. Castor. Okay. No. Mr. Shapley dealt with that separately, outside of his
3 testimony. Are you aware that he is -- he wrote a letter to The Washington Post and
4 said: If I'm your source, feel free, let the world know that.

5 Mr. Rillotta. I'm going to instruct you not to answer that question.

6 You're getting into subject matter that could very well pertain to a claim or
7 defense in upcoming litigation. We're not getting into that.

8 Mr. Castor. So you're not going to let him answer whether he's aware that
9 Shapley has waived any confidentiality with the reporter?

10 Mr. Rillotta. We're not getting into today evidence concerning one way or
11 another a potential leak by Gary Shapley because that could be relevant in upcoming
12 litigation.

13 Mr. Castor. Okay.

14 Mr. Rillotta. And I'm happy to discuss this with you offline and try to find a way
15 to get you what you need, and I'll explain my rationale in further detail.

16 Mr. Castor. All right.

17 Mr. Clerget. Mr. Shapley made that statement publicly, and to my knowledge
18 The Washington Post has not identified him as a source, despite his waiver of confidential
19 source preparations.

20 Mr. Castor. Of course not. Of course.

21 Mr. Clerget. So we're happy to revisit that off the record.

22 BY MR. CLERGET:

23 Q Okay. I have a couple minutes left in my hour. I want to quickly circle
24 back on a couple -- kind of circle around a couple different issues here.

25 So Mr. Ziegler testified with regard to you, he said, quote, "He told me that I can

1 come to him with any issues on this case -- it's the director of field operations, his name is
2 Mike Batdorf -- that I can come to him at any time and with any issues that I'm having."

3 Do you remember saying that or something similar to Mr. Ziegler?

4 A I do. I was -- it was in a briefing amongst friends and coworkers -- "Hey, if
5 you ever need anything, let me know."

6 Q Sure.

7 A A casual comment that I make to numerous people. Not that I -- not that
8 you can go outside of your chain of command and come directly to me. Like we -- if you
9 bring me an issue, I'm going to talk to your chain of command, and we're going to find
10 a -- get it resolved. But if you have issues, let me know.

11 Q Okay. And you've said that to others?

12 A I have said that to others.

13 Q Do you know if you said that to Mr. Shapley?

14 A I probably have. Mr. Shapley was probably in the room when I said it. It
15 was probably after one of the briefings.

16 Q Okay.

17 And we talked earlier about Mr. Shapley reporting up the chain in a different way
18 on J5 cases. Can you just explain quickly what that looks like? He reports on those
19 cases to whom?

20 A So the -- I'm trying -- I'm not an expert on the J5.

21 Q That's okay. Let me ask you a different question.

22 Did Mr. Shapley have reporting obligations to a different part of the chain of
23 command above you on certain cases?

24 A He had reporting obligations, but investigative steps, investigative actions
25 were still handled by the D.C. Field Office.

1 Q Okay. Understood.

2 So there were times where he would report to people above you in the chain?

3 A Correct. There was -- in the beginning stages of the J5, the investigative
4 teams were to report directly to the chief because he was the chief of the J5.

5 Q Okay. Understood.

6 Mr. Clerget. Okay. I'm close to my hour. I'm going to stop there and turn it
7 over to my --

8 Minority Counsel 1. We're going to take a break.

9 Mr. Rillotta. Before we do, can I ask Michael to step outside the room so I don't
10 pollute your brain.

11 Mr. Clerget. We're off the record, please.

12 [Recess.]

13 Minority Counsel 1. Okay. Back on the record.

14 BY MINORITY COUNSEL 1:

15 Q At the end of the last hour, we talked a little bit about why either team
16 would be removed, either the AUSA or the investigative team, and you mentioned that
17 sometimes it could be the request to have the AUSA removed and sometimes it's the
18 other way around.

19 In a situation where you request to have an AUSA removed, how many times has
20 that happened since you've been at IRS that you know of personally?

21 A That I know of personally? Just a handful. I mean, a couple of times, one
22 or two times. We don't -- I mean, normally we get to an agreement where we can all
23 work together.

