

DEMOCRATIC MEMORANDUM

To: Democratic Members of the Committees Judiciary and Oversight and Accountability

From: Democratic Staff of the Committees on Judiciary and Oversight and Accountability

Date: September 27, 2023

Re: IRS and FBI Witnesses Debunk Republicans' False Claims About Political Interference in Special Counsel Weiss's Investigation

At the direction of Speaker McCarthy, Republicans on the Committee on Oversight and Accountability, the Committee on the Judiciary, and the Committee on Ways and Means have escalated their investigations into President Joe Biden into a so-called impeachment inquiry. Neither the Speaker nor the Committee Chairs have set forth any facts establishing any wrongdoing by the President, let alone the “treason, bribery, or other high crimes and misdemeanors” required for impeachment under the Constitution. Instead, they have made clear that their inquiry will focus on baseless accusations that have already been repeatedly disproven. This memorandum addresses the evidence undermining Republicans’ false claim that President Biden interfered in the investigation and prosecution of his son, Hunter Biden, led by Special Counsel Weiss, a Trump-appointed U.S. Attorney handpicked by Attorney General Barr for this assignment.

As Mr. Weiss and Attorney General Garland have made clear in public statements and letters to the committees, Mr. Weiss has been able to carry out this ongoing investigation without political interference from President Biden, his White House, or the Attorney General. Attorney General Garland, recently reiterated this basic truth in his public sworn testimony before the Judiciary Committee on September 20, 2023: “I promised the Senate when I came before it for confirmation that I would leave Mr. Weiss in place and that I would not interfere with his investigation, . . . [and] I have kept that promise.” Attorney General Garland also testified that he had no contact with the President or the White House about the Hunter Biden matter:

Q Let me get right to the chase. Has anyone from the White House provided direction at any time to you, personally, or to any senior officials at the DOJ regarding how the Hunter Biden investigation was to be carried out?

A No.

Republicans on these committees continued to repeat false claims of political interference even after five witnesses called by the Republican chairs—all current and former Internal Revenue Service (IRS) and Department of Justice (DOJ) officials with personal knowledge of the case—squarely debunked and refuted these claims. This staff memo details the evidence provided by these witnesses establishing four core points:

- 1. There was no political interference, and political favoritism played no role in the case.**
- 2. Mr. Weiss had authority to bring charges in this case well before he was named Special Counsel.**

3. **Routine procedures and typical challenges—not political interference—drove the investigative decision-making.**
4. **No one retaliated against the IRS investigator witnesses, but Republicans have weaponized their investigations to harm law enforcement officials and public servants.**

The statements of these five witnesses who were involved in and supervised case agents assigned to the investigation undermined the testimony of IRS Supervisory Special Agent Gary Shapley and IRS Special Agent Joseph Ziegler which Republicans have used to advance claims of political interference and retaliation:

- Thomas Sobocinski, the Federal Bureau of Investigation (FBI) Special Agent in Charge (SAC) of the Baltimore Field Office,¹ on September 7, 2023, in the Judiciary Committee;
- The FBI Assistant Special Agent in Charge (ASAC) of the Baltimore Field Office, on September 11, 2023, in the Judiciary Committee;²
- Darrell Waldon, currently the IRS Executive Director of Advanced Analytics and Innovation, on September 8, 2023, in the Ways & Means committee. Until February 2023, Mr. Waldon was the IRS Special Agent in Charge (SAC) of the Washington Field Office and Mr. Shapley’s supervisor;
- Michael Batdorf, Director of Field Operations for IRS Criminal Investigations, on September 12, 2023, in the Ways & Means Committee; and
- The FBI Supervisory Special Agent (SSA) assigned to the Hunter Biden matter, on July 17, 2023, in the Oversight Committee.³

¹ The FBI’s Baltimore Field Office’s territory covers the entire states of Maryland and Delaware.

² The Judiciary committee redacted the name of this individual.

³ The Oversight committee redacted the name of this individual.

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I. IRS and DOJ Witnesses supervising the investigation testified that there was no political interference, and that political favoritism played no role in the case.

Extreme Partisan Talking Point:

This investigation is rife with political interference.

Reality:

Witnesses have repeatedly denied observing or engaging in any political or other inappropriate interference in this matter.

A. The SAC for this case said that political favoritism played no role in any decision-making.

Federal investigations in Delaware are handled by the FBI's Baltimore Field Office, which covers the entire states of Maryland and Delaware. Baltimore SAC Sobocinski said that he believed Mr. Weiss's statement that his decisions in the Hunter Biden matter have been made without reference to political considerations was a true statement:

Q I want to turn to the very last paragraph of this letter, right above the signature block. It says: "In February 2021, I was asked to remain as United States Attorney for the District of Delaware to continue my oversight of the matter. Since that time, I have fulfilled my responsibilities, consistent with Department practices and procedures, and will continue to do so. Throughout my tenure as U.S. Attorney my decisions have been made—and with respect to the matter must be made—without reference to political considerations." Did I read that correctly?

A You did.

Q And are you aware of any information that contradicts Mr. Weiss' statement that his decisions in this matter have been made without reference to political considerations?

A I'm not.

Q And do you believe that to be a true statement?

A I do.

Sobocinski also said that he had no reason to believe that Weiss lied to Congress about the extent of his authority or that the Attorney General prevented Weiss from taking any step or denied him any resources, and he did not believe that President Biden had interfered in the investigation in any way:

Q Okay. So just to sum up kind of what we just talked about. Do you have any reason to believe that David Weiss lied to Congress about the extent of his authority that he had been granted by the Attorney General?

A I don't.

Q Okay. Do you have any reason to believe that the Attorney General prevented—that Attorney General Garland prevented Mr. Weiss from taking any particular investigative step in this case?

A No, I don't.

Q Do you have any reason to believe that Attorney General Garland denied Mr. Weiss any resources for this investigation?

A No.

Q Okay. Do you have any reason to believe President Biden interfered in this investigation in any way?

A No.

Q There have been allegations that the FBI and the Delaware U.S. Attorney's Office handling of this case is an example of two tiered system of justice. What's your reaction to those allegations?

A Speaking on my behalf of my team, we've worked this as diligently as we work all the cases we do. And as we referenced my discussion about politics and my belief of where that should play in our cases, it has no role. And so my goal as the leader of this team has been focused on getting a resolution in that case.⁴

Sobocinski also said that during the October 7, 2022, meeting, he asked if anyone thought the matter had been politicized and that nobody believed it had.

Q Okay. But when you asked whether the case had been politicized, in essence, is it fair to say you were asking whether there had been any political favoritism?

A I was asking in a room of leaders on this case to say, "Hey, we are working together. We're moving this thing forward. Do you think there's any manipulation from the outside that's stopping us from what we're doing?"

Q And you thought at that point the answer was no?

A Thought that it was no, and nobody in that room raised their voice to say anything other.⁵

He later specifically noted that Mr. Shapley had not raised any concerns about politicization during the meeting:

Q Okay. You were asked a little bit ago about number 4, which is when you asked the room whether anyone thought the case had been politicized.

A Uh huh.

⁴ House Judiciary Interview with Baltimore SAC Sobocinski at 75–76 (Sept. 7, 2023) (transcript on file with Committee) (hereinafter "Sobocinski Interview").

⁵ Sobocinski Interview at 49.

Q And just again for the record, you do recall saying that?

A I do.

Q And do you recall anybody responding in the affirmative?

A No.

Q Okay. And do you recall if there was a discussion around that?

A There was. I mean, I opened it, I talked about my personal view, once again talked about on the need for us to come together, there's a media leak. Obviously, media leaks are very important for us in the FBI. We have a process we go through then to make a referral so that other entities within the Department will look into that. It's not my responsibility.

My responsibility is to work this with my team to continue moving it forward, although I had—you know, the FBI were my direct reports. I felt we were working as a team on this case. We each had our own role. And if we wanted to move this forward, now was the time to talk about any concerns at the U.S. attorney, the SAC for IRS, and myself to at least, at our level, discuss if there were concerns.

And so I took the lead at that and opened it up and said, "Hey, I didn't, but I want to hear if anybody else does and let's move through that."

Q And did anybody say that they had concerns that the investigation had been politicized?

A No.

Q And you, sitting here today, you would recall if somebody had said that, correct?

A I would have.

Q And if somebody had raised such a concern, what specific steps do you think you might have taken in response to that?

A I would have tried to get a better understanding of what they thought. Obviously, people can have different perspectives for things that are going on.

But for me, in the time I've spent in law enforcement, it's important for us to be apolitical. That is what makes the FBI so good at what we do. We work these cases to resolution regardless of what that target is, and it's important to replicate that in a nonpolitical way. That's a core function of what we do. And so if something is interfering with that, then I find that to be incredibly troubling.

