

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Committee on the Judiciary of the United States House of Representatives (Judiciary Committee or Committee) brings this civil action against Defendants Mark Daly and Jack Morgan to enforce duly authorized, issued, and served Congressional subpoenas (Subpoenas) to Daly and Morgan, respectively, which are attached as Exhibits A and B.¹ House

¹ The Committee issued subpoenas to both Daly and Morgan on two different occasions. The first was in September 2023, and the second was in February 2024. Exhibits A and B are the subpoenas the Committee issued in February 2024. For convenience, we use Subpoena when referring to a single subpoena issued on either date, and we use Subpoenas when discussing the pair of subpoenas issued on either date.

Resolution 917, which the full United States House of Representatives (House) adopted, expressly authorized this lawsuit. The Judiciary Committee alleges as follows:

INTRODUCTION

1. The Judiciary Committee is investigating whether the U.S. Department of Justice (DOJ) is committed to impartial justice in light of evidence that it has given Robert Hunter Biden (Hunter Biden), President Joseph Biden's son, favorable treatment. For years, the Internal Revenue Service (IRS) and DOJ have been investigating Hunter Biden for tax crimes. In the spring of 2023, two IRS whistleblowers who were intimately involved in that investigation came forward and exposed several ways that DOJ had deviated from its standard processes during the Hunter Biden investigation.² A few months later, more irregularities spilled into public view when Hunter Biden stood inside a federal courtroom in Delaware ready to admit publicly and under oath that he had committed federal misdemeanor tax crimes. During that hearing, a DOJ prosecutor admitted that DOJ had offered Hunter Biden a diversion agreement that was unlike any other he was aware of: an agreement that, in the presiding judge's words, would have given Hunter Biden broad immunity over "crimes that have nothing to do with the case or the charges being diverted."³ The agreement ultimately fell apart, and the prosecution is ongoing.

2. The Committee is thus investigating whether DOJ, which is supervised by the President, Hunter Biden's father, has given Hunter Biden special treatment. Through its

² Transcript of Interview of Gary Shapley, Supervisory Special Agent, IRS (May 26, 2023) (Shapley Interview) (attached as Ex. C); Transcript of Interview of Joseph Ziegler, Special Agent, IRS (June 1, 2023) (Ziegler Interview) (attached as Ex. D); *Hearing with IRS Whistleblowers About the Biden Criminal Investigation: Before the H. Comm. on Oversight and Accountability*, 118th Cong. (July 19, 2023), <https://perma.cc/NXG7-3BGU>.

³ Transcript of Hearing at 46, *United States v. Biden*, No. 1:23-cr-61-MN (D. Del. July 26, 2023), ECF No. 16 (Transcript of July 26, 2023 Hearing) (attached as Ex. E).

investigation, the Committee seeks to develop legislative reforms, such as reforming DOJ's Tax Division and the Tax Division's interactions with the IRS. The Committee is also considering whether to modify the federal statute that permits DOJ to appoint a special counsel, including when a conflict of interest may affect an investigation.

3. Additionally, the Committee is investigating whether President Biden has attempted to obstruct or influence in any way the investigation into his son. President Biden has already made numerous public statements about subject matter relevant to DOJ's pending investigation, raising the concern that he is influencing, or attempting to influence, the course of DOJ's investigation. In light of these statements and the control that a president exercises over DOJ, the Committee's investigation is part of an impeachment inquiry that is assessing, among other things, whether President Biden has abused his power as President to impede, obstruct, or otherwise influence investigations into his son.

4. The Committee cannot, however, do these things in the dark. To craft effective legislative reforms and to determine whether President Biden has committed an impeachable offense, it must have all the facts. And to uncover all the facts, the Committee requires testimony from both Mark Daly and Jack Morgan, two current or former Tax Division attorneys who have firsthand knowledge of the irregularities in DOJ's investigation that appear to have benefited Hunter Biden. For example, as members of the team that recommended what charges to bring against Hunter Biden, Daly and Morgan initially agreed that DOJ should file charges for tax crimes related to 2014 and 2015. But months later, they gave a key presentation and argued just the opposite—that Hunter Biden should *not* be charged for tax crimes related to those years.

DOJ ultimately allowed the statute of limitations for those charges to lapse. Daly and Morgan are thus crucial to the Committee's investigation.⁴

5. After DOJ refused to make Daly and Morgan available for voluntary interviews with the Committee, the Committee subpoenaed them to appear for depositions. But they defied the Subpoenas because their employer, DOJ, directed them not to appear. By refusing to appear, Daly and Morgan are frustrating Congress's ability to conduct oversight and investigate Executive Branch corruption—a critical part of Congress's Article I powers. Because this investigation is also part of an impeachment inquiry, Daly and Morgan are likewise frustrating the Committee's ability to determine whether President Biden has committed an impeachable offense. They are thus preventing the House from discharging its solemn power of impeachment, a power the Constitution vests exclusively in the House.