24 Q Has that happened one or two times over the past year? Or what's the
25 time period? Last 5 years?

1 A From my personal knowledge, it would be outside of more than 5 -- it would
2 be when I was an ASAC and SAC and dealt with those issues. It would not have been in
3 the last 5 or 6 years.

4 Q So it's not frequent?

5 A So it's usually not frequent, no.

6 Q What are some of the reasons why a team might request to remove an
7 AUSA?

8 A If there is just disagreement between -- I mean, just general -- I'm trying to
9 think of the one example that I have. It was back when I was in Chicago. It was just, I
10 mean, two personalities just couldn't work together, and it was, "Hey, we need to assign a
11 new agent. We need to assign a new AUSA. We've got to do something here." It just
12 wasn't working. It's very -- it's rare.

13 Q Would you say that it's more than just your run-of-the-mill give-and-take
14 disagreements that go back and forth? We've mentioned that sometimes there's
15 disagreements generally.

16 A It's more than just the run-of-the-mill disagreements, yes.

17 Q Would you say it's an extraordinary case generally, extraordinary
18 disagreement, and that's why you've gone to removal?

19 A To have an AUSA just assigned to a new -- to have an AUSA assigned?

20 Q Uh-huh.

21 A Yeah, normally IRS CI typically does not ask for that to happen.

22 Q What about in the reverse where the AUSA may ask to have either someone
23 on the investigative team removed or the entire team? Let's start first with, when they
24 ask, do they generally ask for one person to be removed when you've seen that?

25 A Generally in IRS CI investigations you only have one case agent. So it would

1 be the case agent that would be removed.

2 Very few of our cases have entire teams of investigators. Some rise to that level.
3 Some are that complex or some have that much evidence that you have one, two, three,
4 four case agents.

5 But most of our investigations have one case agent. So it would just be one case
6 agent asked to be removed.

7 Q Do you have situations where you remove more than the case agent? So,
8 say, the case agent supervisor, the SSA. Is that common?

9 A I'm not aware of that happening. That's not common.

10 Q Has that ever happened that you are aware of?

11 A In this investigation, it happened.

12 Q What are some of the types of reasons why you may have the investigative
13 team removed? Is it the same reason why you would ask for an AUSA or something
14 different?

15 A It would roughly be the same reasons. For the investigative team or for an
16 agent?

17 Q For the team, for the team to be removed.

18 A For the team to be removed, I mean, if you're talking this specific incident,
19 because it's the only one that I know of, I mean, Supervisory Special Agent Gary Shapley
20 was the main point of contact with this investigation. He was taking investigative steps
21 with the special agents. I mean, he was one of the team.

22 So it wasn't just an agent involvement. It was the supervisor involvement. He
23 was, again, taking those actions as if he was a working case agent.

24 Q Is this the only time you've seen this where an entire team has been
25 removed?

1 A In my experience?

2 Q In your experience.

3 A Yeah, I don't recall having an investigative team removed before, prior to
4 this.

5 Q Okay.

6 I want to talk a little bit about the inference aspect of this case that was
7 mentioned in the prior hour. I want to just start at the beginning.

8 You said that you were briefed by the outgoing SAC and the incoming person and
9 Gary and Joe when the case first started. And so I want to just go back to the beginning.

10 When did the case start? What year? Do you know? Was it before you
11 arrived?

12 A It was before I arrived as the deputy field -- the director of field operations.

13 Q And what year was that?

14 A That it started, the case started?

15 Q No, that you arrived.

16 A I arrived and I was assigned to DFO January of 2021.

17 Q So the case started before that?

18 A The case was ongoing when I came to DFO, yes.

19 Q Okay.

20 Joseph Ziegler, I believe, in his testimony testified that the case started in 2018.

21 So in 2018, was that the same administration then the one that's currently in place?

22 We've talked a lot about the inference, and Mr. Biden appointed AUSAs, and the subject
23 also having that last name. But in 2018, was it a different administration, a different
24 President at that time?