Q Okay. And so, again, you asked if anyone in the room had concerns. Mr. Shapley did not say he had concerns, for example?

A He did not.⁶

B. The ASAC for this case also said that she did not witness any political interference in this investigation.

The Baltimore ASAC said that while she did not specifically remember Sobocinski asking the October 7 meeting participants if anyone thought the case had been politicized, she would have recalled if anyone had responded in the affirmative:

Q Do you recall if anybody said they thought the case had been politicized?

A I don't.

Q And, if somebody had said that they thought the case had been impacted by any type of political pressures, would you have recalled that?

A I think so.

Q If somebody had said that, are there steps that you think you might have taken in response to those concerns?

A Yes.

Q What steps might you have taken?

A Well, I probably—if I'm in a room to hear it, I would say from my opinion that it has not been politicized by the investigators. I think everybody that was—is and is working this ongoing matter are doing their jobs and are doing their jobs to the best of their ability. And, if there's any political, you know, or anything being politicized, that is outside of the investigative entities.⁷

The ASAC later clarified that when she said “investigative entities,” she meant the entire team working on the case, and stated plainly: ***“I did not think anyone involved in the ongoing matter was politicizing it.”***

Q You testified clearly that you did not feel like the case was being politicized by the investigative entities. And those were the words you used, “investigative entities.” I just want to clarify, do you also feel that the case was free from politicalization from the prosecutory entities, so the U.S. Attorney and the other trial attorneys?

A Yes. And I apologize. When I—most of the time when I say “investigative,” I'm thinking of the whole team, and so maybe I will try and be clearer in saying “the team” or just really specify in this sense. But I think of it as a team atmosphere because, again, we're working the cases together, although we have our specific roles. But, yes, I was talking

⁶ Sobocinski Interview at 57–58.

⁷ House Judiciary Interview with Baltimore ASAC at 52–53 (Sept. 11, 2023) (transcript on file with Committee) (hereinafter “ASAC Interview”).

about everyone, that I did not think anyone involved in the ongoing matter was politicizing it.⁸

The ASAC later said a third time that she has no knowledge of any political interference in this matter:

Q Just to make it clear for the record, to the best of your knowledge, has there been any inappropriate political interference in this case?

A No.

Q And does that include—when you say no, that includes there’s been no interference by—any inappropriate political interference by anybody at the FBI, correct?

A That includes I have no awareness of any political influence from the FBI, from the IRS, from the U.S. Attorney’s Office. None.

Q What about from President Biden or from the White House?

A I have no knowledge of any influence from the White House.

Q There have been allegations that FBI’s and the Delaware U.S. Attorney’s Office’s handling of this case is an example of a two-tiered system of justice. What’s your reaction to that allegation?

A I think the investigation is being worked thoroughly, and I don’t have a concern that there is a two-tiered system being applied to this investigation.⁹

C. The FBI SSA likewise denied witnessing political interference in this case.

As described in the Oversight Committee’s August 16, 2023, memo, the FBI SSA likewise stated he was “not aware of political interference” in the Hunter Biden investigation:

Q If you had been party to political interference in FBI investigations, you would have reported that out somewhere, wouldn’t you have?

A I hope I would’ve.

Q But you didn’t do that in this instance?

A Well, I wasn’t aware of political interference personally.¹⁰

⁸ ASAC Interview at 56.

⁹ ASAC Interview at 118.

¹⁰ Memorandum from Democratic Staff to Democratic Members of the Committee on Oversight and Accountability, *Transcribed Interview of Former FBI Supervisory Special Agent* (Aug. 16, 2023) (online at https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2023-08-16.Democratic%20Member%20Memorandum%20re%20FBI%20SSA%20Transcript_0.pdf); House Oversight Interview with FBI Supervisory Special Agent (“SSA”) at 49 (Jul. 17, 2023) (online at

D. The IRS Special Agent in Charge denied witnessing political interference in this case.

Darrel Waldon, the IRS Special Agent in Charge of the Washington, D.C. Field Office explained the case had not been politicized:

Q Back to this email, number 4: “FBI SAC asked the room if anyone thought the case had been politicized—we can discuss this if you prefer.”

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

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

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

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

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

A Yes.

Q Okay. And what did they say?

A No.

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

A No.¹¹

<https://oversight.house.gov/wp-content/uploads/2023/08/FBI-SSATranscribed-Interview-Transcript.pdf>) (hereinafter “SSA Interview”).

¹¹ House Committee on Ways and Means Interview with Darren Waldon, IRS Special Agent in Charge of the Washington, D.C. Field Office (Sept. 8, 2023) (on file with Committee on Ways and Means) (hereinafter “Waldon Interview”) at 40–41.

II. U.S. Attorney Weiss had authority to bring charges in this case well before he was named special counsel.

A. Weiss has had full authority to bring charges in this case since well before he was named special counsel.

Extreme Partisan Talking Point:

Republicans claim that both the Attorney General and David Weiss lied to Congress when they said Weiss had full authority over this matter. Republicans base this claim on statements from Gary Shapley, who claimed that during an October 7, 2022 meeting, Weiss stated that he was not the final decision maker on whether charges would be brought and that he had been denied the right to bring charges in other jurisdictions.

Reality:

Both Sobocinski and the ASAC have sharply disputed Mr. Shapley’s account of the October 7 meeting. They both said that they have no recollection of Weiss making the statements Shapley claims he made and that they would have remembered if this had happened. In addition, both agreed Mr. Weiss’s statements that he had full authority over whether and where to bring charges, including that he would be granted special attorney status under 28 U.S.C. § 515 if he requested it, were true and accurate.

On October 7, 2022, case supervisors met with David Weiss to discuss the next steps in this case. According to Sobocinski, the primary purpose of the meeting was to discuss the media leak which had led to the October 6, 2022, Washington Post article suggesting that agents saw sufficient evidence to charge Hunter Biden with tax crimes.¹²

When Shapley testified before Ways & Means, he presented a two-page October 7 email from him to his superiors written after the meeting. In that email, he claimed that during the meeting, “Weiss stated that he is not the deciding person on whether charges are filed,” that he would need to seek approval from DOJ’s tax division and the District of Columbia and Central District of California U.S. Attorney’s offices before bringing charges.

Both Sobocinski and the ASAC have disputed Shapley’s characterization of the meeting. As Sobocinski noted: “I went into that meeting believing he had the authority, and I have left that meeting believing he had the authority to bring charges.”¹³ He specifically stated that he had no recollection of Weiss saying he was “not the deciding person on whether charges are filed, and that “if he would have said that, I would have remembered it.”

Q Okay. Turning back to this exhibit 1 [the October 7 Shapley email].
Number 2: “Weiss stated that he is not the deciding person on whether charges are filed.” 2a: “I believe this to be a huge problem—inconsistent with DOJ public position.” So you don’t remember Weiss saying that at the 10/7 meeting?

¹² Sobocinski Interview at 27.

¹³ Sobocinski Interview at 164.

A That he was not the deciding person?

Q Correct.

A Correct. I do not remember I don't—he didn't say that. In my recollection, if he would have said that, I would have remembered it.

Q Okay. So you're saying in your recollection that didn't happen?

A Correct.¹⁴

He explained further that while he understands that Weiss may have to go through a process to bring charges outside of his District, that was essentially an administrative process.

Q You always thought that Mr. Weiss had the authority to bring charges wherever and whenever he wanted to?

Q Correct.

Q You thought that the entire time?

A Correct.

Q From July 2021 when you got there all the way through, you thought he could bring them wherever he wanted to bring them?

A Correct. And that there was an administrative process that I don't know the minutia of that the Department—then he would work within the Department to have that authority to do that within whatever venue this ultimately resided in.¹⁵

Sobocinski likewise disputed Shapley's claims that Weiss needed to seek permission from DOJ's Tax Division before he could bring charges.

Q "Process for decision: Needs DOJ Tax approval first—stated that DOJ Tax will give 'discretion.' (We explained what that means and why that is problematic)." Do you remember that part of the discussion?

A Without going into specifics, there were discussion about taxes and venue. And, once again, Mr. Weiss had the authority to bring it.

Q So he didn't need DOJ Tax's approval?

A There was, like, a bureaucratic administrative process he had to work through, but I never viewed it as or talked about it as approval. I don't remember David saying approval. It was solely a process that he had to work through.¹⁶

Sobocinski explained that the administrative process was no real bar to Weiss's authority:

¹⁴ Sobocinski Interview at 44.

¹⁵ Sobocinski Interview at 35.

¹⁶ Sobocinski Interview at 44-45.

Q You've said repeatedly that you were always under the impression that Mr. Weiss had authority to bring charges, that there perhaps would be a process, an administrative process, but that he had that authority. Broadly speaking, what do you mean by an administrative process?