6. Daly, Morgan, and DOJ have not disputed that the Committee's investigation is lawful. Nor have they disputed that Congress has the authority to pass legislation addressing the topic of the Committee's investigation, or that it is entitled, as part of an impeachment inquiry, to investigate whether the President has abused his powers. Indeed, multiple other DOJ officials have appeared before the Committee as part of its inquiry. Rather, DOJ has directed Daly and Morgan to defy the Committee's Subpoenas only because, under House Rules, agency counsel (a lawyer who represents the Executive Branch's interests, not Daly's or Morgan's) cannot attend. Despite the Constitution's clear command that each chamber of Congress "may determine the Rules of its Proceedings,"⁵ DOJ contends that subpoenas compelling testimony about an agency

⁴ Ex. D (Ziegler Interview) at 32-39; Ex. C (Shapley Interview) at 142.

⁵ U.S. Const. art. I, § 5, cl. 2.

employee's official duties, without agency counsel present, are unconstitutional and thus unenforceable.

7. The House's legal authority and rationale for adopting the rule at issue are straightforward. A rule that dictates who may attend committee depositions is a rule that governs House proceedings and thus easily falls within its rulemaking authority under the Constitution. The House has decided to exercise its constitutional authority in this manner because it protects the integrity of its investigations: a witness may be less willing to share information that reflects poorly on his employing agency if a lawyer representing that agency is sitting right next to him.

8. The deposition rule is not new. Indeed, the House has adopted variations of this rule since the 1980s, when it first began delegating deposition authority to select committees and task forces. And to date, more than 175 Executive Branch witnesses have appeared for depositions without agency counsel.

9. The Committee has diligently tried to get the information that it needs from other witnesses but has been unable to do so. For example, the Committee has asked both the lead prosecutor and a former senior member of the prosecution team about DOJ's decision to let the statute of limitations lapse for charges against Hunter Biden related to the 2014 and 2015 tax years. Both refused to answer those questions. Daly and Morgan were personally involved in that decision and thus have information that the Committee needs. The Committee has also asked two U.S. Attorneys—whom President Biden appointed—about their decisions not to partner with the prosecution team (which at the time was necessary because of venue requirements) to bring charges against Hunter Biden. One of them refused to tell the Committee why he declined to partner, and the other refused to answer specific questions about the materials he reviewed before making his decision. Daly and Morgan either personally interacted with

these U.S. Attorney's Offices or have knowledge of the prosecution team's interactions with them and can thus shed light on whether political interference played a role in these decisions.

10. Daly and Morgan may share this information with the Committee—indeed, they have a legal obligation to do so. Other witnesses who have refused to answer the Committee's questions about many critical issues have generally claimed that they are unable to discuss those topics because they implicate an ongoing investigation. But such an assertion is not grounded in law or fact. Among other things, there is no ongoing-investigation privilege that permits witnesses to refuse to answer questions from Congress.

11. In sum, the failure of Daly and Morgan to comply with their respective Subpoenas is impeding the Committee's impeachment inquiry and its oversight of DOJ's handling of the Hunter Biden investigation, matters of significant public concern. The Executive Branch's purported reasons for frustrating this investigation lack merit, and the Committee asks this Court to compel both Daly and Morgan to appear before the Committee and to testify about the decision to allow the statute of limitations to lapse and the failure of two U.S. Attorneys (appointed by President Biden) to partner with the Hunter Biden prosecution team.

JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to 28 U.S.C. § 1331. This case arises under Article I of the Constitution of the United States and implicates Article I, Section 1, which vests “[a]ll legislative Powers” in the Congress of the United States, and Article 1, Section 2, Clause 5, which provides the House of Representatives with “the sole Power of Impeachment.”

13. This Court has authority to issue a declaratory judgment and order other just and proper relief pursuant to 28 U.S.C. §§ 2201(a) and 2202.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) and 1391(e)(1).

PARTIES

15. Plaintiff Committee on the Judiciary of the United States House of Representatives is a standing committee of the House that, among other duties, conducts oversight of DOJ.

16. Defendant Mark Daly serves as a Senior Litigation Counsel in DOJ's Tax Division.

17. Defendant Jack Morgan served as a Trial Attorney in DOJ's Tax Division. He currently serves as an Assistant U.S. Attorney in the United States Attorney's Office for the Eastern District of Virginia.

ALLEGATIONS

I. The Committee's constitutional authority to conduct investigations, including an impeachment inquiry, and to issue subpoenas to advance its investigations

18. Article I of the Constitution vests Congress with "[a]ll legislative Powers."⁶ Those powers include the authority to investigate matters relating to subjects within its broad legislative purview; conduct oversight of Executive Branch agencies; examine whether Executive Branch agencies are faithfully, effectively, and efficiently executing the laws; and determine whether changes to federal law are necessary and proper. For nearly a century, the Supreme Court has recognized that the Constitution vests the House with the "power of inquiry—with process to enforce it"—commensurate with the House's Article I legislative authority to investigate any subject on which "legislation could be had."⁷

⁶ U.S. Const. art. I, § 1, cl. 1.