25 A Yes, it was.

1 Q And looking at the individuals who were working on the case outside of IRS,
2 so looking at the AUSA, for instance, to your knowledge, was there any change in the
3 personnel of the AUSA from when it started in 2018 to now? Has there been a change,
4 or has it been generally the same career people working the case the entire time?

5 A It's my understanding that there had been a change in the AUSA, the
6 prosecution team.

7 Q And when was the change made? Do you know?

8 A I believe that was made in roughly -- I think it was May or June of this year
9 when we decided to move forward with the investigation.

10 Q Okay. But there was no change from earlier than that, say between 2020
11 going to 2021, when there was a change in the administration?

12 A I don't -- not that I recall. I don't believe there was a change reported to
13 me. There are several AUSAs that have been working. I'm not sure if any have come
14 or gone in those three years.

15 Q As far as the actual agents that have been involved in the case, not on the
16 IRS side but on the FBI side, do you have any knowledge whether any of those agents
17 changed between '20 and '21?

18 A Between '20 and '21 on the IRS side or the FBI side?

19 Q On the FBI side.

20 A On the FBI side, I'm not aware of the FBI involvement or the case agents.

21 Q And would you, just generally looking at this case, would you say that the
22 team, the career individuals that are involved, generally have been the same since 2020,
23 even with the transition in 2021?

24 A The career individuals, like the investigative team?

25 Q Uh-huh.

1 A They've all mostly been the same. I'm sure there was probably a change or
2 two somewhere. I mean, like for our agency, Christine Puglisi left and took a supervisory
3 role at some point, so she was not on the team anymore.

4 So there have been some, but generally speaking, yes, their team is intact.

5 Q We talked a little bit about Mr. Weiss, and there was a change in the
6 administration, and he still continues to head up this case for the DOJ. Is that correct?

7 A Correct.

8 Q The day of action, that took place when? You were briefed on that as well.
9 That took place in what year? Before you arrived?

10 A Before I arrived.

11 Q Do you think that was 2020?

12 A I believe that was 2020, yes.

13 Q Would you agree that the decisions that were made regarding that day of
14 action were made in 2020 or before, earlier in the year? And so before 2021, because
15 that had already taken place, correct, the day of action?

16 A I'm not sure I understand the question.

17 Q The decisions that were made that relate to the day of action and what
18 investigative steps were taken on that day of action, those were made prior to your
19 arrival, correct?

20 A Correct.

21 Q They were made prior to 2021, correct?

22 A Correct, yeah.

23 Minority Counsel 1_ Okay. I think we're good.

24 Mr. Clerget. Just a couple more questions.

25 BY MR. CLERGET:

1 Q We may have touched on this earlier, but Mr. Shapley testified that -- and I'll
2 quote it here so that we have a clear record of exactly what he said.

3 He said: "So finally, when we heard that '14 they were kind of leaning
4 toward -- we thought they were still deciding on '14 and '15 in August, and that they were
5 leaning toward a no to charge those. My DFO responds that he is going to go and talk to
6 the deputy chief and tell him to call over to Stuart Goldberg and tell him that IRS CI
7 supports 2014 and 2015."

8 Do you remember the events that Mr. Shapley is describing in this testimony?

9 A Yeah, I do. I mean, I don't remember the specific -- or the date or when he
10 said, "Hey, they're thinking about" -- I remember being informed. I don't remember if it
11 was an email, phone call, meeting. There was some wavering on '14 and '15. So I did,
12 yeah, absolutely.

13 The deputy chief and chief meet regularly with Stuart Goldberg, and before they
14 go meet with Stuart Goldberg they usually send out an email to the executive team, more
15 specifically the DFOs, because we're field operations, "Hey, any issues you want us
16 to bring up?" I said, "Hey, if you want to lend your word to Stuart Goldberg that we fully
17 support '14 and '15, that would be helpful."