A There were steps that he was going to have to take with—originating in districts he was looking to explore. I think I mentioned earlier he goes to that district. He asks if they want to join with them. I don't know what that looks like. I don't know what the reasons for and against are. But that's what happens.

Then, if they agree, then I think it's a joint case. They bring USAs. But if they don't, then it goes back to the Department. The Department can then give them some type of status that allows them to bring this case in other venues.

Q Okay. So, one way or the other, he could bring the case. It's just a matter of how you get to that point?

A Correct.¹⁷

Like Sobocinski, the ASAC stated that before the meeting and after the meeting she believed that Weiss had full authority to bring whatever charges he wanted in whatever district he wanted to bring them in:

Q Going into this meeting, were you under the impression that Mr. Weiss would have the authority to bring charges—whatever charges he wanted to bring in any district he wanted to bring them in?

A Yes.

Q Leaving the meeting, were you under the impression that Mr. Weiss had the authority to bring whatever charges he wanted to bring in whatever district he wanted to bring them in?

A Yes.¹⁸

The ASAC likewise said that she had no recollection of Weiss stating that he was not the deciding authority on whether to bring charges, and that if he had said that he was not, she would have remembered it.

Q On No. 2, which is: Weiss stated that he is not the deciding person on whether charges are filed. You said you don't recall him saying that. Do you remember—do you agree that you don't recall him saying that?

A Yes, I agree.

Q If he had said that, is that something that would have stuck out to you?

¹⁷ Sobocinski Interview at 59.

¹⁸ ASAC Interview at 51–52.

A Yes.

Q You would remember that?

A I think so.¹⁹

The ASAC likewise said she had no recollection of Weiss stating that he needed to obtain permission from DOJ Tax before bringing charges.

Q Okay. Under 2B, Roman numeral I, Needs DOJ Tax Approval First, do you recall him using the word “approval” with respect to DOJ Tax?

A I don’t. My only understanding was that DOJ Tax provides some type of discretion.

Q Okay. And, if he said that he needs to get permission, for example, from DOJ Tax before bringing charges, is that something that you would probably recall?

A I think so.

Q And you don’t recall that?

A I do not.²⁰

The ASAC also stated that she had no recollection of Weiss stating that he had been denied permission to bring charges in Washington D.C.

Q [Y]ou don’t recall Mr. Weiss saying that he had been denied permission to bring charges in Washington, D.C. Correct?

A That is correct.

Q And you would recall that if he had said that?

A I think so.²¹

The ASAC specifically said that she disagreed with Shapley’s characterization of the October 7 meeting:

Q And you indicated when [Democratic counsel] went through some of the specific words that were used in these notes, like “permission,” for example, and others, that you were surprised to see those words because that wasn’t how you felt the case was going. Is that fair to say that some of the words he chose to describe the authority of Mr. Weiss, for example, are not the words you might have chosen because the understanding could

¹⁹ ASAC Interview at 49–50.

²⁰ ASAC Interview at 50.

²¹ ASAC Interview at 51.

be different between what Mr. Shapley believed and what you believed based on your position in the case.

A Yes, that is correct.

Q Can you elaborate on that in any way?

A Just that, again, my understanding generally of that meeting is that Mr. Weiss was just giving us an overhead of where we were and things that were still ongoing and just the steps that he would generally be taking to move forward. And, again, like I said, for whatever reason, California sticks out in my mind more, that they were not moving forward solely. And so, again, he would have to do, like, a special AUSA—special attorney process.

Q But your general understanding at the time of this meeting was that Mr. Weiss had the authority to pursue whatever charging decisions he chose as a prosecutor in any venue in the United States. Is that fair.

A Yes.

Q And, to the extent that these e-mailed notes that Mr. Shapley prepared sometime after the meeting suggest otherwise, that understanding that Mr. Shapley has expressed is not consistent with the understanding that you have.

A That is correct.²²

In fact, the “process” for a U.S. Attorney to bring a case outside of his or her district is referred to as seeking special attorney status under 28 U.S.C. § 515. That statute provides:

The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrate judges, which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought.²³

The fact that Weiss would need to seek authority under this statute is not news. In fact, as noted above, the Attorney General himself explained this process to Senator Grassley in March 2023:

²² ASAC Interview at 57–58.

²³ 28 U.S.C. § 515 (a).

Mr. Grassley. Does the Delaware US attorney lack independent charging authority over certain criminal allegations against the president's son outside of the District of Delaware?

Mr. Garland. He would have to bring—if it's in another district, he would have to bring the case in another district. But as I said, I promise to ensure that he's able to carry out his investigation and that he be able to run it. And if he needs to bring it in another jurisdiction, he will have full authority to do that.

U.S. Attorney Weiss likewise explained this process in his June 30 letter to Chairman Jordan, in which he wrote:

As the U.S. Attorney for the District of Delaware, my charging authority is geographically limited to my home district. If venue for a case lies elsewhere, common Departmental practice is to contact the United States Attorney's Office for the district in question and determine whether it wants to partner on the case. If not, I may request Special Attorney status from the Attorney General pursuant to 28 U.S.C. § 515. Here, I have been assured that, if necessary after the above process, I would be granted § 515 Authority in the District of Columbia, the Central District of California, or any other district where charges could be brought in this matter.²⁴

Sobocinski and the ASAC both unequivocally asserted that that they believe Weiss's assertions to be true and accurate.

When asked about Weiss' June 7 letter to Chairman Jordan, Sobocinski confirmed that he believed it to be true and accurate that Weiss had been granted ultimate authority over this matter.

Q [S]pecifically with respect to, "I want to make clear that, as the Attorney General has stated, I have been granted ultimate authority for this matter," to the end of that sentence, are you aware of any information that contradicts Mr. Weiss' statement that he was granted ultimate authority over this matter?

A No, I have no direct knowledge that counteracts that.

Q And do you believe that to be a true statement?

A I do.

Q Are you aware of any information that contradicts Mr. Weiss' statement that his authority over this matter includes responsibility to decide where, when, and whether to file charges?

A No, I have no direct knowledge that would contradict that.

²⁴ Letter from David Weiss, United States Attorney for the District of Delaware, to Hon. Jim Jordan, Chair, H. Comm. on the Judiciary (Jun. 30, 2023) (on file with Committee).

Q And do you believe that to be a true statement?

A I do.

Q Are you aware of any information that contradicts Mr. Weiss' statement that his authority over this matter includes making all decisions necessary to preserve the integrity of the prosecution?

A No. I believe that to be true.²⁵

With regard to Special Attorney status specifically, Sobocinski stated that it was his understanding that this process is the bureaucratic process he referenced earlier in his testimony, that in his experience it was not unusual for U.S. Attorneys to request and obtain such status, and that he believed Weiss's statement that he would be granted such authority if needed to be a true statement.

Q Okay. Going back to this paragraph. The third sentence reads, "If not"—meaning if another U.S. Attorney's Office does not wish to partner on the case—quote, "I may request special attorney status from the Attorney General pursuant to 28 U.S.C. Section 515." Do you see where it says that?

A I do.

Q Are you familiar with 28 U.S.C. Section 515?

A I'm not familiar with the actual—with that code in specifics, but what it's referencing in that process, I am familiar with.

Q And what's your understanding of that?

A That the Attorney General or somebody within that chain has the authority to provide authority for somebody to prosecute that—to prosecute that case in another venue that's not an AUSA assigned to that. And I do have experience that that's not abnormal. ...

Q Okay. So if ... if Mr. Weiss had requested status, Section 515 status, and if the Attorney General had granted that to him, Mr. Weiss would have been permitted to bring a case in, for example, Washington, D.C.?

A Based on what you're showing me, that looks like the bureaucratic process that I had mentioned earlier.

Q Okay. And the same, he could have brought a case in the Central District of California under this authority, correct?

A It appears so, yes.

²⁵ Sobocinski Interview at 61–62.

Q Okay. The last sentence—going back to the June 30th letter. The very last sentence of that third paragraph reads: Here, I have been assured that, if necessary after the above process, I would be granted Section 515 authority in the District of Columbia, the Central District of California, or any other district where charges could be brought in this matter.

Are you aware of any information that would contradict that statement?

A I'm not.

Q Do you believe that to be a true statement?

A I do.²⁶

The ASAC similarly stated that she believed Mr. Weiss would have no issues obtaining 515 authority if he requested it and agreed that it was “just a procedural step.”

Q And then it goes on: “If not, I may request Special Attorney status from the Attorney General pursuant to 28 U.S.C. Section 515. Here, I have been assured that, if necessary after the above process, I would be granted Section 515 authority in the District of Columbia, the Central District of California, or any other district where charges could be brought in this matter.” Do you see where it says that?