⁷ *McGrain v. Daugherty*, 273 U.S. 135, 174, 177 (1927).

19. The Constitution commits to each chamber of Congress the authority to “determine the Rules of its Proceedings.”⁸ Pursuant to this authority, the 118th House of Representatives adopted the Rules of the House of Representatives (House Rules) to govern itself during the current Congress.⁹ The House Rules establish various standing committees, including the Judiciary Committee, and delegate to each committee “jurisdiction and related functions.”¹⁰

20. The Judiciary Committee’s legislative and oversight jurisdiction includes, among other subjects, “judicial proceedings, civil and criminal,” as well as “[c]riminal law enforcement and criminalization.”¹¹ Thus, the Judiciary Committee exercises jurisdiction (among other matters) over legislation relating to criminal proceedings and law enforcement matters.¹² The House Rules further mandate that “[a]ll bills, resolutions, and other matters relating to” subjects within the Judiciary Committee’s jurisdiction be referred to the Judiciary Committee for its consideration.¹³

⁸ U.S. Const. art. I, § 5, cl. 2.

⁹ See H. Res. 5, 118th Cong. § 1 (2023) (adopting House Rules for the 118th Congress), <https://perma.cc/28AM-XD4R>; see also House Rules, 118th Congress (Jan. 10, 2023), <https://perma.cc/3UX4-2YG5>.

¹⁰ House Rule X.1.

¹¹ House Rule X.1(l)(1), (7).

¹² For example, the Committee previously worked on the First Step Act, *see generally* H. Rep. No. 115-699 (2018) (reporting H.R. 5682, the First Step Act, favorably to the House), <https://perma.cc/5HJ9-2ENX>, and as part of that law, Congress requires “the Attorney General [to] submit a report to the Committees on the Judiciary of the Senate and the House of Representatives” on an annual basis assessing various metrics on how well the law is being implemented, *see* 18 U.S.C. § 3634.

¹³ House Rule X.1.

21. As a standing committee, the Judiciary Committee also has “general oversight responsibilities,” including regarding the “operation of Federal agencies and entities” within its areas of jurisdiction.¹⁴ As such, the Judiciary Committee exercises oversight of the structure and functions of DOJ.¹⁵ Among other responsibilities, the Judiciary Committee is charged with reviewing “on a continuing basis ... the application, administration, execution, and effectiveness of laws and programs ... within its jurisdiction.”¹⁶ The Judiciary Committee must determine whether such laws are being “implemented and carried out in accordance with the intent of Congress” and if there are “any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation.”¹⁷

22. The House Rules empower all standing committees, including the Judiciary Committee, to “conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities” over matters within its jurisdiction.¹⁸ To aid these inquiries, the Judiciary Committee, like all standing committees, is authorized to issue subpoenas for testimony and documents.¹⁹

¹⁴ House Rule X.2(a), (b)(1)(B).

¹⁵ See, e.g., *Oversight of DOJ: Hearing Before the H. Comm. on the Judiciary*, 118th Cong. (Sept. 20, 2023) (oversight hearing conducted with Attorney General Merrick Garland appearing as a witness), <https://perma.cc/3UQU-WW3H>.

¹⁶ House Rule X.2(b)(1)(A).

¹⁷ House Rule X.2(b)(1)(C).

¹⁸ House Rule XI.1(b)(1).

¹⁹ See House Rule XI.2(m)(1)(B), (3)(A)(i); see also Rule IV(a), Rules of the Committee on the Judiciary of the U.S. House of Representatives, 118th Cong. (2023) (Judiciary Committee Rules) (“A subpoena may be authorized and issued by the Chair, in accordance with clause 2(m) of rule XI of the House of Representatives, in the conduct of any investigation or activity or

23. Separate from Congress’s legislative authority, the power of impeachment is textually committed by the Constitution to the House and the House alone.²⁰ This power is far-reaching. Indeed, in “an impeachment investigation involving the President of the United States[,] [i]t would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair inquiry based on all the pertinent information.”²¹ Even prior presidents have admitted that an impeachment inquiry “would penetrate into the most secret recesses of the Executive Departments” and would include the authority to “command the attendance of any and every agent of the Government, and compel them to produce all papers, public or private, official or unofficial, and to testify on oath to all facts within their knowledge.”²²

24. The Committee’s jurisdiction includes impeachment.²³ Resolutions that call for impeachment of eligible officials are normally referred by the Speaker of the House to the

series of investigations or activities within the jurisdiction of the Committee, following consultation with the Ranking Minority Member.”), <https://perma.cc/6UUS-LYEH>.