18 Q Okay. And so you made that communication to the deputy chief and chief?

19 A Yes.

20 Q Okay. And do you know if they talked to Stuart Goldberg about it?

21 A I do not know.

22 Q So you didn't get a readout --

23 A No.

24 Q -- anything like that?

25 A No.

1 Q Is that the only time you asked him to put in a word on this case?

2 A I believe so. I don't recall having another ask of them. We discussed
3 briefly whether they should attend the June meeting, and it was my role to attend that
4 June meeting, but I don't recall asking, again, from the chief or deputy chief's chair.

5 Q Okay.

6 Mr. Shapley says in this piece of his testimony, he references August. So would it
7 make sense that this would have happened sometime between the June 15th meeting
8 and the October 7th meeting?

9 A That would make sense to me.

10 Q Okay. And you got no follow-up after they -- you don't know whether they
11 told Stuart Goldberg, whether -- what his reaction was? You didn't get any readout at
12 all?

13 A No.

14 Q Okay.

15 Were you supportive of Mr. Shapley blowing the whistle to Congress?

16 A Yes, I was.

17 Q Okay. And how were you supportive?

18 A I wrote an email to Gary talking about his options. He was having a hard
19 time. I wrote and talked about the options that he has. I don't necessarily -- I'm not
20 the arbiter of prosecutorial misconduct. That's what he was alleging. So I offered
21 support in that role.

22 And then, when he told me that he was a whistleblower, I offered support. He
23 requested to take leave or admin leave during the course of any actions he had to take.
24 And absolutely not. It's your right and your role. You don't need to take leave. You
25 can -- it's your right as an agent to go do what you need to do. So stuff like that, that

1 was the support.

2 Q Okay. And did you hear from anyone else at the IRS that they were
3 unhappy with Mr. Shapley blowing the whistle?

4 A Not that I recall, no.

5 Q Do you know if Mr. Shapley received any other support within the IRS for
6 blowing the whistle?

7 A I'm not aware. I'm trying to think if I was like cc'd on an email or told. I
8 mean, obviously, Joe Ziegler offered support for his blowing the whistle. I'm not aware
9 of anyone else that had reached out to Gary and personally said, "Hey, we support what
10 you're doing."

11 Q Okay.

12 Did you -- when it comes to the removal of the case team, did you speak to the IRS
13 commissioner about that?

14 A I did not.

15 Q Did you speak to the deputy commissioner?

16 A No.

17 Q CI chief?

18 A No, I don't believe so.

19 Q Deputy chief?

20 A I made him aware of the decision that we made, yes.

21 Q And do you know whether he reported that decision up the chain?

22 A I do not know.

23 Q And going back to this discussion of asking the deputy chief and chief to talk
24 to Stuart Goldberg, the deputy chief at the time of that we said we think -- you recall it's
25 between June 15th and October 7th. Who would that be?

1 A Guy Ficco.

2 Q Okay. And the chief was?

3 A James Lee.

4 Q You mentioned that this was the only time you've had a situation where
5 you've had like a whole case team removed from a case.

6 Is this the only case that you've worked on in your career where a supervisory
7 special agent has blown the whistle to Congress?

8 A Yes.

9 Q So this is not exactly a typical case. Is that fair?

10 A A typical case or -- I'm not sure -- you mean the actual investigation or --

11 Q This is not a typical situation when it comes to having a supervisory special
12 agent blow the whistle and also be removed from a case.

13 A Correct.

14 Q Okay.

15 Mr. Castor. Do you think Weiss recommended Shapley and Ziegler being
16 removed as retaliation because he was mad that they blew the whistle?

17 Mr. Batdorf. Am I able to answer that question?

18 Mr. Rillotta. You can answer yes or no.

19 Mr. Batdorf. Do I believe David Weiss in retaliation?

1 BY MR. CASTOR:

2 Q Yes.

3 A No, I do not.

4 Q Without Ziegler and Shapley, I mean, were they going to be individuals that
5 would testify at a potential prosecution?

6 A So case agents would typically be witnesses in a prosecution case. A lot of
7 times we are the collector of the evidence. We are the best to put in that evidence,
8 whether it's a memorandum of interview or something like that. So, yes, they would be
9 called to testify.