A Yes.

Q Do you have any information to dispute that Mr. Weiss has said that he has been assured that he would be granted Section 515 authority if he were to request it?

A I have—no.

Q And in fact, it was your understanding that there would be no issues with obtaining 515 authority, correct?

A Correct.

Q It was just a procedural step?

A Correct.²⁷

²⁶ Sobocinski Interview at 67–69.

²⁷ ASAC Interview at 115.

B. Sobocinski, the ASAC, and Weiss himself refuted Shapley’s claims that Weiss had been denied special counsel status.

Extreme Partisan Talking Point:

According to Gary Shapley, during an October 7, 2022, meeting, U.S. Attorney Weiss said that he had requested special counsel status and had been denied.

Reality:

U.S. Attorney Weiss directly refuted this statement in his July 10, 2023, letter to Senator Graham. Both Sobocinski and the ASAC have said that they do not believe he said this on October 7, that they would have remembered if he had said it, and that to their knowledge, Weiss never requested special counsel status prior to August 2023.

Shapley’s October 7 email claims that Weiss said that he sought special counsel status and that “Main DOJ” denied his request. U.S. Attorney Weiss denied this statement directly in his July 10 letter to Senate Judiciary Ranking Member Lindsey Graham, writing:

To clarify an apparent misperception and to avoid future confusion, I wish to make one point clear: in this case, I have not requested Special Counsel designation pursuant to 28 CFR § 600 et seq. Rather, I had discussions with Departmental officials regarding potential appointment under 28 U.S.C. § 515, which would have allowed me to file charges in a district outside my own without the partnership of the local U.S. Attorney. I was assured that I would be granted this authority if it proved necessary. And this assurance came months before the October 7, 2022, meeting referenced throughout the whistleblowers’ allegations. In this case, I’ve followed the process outlined in my June 30 letter and have never been denied the authority to bring charges in any jurisdiction.²⁸

Sobocinski confirmed that Mr. Weiss never said that he had been denied special counsel authority.

Q But it says: 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.” Do you see where it says that?

A I do.

Q Do you have any recollection of Mr. Weiss saying that?

A I don’t have a recollection with him saying that there or at any point in my communication with Mr. Weiss.

Q Okay. And you think that if he had said that, here or otherwise, you would have remembered that?

²⁸ Letter from David Weiss, United States Attorney for the District of Delaware, to Hon. Lindsey Graham, Ranking Member, S. Comm. on the Judiciary (Jul. 10, 2023) (on file with Committee).

A Yeah. That would have been a total 180 from all our previous conversations about authorities.²⁹

The ASAC stated that she did not recall any discussion of special counsel authority on October 7 and that she would recall it if it had been discussed.

Q You said you don't recall any discussion of special counsel authority. Correct?

A No, I do not.

Q And do you think that that's something you would recall if that had been discussed?

A Yes.³⁰

The ASAC also said that she had no reason to believe that Weiss was not being truthful in his statement that he had not requested special counsel status as of July 10, 2023, and that she had no reason to believe that he had in fact sought such status earlier than August 2023.

Q David Weiss told Congress that as of July 10th, 2023, he had not requested special counsel status.

Do you have any reason to believe that David Weiss was not being truthful when he told Congress that as of July 10th, 2023, he had not requested that status?

A I do not.

Q In fact, do you have any reason to believe that David Weiss requested special counsel status any earlier than August 2023?

A No.³¹

²⁹ Sobocinski Interview at 55–56.

³⁰ ASAC Interview at 51.

³¹ ASAC Interview at 116.

III. Routine procedures and typical challenges—not political interference--drove the investigative decision-making.

A. Witnesses explained that the decisions Republicans point to as evidence of political bias were made for non-political reasons.

Extreme Partisan Talking Point:

IRS and DOJ investigators and Prosecutors went easy on Hunter Biden because of political interference.

Reality:

Witness testimony, including from the IRS Whistleblowers Shapley and Ziegler, confirms that investigators and prosecutors made strategic decisions in the Hunter Biden case not based on any political interference.

In his original testimony before Ways and Means, Ziegler acknowledged that the prosecutors on the case had concerns about the likelihood of success at trial for certain of the potential charges being investigated. Mr. Ziegler testified that Mr. Weiss had concerns about the viability of charges for tax years 2014 and 2015, in part because of the potential for mitigating facts to impact any eventual jury verdict:

“David says to us—and this is from my recollection—that he agrees with us regarding the 2014, 2015 tax year. They’re great. Yes, we investigated it. We figured it out. But he has been getting concerns from DOJ Tax regarding the tax years because they viewed that, at a trial—that it could affect the later years. That the information regarding the subject’s brother’s death, the substance abuse—that all those things could play a huge role and cause the jury to say essentially—to have sympathy for him and to not convict on the charges.”³²

Ziegler went on to clarify that “DOJ Tax was of the mindset that the jury’s sympathy—related to the death of his brother and the drug use—would affect the later tax years” and that caused Weiss to weigh those concerns.³³ Even Shapley acknowledged that despite their investigative efforts, he did not have a problem with prosecutors’ decision not to charge tax year 2015 because of what he perceived to be “some issues with that that would preclude it being charged,” including that the tax owed amount was relatively low and that the fact pattern was “a little bit less straightforward.”³⁴

To be sure, Shapley and Ziegler disagreed vehemently with some of the decisions prosecutors made about the investigation, but the FBI and IRS officials including Shapley himself have all testified that disagreements among investigators and prosecutors are the norm, and not themselves evidence of any nefarious political influence. Mr. Shapley even admitted that

³² Ziegler Interview at 39.

³³ Ziegler Interview at 90–91.

³⁴ Shapley Interview at 93.

attorneys at the IRS's Office of Criminal Tax Counsel, which reviews agents' assessments of criminal tax cases, disagreed with him and his team "90 percent" of the time.³⁵

The FBI SSA undermined the notion that the disagreement between agents and prosecutors assigned to the Hunter Biden investigation was evidence of political interference. Rather, he acknowledged, it is routine for agents and DOJ prosecutors to disagree about investigative steps and charging decisions, and in his 20-year career, he witnessed this happen frequently:

Q My colleague asked you about the U.S. Attorney's Office for Delaware, with which you are familiar.

A Yes.

Q Are you familiar with U.S. Attorney Weiss?

A Yes, I know him.

Q Have you ever known U.S. Attorney Weiss to make prosecutorial decisions based upon political influence?

A No.

Q Have you ever known any of the AUSAs in the U.S. Attorney's Office for the Office of Delaware to let their prosecutorial decisions be guided by political interference?

A No.³⁶

* * *

Q So it's a common circumstance for FBI agents to have disagreements with prosecutors about investigative steps. Is that fair?

A Yes.³⁷

* * *

Q Could it be that the reason for what you were observing was, in fact, caution and deliberateness in making investigative decisions?

A Among others, yes.

Q Did you ever have instances where you had disagreements with the prosecutors, not just about investigative steps, but charging decisions?

A Absolutely.

³⁵ Committee on Oversight and Accountability, Hearing with IRS Whistleblowers About the Biden Criminal Investigation (July 19, 2023) (online at <https://oversight.house.gov/hearing/hearing-with-irs-whistleblowers-aboutthe-biden-criminal-investigation/>).

³⁶ SSA Interview at 58.

³⁷ SSA Interview at 50.

Q Were there instances where you thought there was – a charge should be – or a count should be charged because you felt the evidence was sufficient to warrant it and the prosecutors decided not to charge those counts?

A Absolutely.

Q Would you say that's common for special agents to have that kind of back and forth with prosecutors?

A Common, but not—what's the word I'm looking for? It's common, but, you know, in my experience, I had very good working relationships with my—the assistant United States attorneys I worked with. We may have disagreements. I certainly recognized my role versus their role, where they're the ones that have to argue in front of a judge and jury, which I don't have to. I have to—I may have to testify, but it's their case to argue. So ultimately, you know, we may have our differences, but it's usually a good relationship. We air out our differences, but, yeah, there are differences at times.³⁸

Sobocinski testified to the same routine disagreements.

Q And as a supervisor, have you experienced instances in which agents you manage have had disagreements with prosecutors about investigative steps?

A Yes.

Q And is that sometimes a challenging issue to manage as a supervisor?

A It is.

Q And why is that?

A Because—first of all, each circumstance is different, but this is something I regularly have dealt with in my career, if weekly, if not daily. And listen, we are putting time and effort into this. We think we've gotten to certain standards, but ultimately it's not our decision.