²⁰ U.S. Const. art. I, § 2, cl. 5 (“The House of Representatives ... shall have the sole power of impeachment.”).

²¹ *In re Rep. & Recommendation of June 5, 1972*, 370 F. Supp. 1219, 1230 (D.D.C. 1974).

²² 4 J. Richardson, *A Compilation of the Messages and Papers of the Presidents*, H. Misc. Doc. 53-210, at 434 (1897) (statement of President James K. Polk), <https://perma.cc/82XR-DWJ2>.

²³ *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States*, H. Doc. 117-161, § 605, at 329 (2023) (“[R]esolutions ... that directly call for the impeachment of an officer have been referred to the Committee on the Judiciary”), <https://perma.cc/6JDB-H6C3>. As *Jefferson’s Manual* explains, “[i]n the House various events have been credited with setting an impeachment in motion,” including “charges made on the floor;” “a resolution introduced by a Member and referred to a committee;” or “facts developed and reported by an investigating committee of the House.” *Id.* § 603, at 327.

Committee²⁴ and are eligible for consideration pursuant to applicable House and Committee Rules.²⁵

25. On September 12, 2023, Speaker Kevin McCarthy directed the Judiciary Committee, among other committees, to open a formal impeachment inquiry into President Joseph Biden.²⁶ The scope of the inquiry includes whether President Biden obstructed DOJ's investigation of his son, Hunter Biden.²⁷ On December 13, 2023, the House adopted House Resolution 918,²⁸ which directs three committees, including the Judiciary Committee, "to continue their ongoing investigations as part of the House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach Joseph Biden, President of the United States of America."²⁹ The full House has also confirmed that the Committee has the "authority to issue subpoenas ... [to] further[] the

²⁴ *See, e.g.*, 169 Cong. Rec. H2809 (daily ed. June 12, 2023) (referring to the Judiciary Committee House Resolution 493, setting forth articles of impeachment against President Biden), <https://perma.cc/CA8S-BXDJ>; 169 Cong. Rec. H4181 (daily ed. Aug. 11, 2023) (referring to the Judiciary Committee House Resolution 652, setting forth articles of impeachment against President Biden), <https://perma.cc/8GM8-JXBF>; 162 Cong. Rec. H4926 (daily ed. July 13, 2016) (referring to the Judiciary Committee House Resolution 828, setting forth articles of impeachment against John Andrew Koskinen, Commissioner of the IRS), <https://perma.cc/D22N-YEMN>; 133 Cong. Rec. 6522 (1987) (referring to the Judiciary Committee House Resolution 128, setting forth articles of impeachment against Judge Alcee Hastings), <https://perma.cc/TV7V-JXVK>.

²⁵ *See* House Rule XI.2(b), (c)(1); *see also* Judiciary Committee Rule II(c).

²⁶ Memorandum from Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, et al., to Members of the H. Comm. on Oversight & Accountability, et al., at 2 (Sept. 27, 2023) (Impeachment Memorandum) (attached as Ex. F).

²⁷ *See id.* at 21-29.

²⁸ 169 Cong. Rec. H6922-23 (daily ed. Dec. 13, 2023), <https://perma.cc/ATQ9-27VV>.

²⁹ H. Res. 918, 118th Cong. (2023), <https://perma.cc/69QX-U332>.

impeachment inquiry.”³⁰ This sequence of events is consistent with other impeachment investigations. In 1973, for example, the Judiciary Committee “began the ‘preliminary phases of an inquiry into [the] possible impeachment’ of President Richard Nixon months before” the House voted to authorize such an inquiry by the Committee.³¹

26. In sum, the Judiciary Committee has plenary authority—under its constitutional authority to conduct legislative oversight and an impeachment inquiry—to investigate DOJ’s handling of the investigation and prosecution of Hunter Biden, including whether President Biden abused his power to interfere with that investigation, and to compel Defendants Daly and Morgan to appear and provide testimony.

II. The Judiciary Committee’s investigation into DOJ’s handling of the Hunter Biden case

27. DOJ’s central mission is to “uphold the rule of law, to keep our country safe, and to protect civil rights,” “without prejudice or improper influence.”³² Despite this clear dictate, the Committee has uncovered troubling information that DOJ officials have impeded, delayed, and obstructed the criminal investigation of Hunter Biden in an unusual manner.³³ Worse yet, President Biden himself has repeatedly weighed in on the subject of his son’s investigation while

³⁰ *Id.* § 6 (adopting House Resolution 917); H. Res. 917, 118th Cong. § 2 (2023) (confirming subpoena authority), <https://perma.cc/B3JT-WEZT>.

³¹ Todd Garvey, Cong. Rsch. Serv., LSB11051, *Legal Issues in Impeachment Investigations, Part I: Authorization 2* (2023) (alteration in original). *See also* H. Res. 803, 93d Cong. (1974) (instructing the Judiciary Committee to investigate grounds for impeachment against President Nixon).