10 Q So if someone in the U.S. Attorney's Office is trying to slow down this
11 investigation, isn't getting Gary Shapley or Joe Ziegler removed a pathway to that because
12 now it's going to take more time to get a new IRS case agent up to speed?

13 A I don't necessarily agree with that assessment, no.

14 Q So a new IRS case agent can just hop on the case and be ready to go to
15 testify?

16 A No, it would take some time to get up to speed on the investigation. I
17 mean, yes, it would take time to get to know the evidence.

18 Q Okay. And did you have any concern that removing Shapley and Ziegler
19 would be detrimental to the case?

20 A I didn't believe it would be detrimental to the case to remove them, no.

21 Q Why not? I mean, they know the facts better than anybody, correct?

22 A At that time, yes.

23 Q But at all times they're going to be -- I mean, they collected all the evidence.
24 They built the case. I mean, they're going to be much more knowledgeable even if
25 somebody subs in --

1 A They're going to have -- I'm sorry. I didn't mean to interrupt you.

2 Q Even if somebody subs in, they're going to be more knowledgeable than
3 their successors.

4 A They have the entire historical case to reference.

5 Q But you didn't have any concerns that that would be detrimental to the
6 case?

7 Mr. Batdorf. Can I speak with --

8 Mr. Clerget. Off the record.

9 [Discussion off the record.]

10 Mr. Clerget. Back on the record.

11 Mr. Batdorf. My concern was the opposite, that if they remained on the case,
12 the case would not go forward.

13 BY MR. CASTOR:

14 Q Because David Weiss wouldn't want to bring it?

15 A That's my understanding.

16 Q Okay. So David Weiss wasn't going to bring the case if they were on the
17 case?

18 A It was my interpretation from the phone conversation that we had in
19 December that there were concerns with the investigation and investigative team, and
20 adding up all those concerns, so having a harder time jumping over that, you know,
21 moving forward with this prosecution.

22 He never specifically stated that we had to remove the investigative team. He
23 stated that he does not control IRS resources, and he understands that. But part of that
24 concern of moving forward was our investigative team.

25 And, again, the evidence speaks for itself. The IRS mission speaks for itself.

1 There was no more investigative activities to take. We can get this to prosecution with a
2 new investigative team. Again, that's a step I'm willing to take if I have to.

3 Q What did Agent Waldon do to support Shapley and Ziegler? Anything?
4 Did he ever have their back?

5 A I'm not -- during the whistleblower or during the entire investigation?

6 Q No, when Weiss -- I mean, Weiss is -- this is an attack. This is an attack by
7 Weiss on Shapley and Ziegler. What did Waldon do to support his agents?

8 Mr. Rillotta. So you don't have to accept the characterization, but the question is
9 one you can answer. What do you recall Darrell Waldon doing to support his agents?

10 Mr. Batdorf. I'm still -- the time frame. I mean, during this phone call? I
11 mean, we talked about -- Darrell and I talked about the pros, the cons, everything about
12 moving forward with the investigation.

13 I mean, during the course of the investigation, Darrell --

14 BY MR. CASTOR:

15 Q Well, during the course of 2022. I mean, the case team, Ziegler and
16 Shapley, had issues with the way the U.S. Attorney's Office was handling this all year,
17 correct?

18 A Correct.

19 Q What did Darrell Waldon do to support his agents during 2022? I'll say
20 before the October 7th meeting.

21 A He was with us in June in that meeting at DOJ.

22 Q Did he speak up on behalf of his agents?

23 A I don't recall. I don't recall if he spoke up.

24 Q Can you cite anything that he did to support his people? I don't think he
25 did. I mean, I don't think he asserted --

1 A I mean, he recommended that we go beyond CT counsel on the prosecution
2 report. He recommended to me that we do that.

3 Q Did he have any one-on-one meetings with Weiss where he said, "Hey, let's
4 try to make this work"?

5 A I don't know if he had any of those types of meetings.

6 Q Did you?

7 A I did not.

8 Q Okay. Why not?

9 A It's outside of the typical role of the director of field operations for personnel
10 in investigative decisions.

11 Q Well, why didn't you recommend Waldon do that, that Waldon have a
12 conversation with Weiss and say, "Hey, let's try to get by our differences, let's try to make
13 this work"?