And so I have two-pronged approaches. The first is to support my investigative team, the employees that are working this case that are actually out there putting in times, putting their lives in danger to do this. And so part of that is to hear what they have to say and advocate on their behalf, as each leader in my office does. And then there are times when I will have conversations with U.S. attorneys on these cases. There are times when I have to communicate, you know, bad news to these teams even before the communication. I may agree with the prosecutors in certain circumstances. So all of these are varied, but, yeah, those can be tough conversations.

³⁸ SSA Interview at 51.

Q And they happen often?

A They happen often.

Q Okay. Ultimately, you said this earlier, it's up to the prosecutors to decide what charges to bring, correct?

A Correct.

Q And that's because prosecutors are best positioned to understand the relative strength of the evidence, right?

A Yes, as it relates to going to court. Absolutely.

Q Right. And prosecutors are best positioned to evaluate the weaknesses a case might have if it is tried before a jury, right?

A Yes.

Q Okay. And is it fair to say that sometimes prosecutors and agents—when an agent disagrees with a prosecutor, sometimes the prosecutor will sit down with the agent and will talk through and explain here's the strengths and weaknesses, here's why I'm unable to pursue this particular charge, right?

A Correct.

Q And some prosecutors don't do that, some just don't have that relationship, right?

A Correct.

Q Okay.

A Can I say that my—as I talk to my—

Q Yeah.

A —communication earlier, my hope and what I try to lead and what the U.S. attorneys and I talk about are that communication. And it's really important to have that at that level so that there's no misunderstanding about what's going on. That is something that I personally strive for and I hold my leaders responsible for that. But there are always personalities, and sometimes that just doesn't happen, but it does create problems when it doesn't.

* * *

Q Okay. And so there was a comment made earlier that Hunter Biden had received a, quote, boatload of money and he didn't pay taxes, I guess suggesting that that was an open/shut case. But in reality, tax cases can be complicated, right?

A Yes.

Q And, in fact, they're so complicated that when you're in the meetings, sometimes you don't necessarily track all of the discussion. Is that fair to say?

A That is more than fair, yes.

Q Okay. And so it's not necessarily a simple charge or don't charge; you know, there might be defenses to a case, for example?

A Yeah, to every case. Correct.

Q And so in tax cases in particular, there might have been deductions that were taken that have to be assessed whether they were legitimate or not, right?

A Once again, that's getting into the weeds of something that—in a general sense I understand that that is an issue.

Q Okay. I'm just—my point is just that these tax cases are not simple. There's a lot that there are defenses that defendants can raise, correct?

A Correct. And IRS and prosecutors and DOJ attorneys are trained in that, and they do it. But I want to bring that back full circle here, which is, you know, as I said, I'm not an absent leader when it comes to this. I was focused on bringing whatever charges this team thought we could bring with the evidence that we've accumulated to get to a resolution. That was the full focus of almost every phone—every conversation meeting I had with the U.S. Attorney's Office.

Q And the—on that note about—comment you just made about the evidence and gathering the evidence. Evidence in any case, and it might – it's fact specific, it could be hard to prove, it could be hard to use to convince a jury, right?

A Correct. Absolutely.

Q And is it fair to say that prosecutors generally only bring cases where they're reasonably confident that they can obtain a conviction?

A I find that to be true.

Q Prosecutors like to win, right?

A Yes, they do.³⁹

As did the FBI ASAC, who testified that disagreements were fairly common and concluded that there was nothing remarkable about the disagreements between investigators and prosecutors in this case:

³⁹ Sobocinski Interview 79–82.

- Q [A]s a supervisor, have you experienced instances in which the agents that you supervise have had disagreements with prosecutors about particular investigative steps?
- A Yes.
- Q Have you also had disagreements with other law enforcement entities, meaning either State and local law enforcement or maybe DHS, Homeland Investigative Services, or the IRS, where you were jointly working an investigation and your investigators—or investigators that you oversaw disagreed with the investigators from another law enforcement entity?
- A Yes.
- Q Okay. Is it fair to say that it's fairly common for FBI agents to have disagreements with prosecutors and other law enforcement entities about investigative steps?
- A I think it's—yes, it's fairly common, definitely not unusual for there to be disagreements and differences of opinions.
- Q And why do you think that is?
- A I believe that's based on, first and foremost, people being different, you know, from the job, as well as having different experiences, investigative experiences, prosecuting experiences. All of those things are going to come into play, their understanding of a matter versus, you know, what someone else's understanding is. All of those things, I believe, come into play as to why everyone is not going to be in lockstep.
- Q Have you had instances where you thought a prosecutor should bring a particular charge and the prosecutor disagreed with that assessment?
- A Yes.
- Q It's ultimately the prosecutors who make the decision in that case. Right?
- A Yes.
- Q And that's because prosecutors are best positioned to understand the relative strength of the evidence and how it might appear to a jury. Is that fair to say?
- A I definitely think we have different specific roles when it comes to that, and so, yes.
- Q Okay. And prosecutors are the ones who actually have to argue the case in court. Right?
- A That is correct.
- Q And they're the ones that have to present it to the grand jury to get an indictment. Correct?

A Yes.

Q And they might be in the best position to evaluate the strengths and weaknesses of a witness and how a witness might appear before a jury. Correct?

A Yes.

* * *

Q Have you ever had cases or supervised cases where agents take it kind of personally when a prosecutor disagrees with them about charges, especially if they have spent a long time building up a case and the prosecutor declines to bring charges in that case?

A Yes.

Q Can you describe those situations broadly?

A Just generally speaking. And, you know, over the years of experience, I've seen where—because people are invested in seeing an investigation come to a conclusion. And, again, as we talked about having different experiences and opinions, there have been, I would say, occasions that I've seen people I think take things personally and have to be, you know, reminded that we have a job and sometimes what your ultimate opinion is, is not necessarily how things are going to turn out. Because, again, you've investigated a case. You've brought the information to the prosecutor, and the prosecutor has now that responsibility to make that determination.

Q And would you agree that prosecutors generally only bring cases when they have a reasonable chance of securing a conviction in that case?

A Yes.

Q In other words, prosecutors like to win. Correct?

A Generally, yes, I would think so.

Q Okay. So, with this discussion of the ways that investigators and prosecutors maybe don't always see eye to eye and prosecutors ultimately have the ultimate charging authority in a case, getting back to the comment earlier about, as in many investigations, there were disagreements between investigators and prosecutors, in this case, was there anything remarkable in this case as opposed to other cases that you've worked on?

A No, not in my opinion.⁴⁰

⁴⁰ ASAC Interview 63–66.

B. There is no evidence that FBI provided the Secret Service with advance notice of a planned voluntary interview of Hunter Biden for political reasons.

Extreme Partisan Talking Point:

FBI and IRS investigators wanted to surprise Hunter Biden by showing up at his door and seeking a voluntary interview on December 8, 2020. FBI and/or DOJ leadership “tipped off” the Secret Service and the transition team, which led Hunter Biden to decline to participate in the interview.¹

Reality: Multiple witnesses have testified that:

- 1. Giving the Secret Service advance notice is standard procedure when armed agents intend to approach any protected person—this is to ensure the safety of all involved.**
- 2. The proposed interview was a voluntary interview which Hunter Biden, an attorney represented by other attorneys, would have almost certainly declined.**

1. Hunter Biden was a protected person.

Baltimore SAC Sobocinski explained:

Q Would you agree that if somebody had tipped off the transition team, the political transition team, that that would have politicized the investigation?

A I can’t comment about specifically this case. But you haven’t asked, but I’ll say it. I was a Secret Service agent. And it would have been expected for me, and I would expect an investigative entity if they were going to want to interview a protectee of mine, to come directly to me.

And so I don’t know what that process would look like during that moment in time to get to that protectee. I just don’t know what that would look like.

Q Okay.

A But it would definitely be of concern to me if I was a Secret Service agent and somebody’s knocking on my door an armed individual claiming to be somebody is knocking on my door. Yeah, that would have been a concern for me.⁴¹

Sobocinski later explained that the Secret Service would have been given advance notice for the safety of all involved:

Q [T]here was conversation earlier about trying to surprise a witness, to conducting interviews, whether it might be advantageous to surprise a witness. And I think you had said that you had as a former Secret Service agent yourself, there are certainly certain particular considerations to be taken into account. Do you recall that?

⁴¹ Sobocinski Interview at 48–49.

A I do.

Q And can you explain a little bit further what those considerations may be?

A So it's been over 25 years, but, you know, as a Secret Service agent, you know, you're there to protect individuals as designated by law. And so that is a full encompassing protection of them. Depending on the protectee, you prohibit people from coming in contact with them or restrict that or protect them. And so as a Secret Service agent, anybody knocking on their door is somebody that they're interested in, and somebody interested who is obviously carrying a gun and potentially in an adversarial issue is something that they would want to know about in advance.