³² *Our Mission*, DOJ (last visited Mar. 12, 2024), <https://perma.cc/3V5Z-QSW4>.

³³ *See generally* Staff of the Comm. on the Judiciary, et al., 118th Cong., *Interim Staff Report: The Justice Department’s Deviations from Standard Processes in Its Investigation of Hunter Biden* (2023) (Interim Staff Report) (attached as Ex. G).

serving as President, raising the specter that he has abused his power as the head of the Executive Branch to influence the decisions of DOJ, an Executive Branch agency under his control.³⁴

A. IRS whistleblowers expose irregularities that suggest DOJ gave Hunter Biden preferential treatment and raise concerns about potential political interference

28. The investigation of Hunter Biden began in November 2018 when the IRS opened an investigation into potential tax crimes arising out of his business dealings and spending habits after bank reports and public reporting showed that he was living “lavishly” while also owing a “substantial tax debt.”³⁵ The IRS investigation was then followed by a Federal Bureau of Investigation (FBI) inquiry in 2019, which was subsequently merged with the IRS investigation.³⁶

29. In April and May 2023, two IRS whistleblowers voluntarily appeared for interviews before the House Committee on Ways and Means, and then testified publicly at a hearing before the House Committee on Oversight and Accountability (Oversight Committee).³⁷ Both whistleblowers were intimately involved in the Hunter Biden investigation. One was the agent who opened the investigation and served as the lead IRS agent.³⁸ The other was the lead

³⁴ *Id.* at 56-57.

³⁵ *Id.* at 5.

³⁶ *Id.*

³⁷ *See supra* note 2.

³⁸ Ex. G (Interim Staff Report) at 6.

agent's supervisor on the investigation.³⁹ Both testified about their grave concerns over DOJ's conduct of the investigation, including DOJ's apparent preferential treatment of Hunter Biden.⁴⁰

30. Specifically, both whistleblowers identified numerous DOJ deviations from normal investigative and prosecutorial protocols, such as allowing the statute of limitations to lapse on certain felony tax charges despite defense counsel's willingness to enter into an agreement to toll the statute of limitations for those charges, prohibiting investigators from referring to or asking about President Biden during witness interviews, withholding evidence from investigators, excluding investigators from meetings with the defense team, and tipping off the defense team about anticipated search warrants.⁴¹ This testimony raised substantial concerns that political interference may have obstructed DOJ's investigation of Hunter Biden.

B. The Committee's investigation of DOJ's commitment to impartial justice and its inquiry into whether President Biden committed an impeachable offense by meddling in DOJ's investigation of his son

31. During almost the entirety of the 118th Congress, the Committee has been investigating DOJ's commitment to impartial justice, and it has focused especially on DOJ's handling of the Hunter Biden investigation.

32. Under House Rules, the Committee has legislative and oversight jurisdiction over "[c]riminal law enforcement" as well as civil and criminal judicial proceedings.⁴² And DOJ's handling of the Hunter Biden investigation has highlighted the potential need for several legislative reforms. For example, as part of the Committee's investigation, it is considering these

³⁹ *Id.*

⁴⁰ *See generally* Ex. C (Shapley Interview); Ex. D (Ziegler Interview).

⁴¹ *See generally* Ex. G (Interim Staff Report).

⁴² House Rule X.1(l)(1), (7).

legislative proposals: “reforming the ‘special attorney’ statute, codifying the special counsel regulations, reforming the Tax Division of [DOJ] and its interactions with the IRS, and expanding the ability of the IRS, including whistleblowers, to share certain tax information with Congress.”⁴³

33. Even before the IRS whistleblowers came forward, the Committee was concerned that the DOJ criminal investigation of Hunter Biden was not being led by a special counsel. Besides the appearance of impropriety, without the appointment of a special counsel, such an investigation ran the risk of an actual conflict of interest given that important decisions regarding the possible prosecution of President Biden’s son would be made by officials who answer to and serve at the pleasure of the President. Consequently, on February 28, 2023, the Committee sent a letter to DOJ requesting documents that would shed light on why Attorney General Merrick Garland had not appointed a special counsel to oversee the Hunter Biden investigation.⁴⁴

34. In the summer of 2023, the Committee’s investigation had become focused more specifically on how, exactly, DOJ was handling the Hunter Biden matter. By that point, the IRS whistleblower testimony had “raise[d] serious questions about the Department’s commitment to evenhanded justice.”⁴⁵ And DOJ’s willingness to offer Hunter Biden an “atypical” plea and diversion agreement, which ultimately fell apart, “raise[d] serious concerns ... that [DOJ] ha[d]

⁴³ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al., to Merrick Garland, Att’y Gen., DOJ, at 1-2 (July 21, 2023) (Garland July 21, 2023 Letter) (attached as Ex. H).