14 A Based on my experience, we were beyond that. We were beyond that,
15 trying to work.

16 Q Okay. But what about during the year 2022, before things had
17 deteriorated?

18 A I mean, I knew there were always concerns. There were investigative
19 differences, prosecutorial differences of what they were having. I mean, I didn't know it
20 was this bad until October when it was, according to Gary, it was the red line, like this was
21 the moment.

22 Q Right.

23 A And then by that time it was November, and it was David Weiss' moment of:
24 I'm not talking to him anymore. He's harassing me.

25 He didn't say it, but in his email he basically says: Tell him to leave me alone.

1 I'm not talking to him anymore.

2 At that point, it's not a good situation for any --

3 Q No, I agree.

4 A -- investigative team to be in.

5 Q But don't you think Agent Waldon should have run some interference to
6 assist Shapley and Ziegler?

7 A I'm trying to remember what Agent Waldon, prior to our meeting in
8 December. We had several conversations.

9 Mr. Rillotta. So I think the difficulty, counsel, is, again, I perceive a
10 miscommunication because I think the witness is testifying in terms of advancing the case
11 and efforts undertaken by the field office leadership to advance the case. You're talking
12 about supporting his agents.

13 I'm not sure whether you're conflating the two. I think perhaps the witness is.
14 Maybe ask him what steps Agent Waldon took to support the case. Because I think the
15 interchangeable use of these concepts is maybe throwing the witness off.

16 Mr. Castor. Well, the concern from a congressional standpoint is you've got two
17 whistleblowers that have come forward, and as soon as they come forward, it's like
18 they're getting clobbered from every which way. They're getting clobbered from the
19 U.S. Attorney's Office. They're getting clobbered back at the agency. They're being
20 removed off the team. That they didn't know they did anything wrong. It's been 6
21 months.

22 You know, they're just getting clobbered, and it's hard for us not to make an
23 inference that it's just because they're whistleblowers, just because they angered David
24 Weiss and they bucked the system.

25 Mr. Rillotta. Well, now, hold on, because that isn't really a question. I mean,

1 that's your theory.

2 BY MR. CASTOR:

3 Q So it's going back to just my question of, what did Waldon do to support his
4 people through this conflict? There's obviously conflict during the year 2022. There's
5 obviously some differences of opinion that came to a head at the October 7th meeting.
6 It was Gary Shapley's red line. It was -- Weiss obviously had a revelation there, too.

7 And so I'm just wondering if Agent Waldon did anything during the year 2022 to
8 sort of stave that off.

9 A Stave off the conflict?

10 Q Yeah.

11 A I don't -- I mean, he supported the investigation and the agents in
12 February 2022 when we moved forward with the investigation, bypassed CT counsel, and
13 said we're going to move forward.

14 He was -- he listened to the agents and their investigative concerns when they
15 said, "Hey, defense counsel is meeting with -- through DOJ Tax. We need to do
16 something." We both stepped in.

17 Actually, I mean, he stepped in and then I was invited over. The chief and the
18 deputy chief were invited. So we went.

19 I do not recall him being --

1

2 [1:26 p.m.]

3 BY MR. CASTOR:

4 Q Is that the June 15th meeting?

5 A The June 15th meeting. I do not recall him being that verbal during that
6 meeting. Maybe because I was, and I'm his supervisor.

7 Q Yeah.

8 A So I was more verbal and he was letting me take that role. Had I not been
9 there, I would have hoped he would have taken that role as well.

10 We talk about the -- I mean, he attends this October meeting with his case agents,
11 with his supervisor. I'm not -- I don't know of the extent of what Darrell may have
12 testified to on what else he did.

13 Q Okay. Okay.

14 A I just -- we're simply, again, trying to move this case forward --

15 Q Okay.

16 A -- to prosecution.

17 Q Okay. I mean, you testified earlier today that Shapley was a bulldog, was a
18 good agent.

19 A Absolutely.

20 Q And, because of what's happened with this case, you know, now there's a
21 real question about, you know, what's his future with the IRS.