Q And is it fair to say that that's for the safety of everybody involved?

A Correct.

Q Because if somebody who's carrying a gun shows up at the home of a protectee, the instinct of the Secret Service officer would be to protect the protectee, correct?

A Correct.⁴²

The FBI Supervisory Special Agent assigned to this investigation likewise explained that failing to provide such advance notice could create a risk of "blue on blue" violence:

I personally was not going to go to armed Secret Service agents and demand that I interview their protectee for two reasons. Number one, I did not believe they would let me in, which would frustrate us. And number two, they would cause us to wait and seek the permission of, most likely, their headquarters, because those agents in the field are doing their job, which is to protect their assigned protectee. So it made common sense to me, as we would deconflict other potentially similar circumstances, that if we could make a notification in advance to speed the process so that if there was an opportunity to approach, that those agents that were, you know, at the street level protecting their protectee knew that we were coming and knew why we were coming.

You know, as somebody who has to provide protection, having an IRS supervisor and an FBI supervisor also armed coming to a scene would cause confusion. And at the worst case, you know, as we talk about law enforcement, it could be a blue on blue matter. They don't know who we are. They don't know if our credentials are faked. So, you know, those are things we're thinking about.⁴³

⁴² Sobocinski Interview at 76–77.

⁴³ SSA Interview at 45; Memorandum from Democratic Staff to Democratic Members of the Committee on Oversight and Accountability, *Transcribed Interview of Former FBI Supervisory Special Agent* (Aug. 16, 2023) (online at https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2023-08-16.Democratic%20Member%20Memorandum%20re%20FBI%20SSA%20Transcript_0.pdf).

2. Subjects regularly decline interviews—and attorneys are more likely than others to do so.

Both Sobocinski and the FBI Supervisory Special Agent assigned to this investigation confirmed that attorneys are less likely to agree to a voluntary interview than other witnesses.

Sobocinski said that he “found it to be true” that both attorneys and individuals represented by attorneys are less likely than others to agree to voluntary interviews:

Q Okay. And it’s also the case again, you talked about having—over your course of your 25 years, you’ve been involved in many interviews, you’ve supervised agents who have done many interviews, correct?

A Correct.

Q Is it fair to say that each one of those interviews is different?

A Yes, it is.

Q And the facts in each one of those interviews is different?

A Yes.

Q Okay. And so there’s a question about taking a witness, quote/unquote, by surprise. That could be a tactic in some cases, and in some cases it might be ill advised. Is that fair to say?

A Correct.

Q So, for example, in the case where an individual has security?

A Correct.

Q Okay. Is it also the case that ... even when an FBI agent takes a witness by surprise, that witness can still decline to talk to them, correct?

A Correct.

Q And if somebody is an attorney who has an understanding of the law, they might be more inclined to decline to have that voluntary conversation?

A I have found that to be true.

Q And if somebody is represented by counsel, they might also decline to take part in a voluntary interview without counsel present?

A Corre—yeah, I find that to be true as well.

Q Okay. And so, again, these are all fact specific situations, but the idea of taking somebody by surprise doesn’t necessarily mean that, even if that was the plan, that that would have played out anyways, right?

A Yeah. You never know how those are going to end.⁴⁴

The FBI Supervisory Special Agent also confirmed that subjects, and in particular attorneys, frequently declined to be interviewed.

Q Did it occur during your career that subjects would decline your request to be interviewed?

A Sure. Sure.

Q How common was that?

A Common. I mean, I don't know if I could assign a percentage to it, but I felt I was more successful than not in engaging people in conducting an interview. But, yeah, some would just outright decline or certainly invoke their right to counsel and defer an interview at the time we were seeking it.

Q Could you give me a percentage on that? Ballpark is fine.

A Less than half would -- more than half I would be able to maybe do the interview.

Q ... At the time you sought to approach Mr. Biden in December of 2020, were you aware that he was an attorney?

A Yes.

Q Did you have any expectation as to whether Mr. Biden being an attorney would be less likely to agree to your interview request?

A In my experience, an attorney would be less likely to agree to succumb to an interview.⁴⁵

⁴⁴ Sobocinski Interview at 77–78.

⁴⁵ SSA Interview at 40-41; Memorandum from Democratic Staff to Democratic Members of the Committee on Oversight and Accountability, *Transcribed Interview of Former FBI Supervisory Special Agent* (Aug. 16, 2023) (online at https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2023-08-16.Democratic%20Member%20Memorandum%20re%20FBI%20SSA%20Transcript_0.pdf).

C. There is no evidence that the Delaware U.S. Attorney’s Office or anyone else slow-walked a search warrant for property owned by Hunter Biden.

Extreme Partisan Talking Point:

The FBI and DOJ slow-walked efforts to obtain a warrant to search certain property owned by Hunter Biden.

Reality:

The property in question was owned by Hunter Biden, who is an attorney. DOJ, IRS, and FBI policies all require investigators to consider pursuing less intrusive means than search warrants in order to obtain property from attorneys. When a search warrant is executed, each agency requires agents to take particular precautionary steps, not in order to slow down the search process, but rather to protect the integrity of the prosecution and information that may be protected by attorney-client privilege.

Shapley alleged that when investigators determined that potential evidence was contained in a storage unit rented by Hunter Biden, the Assistant United States Attorney assigned to this matter called Hunter Biden’s defense attorney to ask for access to the material rather than permitting the team to execute a search warrant.

In fact, longstanding DOJ policy states that while “[t]here are occasions when effective law enforcement may require the issuance of a search warrant for the premises of an attorney who is a subject of an investigation, and who also is or may be engaged in the practice of law on behalf of clients,” particular care must be taken prior to executing such a search “[b]ecause of the potential effects of this type of search on legitimate attorney-client relationships and because of the possibility that, during such a search, the government may encounter material protected by a legitimate claim of privilege.”⁴⁶ Accordingly, prosecutors are required to consider alternatives to search warrants, including seeking production of materials through a subpoena or voluntary cooperation.⁴⁷

The IRS policy echoes this requirement and additionally cautions that “[i]t should be expected that due to the sensitivity of these professions, this additional scrutiny may require a longer period of review.”⁴⁸

Sobocinski explained how these requirements play out in real life:

Q You would agree in general that property owned by an attorney, for example, there are additional factors to consider beyond just probable cause when seeking a search warrant?

A In a general sense, yes.

⁴⁶ Justice Manual § 9-13.420 – Searches of Premises of Subject Attorneys, UNITED STATES DEPARTMENT OF JUSTICE (accessed Sept. 17, 2023) (online at <https://www.justice.gov/jm/jm-9-13000-obtaining-evidence#9-13.420>).

⁴⁷ *Id.*; See also Justice Department Criminal Tax Manual 1.05[3][b], UNITED STATES DEPARTMENT OF JUSTICE (accessed Sept. 17, 2023) (online at <https://www.justice.gov/tax/file/826386/download>).

⁴⁸ Internal Revenue Manual Part 9 §§ 9.4.9.3.2.4.1 and 9.4.9.3.3.3.

Q In a general sense. And the Tax Division in particular has to consider less intrusive means?

A Outlined in these memos—or in these manuals, yes.

Q Okay. And that's because searches of attorneys actually present particular challenges, right?

A Correct.

Q For example, it might involve coming into contact with material that's protected by attorney client privilege, right?

A Correct.

Q And can you explain briefly what your understanding is of attorney client privilege[d] material?

A Yeah. It's protected information that is restricted—you know, that is protected. It is only the attorney and his client and then other people can get—can be included in that.

But from an investigative standpoint we—there may be needs to get that type of information. That information may be included in a larger gathering of a bulk of information. And so there are processes that we apply to preserve that protection when we obtain it.

Q And is it problematic if an agent working on a case is exposed to material that's protected by attorney client privilege?

A Yeah. From an FBI perspective, if an ongoing case and he was exposed to it, yes, there would be issues with that, administrative issues with that.

Q Okay. That ... agent could potentially be removed from the investigation. Is that right?

A I think that's one logical step.

Q Okay. And if the prosecutor on a case is inadvertently exposed to attorney client protected information, that's also potentially problematic, right?

A I would think so.

Q It's possible that that attorney—that prosecutor might be removed from the case, correct?

A Yeah, I think so.

Q And it's possible that, I guess worst case scenario, that a case actually could be dismissed or potentially charges not brought because of that, right?

A Yeah, I believe so.

Q Okay. So you mentioned that there are specific steps that you take to prevent against the risk of exposure to attorney client privilege material. And is it fair to say that the FBI takes this pretty seriously?

A Yes.

Q So, for one example, if even if the first option is likely to pursue a less intrusive means in a search warrant, correct?

A Correct.