⁴⁴ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Merrick Garland, Att’y Gen., DOJ, at 1-2 (Feb. 28, 2023) (attached as Ex. I).

⁴⁵ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al., to Merrick Garland, Att’y Gen., DOJ, at 1 (June 29, 2023) (Garland June 29, 2023 Letter) (attached as Ex. J).

provided preferential treatment toward Mr. Biden in the course of its investigation and proposed resolution of his alleged criminal conduct.”⁴⁶

35. Under the deal that DOJ offered Hunter Biden, he would have pled guilty to only two misdemeanor counts of failing to pay taxes, and DOJ would have dismissed a separate charge that alleged Hunter Biden had unlawfully possessed a firearm, so long as he complied with certain conditions for two years (a diversion agreement).⁴⁷

36. Beyond simply giving Hunter Biden immunity from the gun charge, the diversion agreement also would have given him immunity for any crimes associated with conduct completely unrelated to the gun charge.⁴⁸ At the hearing on the diversion and plea agreements, when the judge asked the prosecutor whether he “ha[d] any precedent for agreeing not to prosecute crimes that have nothing to do with the case or the charges being diverted,” the prosecutor said that he was “not aware of any.”⁴⁹

37. Beyond that, if the government ever believed that Hunter Biden violated the terms of the diversion agreement, DOJ could not bring charges unless the judge herself concluded there had been a breach.⁵⁰ Typically, however, DOJ can bring charges anytime it believes a criminal defendant has violated a diversion agreement, without first getting a determination from a

⁴⁶ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al., to Merrick Garland, Att’y Gen., DOJ, at 1, 4 (July 31, 2023) (Garland July 31, 2023 Letter) (attached as Ex. K).

⁴⁷ Ex. E (Transcript of July 26, 2023 Hearing) at 4, 6.

⁴⁸ *See id.* at 46.

⁴⁹ *Id.*

⁵⁰ *Id.* at 92-93.

judge.⁵¹ The judge questioned whether such a provision—which “puts [the Judicial Branch] in the middle of a decision as to whether to bring a charge,” a decision that belongs to the Executive Branch—was even constitutional.⁵² The judge again asked the prosecutor about precedent for this sort of provision, and, to use her words, “I asked if there is any precedent for this, I was told no. I was asked if there is any authority for this, I was told no.”⁵³

38. As the Committee explained, taking these two provisions together, DOJ “shifted a broad immunity provision, which benefits Mr. Biden, from the plea agreement to the pretrial diversion agreement apparently to prevent the District Court from being able to scrutinize and reject that immunity provision. And then, [DOJ] has benefitted Mr. Biden by giving up its unilateral ability to bring charges against him if it concludes that he has breached the pretrial diversion agreement.”⁵⁴ To make matters worse, this one-of-its-kind deal apparently came after DOJ initially decided not to bring charges at all, a position that DOJ changed around the same that the IRS whistleblowers came forward.⁵⁵ The plea and diversion agreements ultimately fell apart after questioning from the judge overseeing the matter exposed that the two sides disagreed

⁵¹ See Ex. K (Garland July 31, 2023 Letter) at 1.

⁵² Ex. E (Transcript of July 26, 2023 Hearing) at 95.

⁵³ *Id.* at 103.

⁵⁴ See Ex. K (Garland July 31, 2023 Letter) at 3. The plea and diversion agreement ultimately fell apart, and the prosecution is ongoing.

⁵⁵ See Michael S. Schmidt et al., *Inside the Collapse of Hunter Biden’s Plea Deal*, N.Y. Times (Aug. 19, 2023), <https://www.nytimes.com/2023/08/19/us/politics/inside-hunter-biden-plea-deal.html> (attached as Ex. L).

on the meaning of the diversion agreement’s immunity provision.⁵⁶ Hunter Biden and DOJ were ultimately unable to reach an agreement, and the prosecution is ongoing.⁵⁷

39. By the fall of 2023, the Committee’s investigation into DOJ’s handling of the Hunter Biden matter became part of a broader impeachment inquiry into President Biden. After Speaker McCarthy directed the Judiciary Committee (and others) “to open a formal impeachment inquiry into” the President, the relevant committees released an Impeachment Memorandum on September 27, 2023, that, among other things, outlined the scope of the impeachment inquiry.⁵⁸

40. The Impeachment Memorandum explained that the inquiry was examining, as relevant here, whether “Joe Biden abuse[d] his power as President to impede, obstruct, or otherwise hinder investigations (including Congressional investigations) or the prosecution of Hunter Biden.”⁵⁹ The Impeachment Memorandum further discussed the troubled DOJ investigation of Hunter Biden, and set forth how President Biden has made repeated public statements about his son’s innocence while serving as President, such as when he told a reporter in May 2023 that “my son has done nothing wrong.”⁶⁰ These statements “could represent

⁵⁶ *See id.*

⁵⁷ *See, e.g.,* Sara Dorn, *Hunter Biden Claims DOJ Backtracked On Plea Deal*, Forbes (Aug. 14, 2023, 12:13 PM), <https://perma.cc/XJ68-NMD4>; Lindsay Whitehurst & Claudia Lauer, *Hunter Biden pleads not guilty to gun charges after plea deal fails*, PBS (Oct. 3, 2023, 10:38 AM), <https://www.pbs.org/newshour/politics/hunter-biden-pleads-not-guilty-to-gun-charges-after-plea-deal-fails> (attached as Ex. M).