22 A I don't have --

23 Mr. Rillotta. That's not a question.

24 Mr. Castor. You know, just because he came forward and, you know, raised his
25 head as a whistleblower. So we would hope that the Department or the -- you know,

1 the IRS would support agents like him.

2 Mr. Rillotta. That's not a question.

3 Mr. Castor. Not a question. So --

4 Mr. Clerget. I don't have anything else.

5 Mr. Mandolfo. I'm good.

6 Mr. Clerget. I think we're good.

7 Minority Counsel 1. We have just a couple.

8 Mr. Clerget. Okay.

9 Minority Counsel 1. Could we go off the record for a minute? Just one minute.

10 [Discussion off the record.]

11 Mr. Rillotta. So, if counsel are amenable before we proceed, Agent Batdorf has
12 asked for an opportunity to just follow up with a statement.

13 Go ahead, sir.

14 Mr. Batdorf. There was a couple of -- clobbering and retaliation. I just want to
15 go on the record. In my 22.5 years, I have never made a decision or restricted anyone
16 out of spite, out of retaliation, out of anything. That is not who I am.

17 I have dedicated my life to IRS CI. I mean, I took this job at 23 years old. This is
18 all my adult life. I would not do that, put my career in jeopardy or this agency in
19 jeopardy. So I wanted to clarify that.

20 Mr. Castor. Nobody is suggesting you were.

21 Mr. Batdorf. Okay.

22 Mr. Castor. Nobody is suggesting you were. We're suggesting David Weiss is,
23 right? And, you know, just our -- you know, our concern is that, you know,
24 he -- David Weiss is retaliating against Mr. Shapley and Mr. Ziegler, and, you know, we're
25 just asking about, you know, who is looking out for these guys.

1 Mr. Batdorf. That -- again, I'll just -- I mean, I don't want to speak for
2 David Weiss. It was not my impression that he was retaliating. It was my impression
3 that Darrell and I were doing everything we could to move the case forward. And
4 maybe I took some of the authority away from Darrell Waldon by allowing Gary Shapley
5 to come directly to me, and maybe that cut that out.

6 Mr. Castor. Or maybe he was coming to you because you didn't -- he wasn't
7 getting anywhere with his --

8 Mr. Batdorf. It's possible.

9 Mr. Castor. His boss.

10 Mr. Batdorf. It's possible. But I -- again, I just -- from all my statements today,
11 we were trying to move this case to prosecution.

12 Mr. Rillotta. Anything else?

13 Mr. Batdorf. No. Thank you.

14 Mr. Rillotta. Okay.

15 Minority Counsel 1. Okay. Back on the record. I just had a few --

16 Mr. Rillotta. Wait, we were on the record.

17 Mr. Castor. We were on the record. We were on record.

18 Minority Counsel 1. I just have a few questions just on the timeline.

19 BY MINORITY COUNSEL 1:

20 Q This case started in 2018, correct?

21 A Correct.

22 Q The President, at that time, was Mr. Trump, correct?

23 A Correct.

24 Q The President changed in 2021, correct?

25 A Correct.

1 Q In 2021 is when you became DFO on the case, correct?

2 A Correct.

3 Q At that time, Mr. Weiss was in charge of the case, correct?

4 A Yes.

5 Q And then on October 7 of 2022, there was a statement that there were no
6 more investigative steps that needed to be taken in the case, correct? According to
7 exhibit 1 --

8 A Exhibit --

9 Q -- that we have? On the second page, he states, IN No. 5, There is no more
10 investigative steps.

11 A You mentioned in August. This was in October, I believe.

12 Q In October, yes.

13 A Yeah. Correct.

14 Q In October. And then, in December of 2022, there was a decision to
15 remove him from the case -- is that correct -- Mr. Shapley?