Q So, for example, even if a prosecutor has probable cause to seek a search warrant, the prosecutor might instead go with a subpoena or just ask the attorney to produce the information so that presumably that attorney will know it's privileged and can remove it from the production?

A Yes.

Q And even—and if the prosecutor determines that a search warrant is necessary, the FBI and the Department of Justice then might create a filter team, right?

A Correct.

Q And what's your understanding of what a filter team is?

A So depending on what the process was to get the documents, it would come to a group of attorneys and/or FBI employees, agents, and others that are separated from the case team.

And so they will get those—the information. They obviously can review the—whatever the means of what we're looking for, the affidavit, the items of interest. But then they also have a general understanding of what would look like attorney client material.

They would work through it. So essentially then you have two bulk two groupings of items. One is agreed that it is not attorney client privilege, and then the second item is then potential. And then there's and I don't know what that next review is but then there is yet another review or two to confirm to agree.

I think it's then passed to potentially opposing counsel. They talk about it. And then in the times in an ongoing trial I think this can come up again and those determinations can be relooked at.

Q Can this process sometimes take some time?

A Yes.

Q And sometimes it can take a lot of time?

A Yes.

- Q Because I think you just talked through about five or six different steps, correct?
- A Correct.
- Q And the goal of this process is to ensure that any privileged information is sequestered, correct?
- A Correct.
- Q This is a pretty typical process when a search warrant is executed for property belonging to an attorney, correct?
- A Yes.
- Q There's nothing unusual about it?
- A No.
- Q And the goal is not to slow down the case, right?
- A Yeah. This is a mandated process that we have to go through.
- Q Okay. The goal, as I said, is to protect privileged information?
- A Correct.⁴⁹

The former FBI SSA also explained that, in determining whether to seek a warrant in cases involving political candidates, attorneys, or election year sensitivities, it is DOJ policy that prosecutors must consider additional factors beyond whether probable cause exists. Mr. Shapley and Mr. Ziegler, criticized Assistant U.S. Attorney Lesley Wolf for her decision not to seek warrants in two separate instances—specifically, her October 2020 decision not to seek a warrant to search the guest house at the Bidens' Delaware residence where Hunter Biden stayed for a time, and her December 2020 decision not to seek a warrant for a storage unit supposedly containing records from Hunter Biden's law firm, Owasco. However, as the former FBI SSA explained, these decisions, made during the Trump Administration, reflected longstanding DOJ policy with regard to both search warrants involving election year sensitivities and those involving the property of lawyers, public officials, or political candidates:

- Q I wanted to ask you a little bit about – you've done sensitive investigations as part of the public integrity section?
- A Public corruption squad, yes.
- Q Public corruption. My colleague was asking you about some of those, and I wanted to ask you specifically about search warrants.
- A Okay.

⁴⁹ Sobocinski Interview at 138-141.

Q So when you're presenting an application for a search warrant to a magistrate judge, you obviously need to establish probable cause to get the search warrant.

A Correct.

Q But particularly in sensitive cases, isn't it true that there are additional factors that prosecutors are supposed to consider before they make an application for a – such a search warrant beyond whether or not there is probable cause?

A Well, I think –

Q Let me maybe ask you a more specific question.

A Sure.

* * *

Q So are you aware of a DOJ policy, for example, that applies to search warrants at property that belongs to an attorney that instructs prosecutors that in order to avoid impinging on valid attorney-client relationships, prosecutors are expected to take the least intrusive approach consistent with vigorous and effective law enforcement when evidence is sought from an attorney engaged in the practice of law?

A I don't know it word for word, but I understand that in practice.

Q And so prosecutors are instructed by the Justice Department as a matter of policy that they should consider less intrusive means, such as a subpoena, instead of executing a search warrant. Is that fair?

A That is fair.

Q And so that is an additional consideration beyond whether or not there is probable cause to execute a search warrant. Is that correct?

A Yes, assuming you had probable cause to even consider conducting a search. Yes, absolutely.

Q So it would be proper, and by that I mean within DOJ policy, for an attorney to say to an agent, yes, there is probable cause to execute this search warrant, but we are not going to do it because there are less obtrusive means of obtaining the evidence?

A That's reasonable, yes.

Q So we discussed that in the context of search warrants at premises that belong to an attorney. Are you familiar with similar policies applying to property belonging to a public official or a political candidate?

A Early in my career, I became somewhat familiar with that with a search on Capitol Hill with Congressman Jefferson’s office. So, yes, I’m somewhat familiar that –

* * *

Q Are you aware generally of the Department of Justice policy that – with regard to election year sensitivities that cautions agents and prosecutors not to take any actions that might give the impression of – or that might affect an election?

A Yes.

Q So there are additional sensitivities during an election year that apply especially when they involve political figures or those close to political figures. Is that right?

A Yes.⁵⁰

D. Disagreements and personality conflicts between investigators and prosecutors assigned to the matter were routine.

Extreme Partisan Talking Point:

IRS investigator Shapley’s criticisms of the investigation are well-founded and unbiased.

Reality:

Shapley’s supervisor at IRS did not share his concern of political bias in the investigation and acknowledged that Shapley had more of a tendency to inflate conflict than others.

When describing Mr. Shapley as an employee, his supervisor Michael Batdorf, IRS Criminal Investigation Director of Field Operations, stated that “Gary has a tendency to go to level like grade 7 alarm fire on everything.”

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

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

So were they frustrated? Yeah, they were frustrated throughout the entire investigation, some parts of it. So I’m not sure why these would be surprisingly

⁵⁰ SSA Interview at 53–57; Memorandum from Democratic Staff to Democratic Members of the Committee on Oversight and Accountability, *Transcribed Interview of Former FBI Supervisory Special Agent* (Aug. 16, 2023) (online at https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2023-08-16.Democratic%20Member%20Memorandum%20re%20FBI%20SSA%20Transcript_0.pdf).

contentious. I mean, my phone call with Darrell after this, I mean, he—if you look at his email and why his talk with me, I mean, he disarmed some of.

Gary has a tendency to go to level like grade 7 five-alarm alarm fire on everything. Darrell, being a senior leader with experience, kind of, “Hey”—if Darrell would have wrote, “Oh, my God, this happened, we got to talk immediately,” okay. But him and I talked and we talked through some of this, and there was a statement that he didn’t even remember being made, and I said, “Okay, let’s work through this and figure out what we need to do.”

Q Which statement was that?

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

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

A Correct.

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

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

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

And we’re working through those issues. So this isn’t the first email I got where everything is on fire and we need to figure it out. So Darrell has done a good job of being that barrier between the two, and that was more the conversation, not necessarily the specifics of why it was contentious.⁵¹

Mr. Shapley routinely circumvented his direct supervisor, and instead went directly to Mr. Batdorf on issues. Below, Mr. Batdorf describes how many people he oversees and how only one employee, Mr. Shapley, ever broke the chain of command.

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

⁵¹ House Committee on Ways and Means Interview with Michael Batdorf. IRS Criminal Investigation Director of Field Operations, (Sept. 12, 2023) (on file with Committee on Ways and Means) (hereinafter “Batdorf Interview”).at 40–42.

A There are—I mean, there are roughly 27-, 2,800 special agents nationwide. Add 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.

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

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

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

A When you say regular conversation –

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

A One.

Q Who is that one SSA?

A Supervisory Special Agent Gary Shapley.⁵²

Mr. Batdorf described Mr. Shapley and Mr. Ziegler as “one and the same.”

Q Okay. What about Mr. Ziegler?

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

Could we have put Mr. Ziegler in a new group with a new SSA? Potentially, yes. But, having an objective set of eyes—complete objective set of eyes on the case where the new investigative team came in and the case is good, the evidence is good, that was something that we just said, Let’s—we removed the cooperating revenue agent that was doing our tax calculations. We just got an entire new investigative team in there.⁵³

⁵² Batdorf Interview at 47–48.

⁵³ Batdorf Interview at 77.

IV. Witness testimony debunks claims of retaliation, establishes Republicans' investigations have harmed law enforcement officials and public servants.

A. There is no evidence of retaliation by the DOJ or IRS against the whistleblowers.

Extreme Partisan Talking Point:

Democrats inside of the DOJ and IRS retaliated against the whistleblowers.

Reality:

There is no evidence that DOJ or IRS retaliated against the whistleblowers. The whistleblowers' supervisors removed both for cause prior to either whistleblower testifying before Congress.

Republicans allege that the DOJ and IRS removed Mr. Shapley and Mr. Ziegler from the investigation as retaliation for being whistleblowers to Congress. In September of 2023, Mr. Michael Batdorf, Director of Field Operations of the Southern Area for the IRS as well as Mr. Darrell Waldon, then Special Agent in Charge of the Washington, D.C. field office for the IRS, appeared for a transcribed interview before the House Ways and Means Committee. Both Mr. Batdorf and Mr. Waldon were Mr. Shapley and Mr. Ziegler's supervisors while Mr. Shapley and Mr. Ziegler were on the investigation team.