⁵⁸ Ex. F (Impeachment Memorandum) at 2.

⁵⁹ *See id.* at 29.

⁶⁰ *Id.* at 26-27.

attempts to use the authority of his office to influence the Department’s actions and decision-making in the criminal investigation of his son.”⁶¹

41. The full House ultimately formalized the impeachment inquiry by adopting House Resolution 918.⁶² It directs the Committee to continue its “ongoing” inquiry into whether sufficient grounds, including those “set forth in the” September 27, 2023 Impeachment Memorandum, exist to impeach President Biden.⁶³

42. Thus, at this point, the Committee’s investigation is not only considering the need for legislative reforms; it serves the dual purpose of determining whether President Biden has committed an impeachable offense by attempting to obstruct directly or indirectly the criminal investigation of his son.⁶⁴

43. Congress must understand the full extent of any wrongdoing in connection with DOJ’s handling of the Hunter Biden investigation before it can determine whether legislative proposals are necessary, and if so, the nature of any required legislative reforms, or whether President Biden has committed an impeachable offense. Indeed, as the Supreme Court has explained, “[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.”⁶⁵

⁶¹ *See id.* at 29.

⁶² *See* 169 Cong. Rec. H6922-23.

⁶³ *See* H. Res. 918, 118th Cong. (2023).

⁶⁴ *See* Ex. F (Impeachment Memorandum) at 21.

⁶⁵ *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 504 (1975) (alteration in original) (quoting *McGrain*, 273 U.S. at 175).

Additionally, “[i]mpeachment based on anything less than all relevant evidence would compromise the public’s faith in the process.”⁶⁶

44. Although the Executive Branch has attempted to shield much of its investigation into Hunter Biden from the Committee’s oversight, the Committee has worked diligently to understand DOJ’s handling of the Hunter Biden case.

45. The Committee has released a nearly eighty-page interim staff report that documents the status of the investigation. Thus far, the Committee’s investigation has revealed serious deviations from standard DOJ protocol even beyond the flawed plea and diversion deal.⁶⁷ It has also uncovered information that raises questions about potential political interference.

46. For example, witness testimony and documents reveal how DOJ slow-walked the investigation by requiring unprecedented higher-level approvals for basic investigatory tasks, such as requiring approvals from seventeen different officials every thirty days to even continue the assignment of vetting certain information that was being provided to DOJ and related to Hunter Biden.⁶⁸ And one whistleblower noted that “every single time the process could be bogged down by deferring to some other approval level, [DOJ’s Tax Division] took full advantage of that.”⁶⁹

47. DOJ also prevented investigators from pursuing promising leads and interviewing crucial witnesses. For example, DOJ did not allow investigators to interview Hunter Biden’s adult children because, according to DOJ, “they would be in ‘hot water’ if they interviewed ‘the

⁶⁶ *In re Application of Comm. on Judiciary*, 414 F. Supp. 3d 129, 176 (D.D.C. 2019).

⁶⁷ *See generally* Ex. G (Interim Staff Report).

⁶⁸ *Id.* at 2, 30, 68-69.

⁶⁹ Ex. C (Shapley Interview) at 59.

President's grandchildren," even though investigators determined that Hunter Biden had impermissibly taken tax deductions for payments he made to his adult children.⁷⁰ Both IRS whistleblowers stated that they were unable to get a search warrant for a guest-house of then-candidate Joseph Biden, even though Hunter Biden often stayed there and DOJ prosecutors admitted that there was more than enough probable cause to believe that evidence would be found there.⁷¹

48. DOJ even withheld crucial information from investigators and sought to cabin the investigation. For example, the U.S. Attorney's Office for the Western District of Pennsylvania was tasked with vetting information provided to DOJ not only about corruption in Ukraine generally, but also Hunter Biden and his role on the board of Burisma, a Ukrainian company that was under investigation for corruption.⁷² The Hunter Biden prosecution team did not share with that office the fact that it had Hunter Biden's laptop, which contained information regarding Hunter Biden's activities on the board of Burisma, in its possession.⁷³ That office only learned of the laptop's existence through media reports.⁷⁴ Additionally, the Hunter Biden prosecution team did not even share information internally: the FBI withheld the contents of Hunter Biden's laptop and hard drive from IRS agents working on the same investigation, even though they notified the IRS that those devices contained evidence of tax crimes.⁷⁵

⁷⁰ Ex. G (Interim Staff Report) at 29 (citations omitted).