16 A In December of 2022, correct.

17 Q And then, on January 5 of 2023, he told you that he may file as a
18 whistleblower. Is that correct?

19 A January 5th, I believe he emailed me saying, Mike, do you have 5 minutes
20 that I can speak to you?

21 We were able to schedule that meeting on January 6th.

22 Q And then, on January 6th, do you know, did he file as a whistleblower after
23 you spoke to him?

24 A He told me he had filed as a whistleblower. I don't know the date that he
25 actually filed.

1 Q And then he was notified of the removal from his case in May of 2023. Is
2 that correct?

3 A Yes.

4 Q Why wasn't he told in December that he had been removed from the case?

5 A As I stated before, there were -- with the investigation not having any more
6 investigative activity, we were waiting to see if the U.S. Attorney's Office was going to
7 move forward with a prosecution.

8 It would have been a misuse of my resources to have an investigative team get up
9 to speed and then not have anything to prosecute if they decided not to go forward. If
10 DOJ Tax didn't authorize it, or if David Weiss decided not to go forward with any charges,
11 I just spent 4 months -- it could have been 5 months. It could have been 10 months. It
12 could have been one. I didn't know how long that decision was going to take.

13 But to have an entire investigative team offline and not working other cases or not
14 working other investigations, I didn't make -- we didn't get them a new investigative team
15 until the decision was made to move forward.

16 Q And that was in May of 2023?

17 A I believe so, yes.

18 Minority Counsel 1. Okay. Thank you.

19 Mr. Clerget. Thank you very much for appearing today. We really appreciate
20 your time, and I appreciate you indulging our questions --

21 Mr. Batdorf. Absolutely.

22 Mr. Clerget. -- and spending some time with us. And have a great afternoon.

23 Mr. Batdorf. Thank you very much. I appreciate it.

24 Mr. Castor. All right. Thank you.

25 Mr. Rillotta. Thank you, folks.

- 1 Mr. Clerget. We'll go off the record.
- 2 [Whereupon, at 1:35 p.m., the interview was concluded.]

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Certificate of Deponent/Interviewee

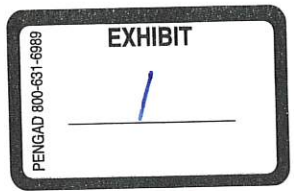
I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date

Exhibits:

Ex 10



From: [Walden 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

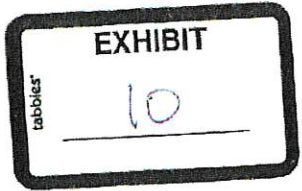
Darrell J. Waldon
Special Agent in Charge
Washington, D.C. Field Office
(C) [REDACTED]

From: Shapley Gary A Jr <[REDACTED]>
Sent: Friday, October 07, 2022 6:09 PM
To: Batdorf Michael T <[REDACTED]>
Cc: Walden 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



- 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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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NATIONAL DIRECTOR
FOR LEGISLATIVE
AFFAIRS

The Honorable Jason Smith
The Honorable Richard E. Neal
Committee on Ways and Means
U. S. House of Representatives
Washington, DC 20515

Dear Chairman and Ranking Member:

I write to follow up on the Committee's transcribed interview of IRS-Criminal Investigation Director of Field Operations (DFO) Michael Batdorf, which took place on September 12, 2023. I understand that Agent Batdorf testified regarding an email from Washington Field Office Special-Agent-in-Charge (SAC) Darrell Waldon in February 2023, attendant to Agent Waldon's transition from that role, but that it was unclear in Agent Batdorf's testimony whether this email was addressed to Agent Batdorf or to Agent Waldon's successor in the SAC role, Kareem Carter. I am advised that Agent Batdorf has consulted his records and confirmed that this email was addressed to him (*i.e.*, to Agent Batdorf).

Please disregard my letter on this matter of September 20, 2023, which contained a significant typographical error. We apologize for any confusion.

Please let me know if we can be of further help on this matter, or if you have any other questions. I can be reached at 202-317-6985.

Sincerely,

Amy E. Klonsky
Director, Legislative Affairs

cc: Joseph A. Rillotta
Counselor to the Commissioner