Mr. Batdorf, as shown below, did not believe that Weiss retaliated against Mr. Shapley or Mr. Ziegler:

Q Do you think Weiss recommended Shapley and Ziegler being removed as retaliation because he was mad that they blew the whistle?

A Am I able to answer that question?

Counsel You can answer yes or no.

A Do I believe Mr. Weiss in retaliation?

Q Yes

A No, I do not.⁵⁴

Nor did Mr. Batdorf believe that the IRS retaliated against the whistleblowers:

Mr. Batdorf: There was a couple of—clobbering and retaliation. I just want to go on the record. In my 22.5 years, I have never made a decision or restricted anyone out of spite, out of retaliation, out of anything. That is not who I am. I have dedicated my life to IRS CI. I mean, I took this job at 23 years old. This is all my adult life. I would not do that, put my career in jeopardy or this agency in jeopardy. So I wanted to clarify that.

⁵⁴ Batdorf Interview at 104–105.

Counsel: Nobody is suggesting you were.

Mr. Batdorf: Okay.

Counsel: Nobody is suggesting you were. We're suggesting David Weiss is, right? And, you know, just our—you know, our concern is that, you know, he—David Weiss is retaliating against Mr. Shapley and Mr. Ziegler, and, you know, we're just asking about, you know, who is looking out for these guys.

Mr. Batdorf: That—again, I'll just—I mean, I don't want to speak for David Weiss. It was not my impression that he was retaliating. It was my impression that Darrell and I were doing everything we could to move the case forward. And maybe I took some of the authority away from Darrell Waldon by allowing Gary Shapley to come directly to me, and maybe that cut that out.⁵⁵

As stated above, Mr. Waldon who was Mr. Shapley's then immediate supervisor, also appeared for a transcribed interview. Mr. Waldon recommended that Mr. Shapley be removed from the investigation due to communication issues and unsubstantiated claims.

“Yeah. So before I left the special agent in charge position, in February, I recommended to Mr. Batdorf that Gary Shapley be removed as the SSA from the Hunter Biden investigation, primarily due to what I perceived to be unsubstantiated allegations about motive, intent, bias. And, again, my goal was to protect the integrity of the investigation and figure out a way forward. When I left, Mr. Shapley was still on the case, and as I understand it, was on it until May. So in my mind, my recommendation was just that, a recommendation.”⁵⁶

Mr. Waldon also discussed the communication breakdown between Mr. Wiess and Mr. Shapley.

Q Did Mr. Weiss specifically say to you that he didn't want to meet with Mr. Shapley and/or Mr. Ziegler, or did he just simply say, assert affirmatively that he wanted you to be the primary contact from here on out?

A I recall more vividly him stating he was not going to be responding to Mr. Shapley's emails anymore, and at some point, he would be talking to me.

Q Did he offer any reasons why he would no longer be responding to Mr. Shapley's emails?

Counsel Of course in answering the question, Agent Waldon, please refrain from characterizing any evidence in the case or strategic discussions.

⁵⁵ Batdorf Interview at 112–113.

⁵⁶ Waldon Interview at 107.

A I believe that was around the time there was a conflict around discovery and just getting discovery.

* * *

Q Understood—understanding that you’ve offered some clarification on the point of the investigative team and changing the investigative team. As a general matter, why would someone in your position—what are examples of reasons that someone in your position or the director of field operations would reassign either a member of an investigative team or the entirety of investigative team? Can you give some examples of reasons why that might occur?

A I could speak to this particular instance. The U.S. Attorney’s Office was no longer working or talking with Mr. Shapley. And there was no immediate—I didn’t think that that would be resolved quickly. And in order to move the investigation forward, I recommended that, you know, he be removed so that we could continue to push the investigation forward.

Q So to sort of generalize, there was a breakdown in communication between the investigative team and the Justice Department, essentially, and so from your perspective, a personnel shift was needed?

A From my perspective, a personnel shift was needed because there was no longer any communication going on between the team.⁵⁷

Mr. Waldon also informed the Committee that the DOJ does not have the authority to remove an IRS agent from an investigation.

Q So what would be—with regard to partnerships with the Department of Justice, would --Does DOJ have the authority to tell you who to assign to a specific investigation?

A I think, from my perspective, DOJ would communicate what their preference is, and then we would deliberate on that conversation.

Q But, ultimately, the decision would rest within the IRS for the duties and responsibilities of IRS agents?

A As far as I know, yes.⁵⁸

The FBI SSA informed the committee that it would be reasonable for management to remove agents from an investigative team in order to protect the investigation.

Q Generally speaking, do you think it could be problematic for agents’ views in any ongoing investigation to be publicly reported or released to news sources?

A Yes.

⁵⁷ Waldon Interview at 109–111.

⁵⁸ Waldon Interview at 99.

Q And it could create problems potentially for the integrity of an investigation?

A Yes.

* * *

Q Would it be reasonable for management to consider removing the entire investigative team in order to protect the integrity of the investigation?

A I think that would be – dependent upon the circumstances, I think that is one reasonable decision that could be made. You know, whether it’s – again, if there’s other factors, if you think it’s more likely one versus another, whether or not you really think the leak is coming from your team or not. You know, I don’t trust that people misrepresent that they say they’re close to the investigation when, in fact, they’re not, or maybe they’re in a different role, whether it’s coming from some other role or agency. You know, so I would – I would – you know, I’d want to protect the integrity of the investigation. I think that would be reasonable at times, but I would not want to make sweeping changes at the mere allegation that is not substantiated, you know, if that makes sense.

Q But you agree that there are circumstances in which concern about a leak might justify management removing an entire investigative team to protect the integrity of an ongoing investigation?

A Yes.⁵⁹

B. Republicans are weaponizing the investigation against law enforcement and public servants.

Extreme Partisan Talking Point:

Democrats have weaponized the DOJ and IRS.

Reality:

Republicans’ investigations have weaponized Congress’s power to serve political goals and hurt dedicated law enforcement officers and public servants.

In June 2023, Jennifer Moore, then-FBI Executive Assistant Director for the Human Resources Division, appeared for a transcribed interview before the Judiciary committee. She told the committee that from October 2022 to April 2023, FBI employees had faced more threats than they had in the entire previous year, and added, “We have stood up an entire threat unit to address threats that the FBI employees [and] facilities are receiving. It is unprecedented. It’s a number we’ve never had before.”⁶⁰ Asked how big the unit was, Moore responded: “It’s going to

⁵⁹ SSA Interview at 62–63.

⁶⁰ Interview with Jennifer Moore at 202-203 (Jun. 2, 2023) (on file with Committee) (hereinafter “Moore Interview”).

be about 10 people when it's finished. We just we are still in the process of staffing it right now. But their sole mission on a daily basis is threats to FBI employees at facilities.”⁶¹

While many of those threats targeted employees involved in the various investigations into former President Trump, the individuals involved in the investigation into Hunter Biden have also been targets, in part because Congressional Republicans have focused on these employees and made their names public. DOJ and FBI have had to take specific measures to protect these employees, including asking the U.S. Marshals service to protect individuals at the Delaware U.S. Attorney's Office.⁶²

Sobocinski explained that he had significant concerns about how the case was affecting his employees.

I now have FBI employees that names are out there. I have FBI employees and former FBI retired agents who've served for 20 plus years whose parents are getting phone calls, whose photos with their girlfriends, who their children who are being followed. That is not something that we were prepared for, and I was concerned about having that continue or expand to other one of my employees.⁶³

He later elaborated:

[Y]ou know, I joined the FBI 25 years ago. I joined for a reason: to protect the American people and uphold the Constitution. I've been to war. My family's been in bad places. My kids have been evacuated from war zones or quasi war zones. I've been in some bad things. ... I've accepted that. No, no, this is important to me. And so when you ask what I remember, what I not, I am solely focused on two things, and they're not mutually exclusive. The first thing is, like every investigation, I want to get to a resolution in a fair, apolitical way. The second thing, and it's becoming more important and more relevant, is keeping my folks safe. And the part that I never expected is keeping their families safe. So that, for me, is becoming more and more of a job that I have to do and take away from what I was—what I signed up to do, which was investigate and do those things. So when you talk about potential frustrations with communication, I am personally frustrated with anything that places my employees and their families in enhanced danger. Our children, their children didn't sign up for this.⁶⁴

⁶¹ Moore Interview at 203.

⁶² ASAC Interview at 125.

⁶³ Sobocinski Interview at 108.

⁶⁴ Sobocinski Interview at 109.