⁷¹ *Id.* at 27.

⁷² *Id.* at 16, 19-20.

⁷³ *Id.* at 19-20.

⁷⁴ *Id.*

⁷⁵ *Id.* at 5.

49. In perhaps the biggest variations from investigative protocol, DOJ tipped off defense counsel about potential search warrants and allowed the statute of limitations on charges to lapse. Both IRS whistleblowers testified that they had sought a search warrant for a storage unit owned by Hunter Biden that could have contained incriminating evidence.⁷⁶ However, before they were able to secure a warrant, Daly and another prosecutor told Hunter Biden's lawyers about the investigators' plan to search the storage unit, thus permitting him a chance to remove any evidence from that unit.⁷⁷ Both whistleblowers also testified that DOJ allowed the statute of limitations to lapse for the 2014 and 2015 tax years notwithstanding a willingness on the part of the defense team to execute a tolling agreement.⁷⁸

50. President Biden's political appointees appear to have frustrated DOJ's ability to bring tax charges against Hunter Biden, including charges related to the 2014 and 2015 tax years, which reinforces the concern that political interference may have impeded DOJ's investigation. Such criminal charges must be filed in the judicial district where the defendant resides or where the tax return is prepared or filed.⁷⁹ This meant that charges against Hunter Biden related to the 2014 and 2015 tax years would have needed to be filed in the District of Columbia, where

⁷⁶ *Id.* at 27-28.

⁷⁷ *Id.*

⁷⁸ *Id.* at 31-35.

⁷⁹ Under the federal criminal venue statute, "any offense ... begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed." 18 U.S.C. § 3237(a). That means for the tax offenses relevant to Hunter Biden, that is, 26 U.S.C. § 7201 (tax evasion), § 7203 (failure to file or pay a return), and § 7206(1) (filing a false return), venue is proper in any district where the return was, or should have been, prepared or filed. *See generally* Tax Div., DOJ, *Criminal Tax Manual* § 6.2 (2022), <https://perma.cc/DC8Y-M7XP>.

Hunter Biden lived until 2017, and for later years, in the Central District of California, where Hunter Biden moved in 2017.⁸⁰

51. The lead prosecutor assigned to the case is David Weiss, the U.S. Attorney for the District of Delaware. Before his appointment as Special Counsel on August 11, 2023, Weiss could not have filed charges outside of his district and would have needed to partner with Matthew Graves, the U.S. Attorney for the District of Columbia, and/or Martin Estrada, the U.S. Attorney for the Central District of California, to bring charges against Hunter Biden in those districts.⁸¹ In February or March 2022, and August 2022, Weiss approached Graves and then-Acting U.S. Attorney Stephanie Christensen (whom Estrada succeeded when he was confirmed in September 2022), respectively, to ask them to partner with him to bring charges against Hunter Biden in their respective districts.⁸² But Graves and Estrada declined to partner with Weiss and his team,⁸³ notwithstanding Attorney General Garland's public claim that Weiss "would have the necessary authority [to bring charges in any district] and that no U.S. attorney could block him."⁸⁴ Both of these U.S. Attorneys were appointed by President Biden, thus raising questions about whether political interference played a role in their decisions not to partner with Weiss and his team.

⁸⁰ See Ex. C (Shapley Interview) at 100.

⁸¹ Weiss has had the authority to file charges in districts outside the District of Delaware since he was appointed to serve as a special counsel on August 11, 2023. See Press Release, Off. of the Att'y Gen., *Appointment of a Special Counsel* (Aug. 11, 2023), <https://perma.cc/24SD-KYJC>.

⁸² Ex. G (Interim Staff Report) at 44-49.

⁸³ *Id.*

⁸⁴ Transcript of Testimony of Merrick Garland, Att'y Gen., DOJ (Sept. 20, 2023), <https://perma.cc/M7CW-VEGQ>.

52. The U.S. Attorney for the District of Columbia's decision not to partner with Weiss to bring charges related to the tax years 2014 and 2015 is especially concerning. According to one of the IRS whistleblowers, prosecutors initially supported charging Hunter Biden for tax offenses related to those years, and DOJ's Tax Division authored an extensive prosecution memo recommending as such.⁸⁵ According to one of the whistleblowers, Tax Division representatives, including Daly, presented the memorandum to the U.S. Attorney's Office for the District of Columbia in March 2022;⁸⁶ Daly reported that the first assistant in that office, a non-presidentially-appointed (presumably career) prosecutor, was optimistic about bringing charges and stated she would assign a prosecutor to assist.⁸⁷ However, just a couple of days later, Daly told the other IRS whistleblower that U.S. Attorney Graves had personally reviewed the report and indicated that he did not support the charges or the investigation as a whole and would not allow charges to proceed in his district.⁸⁸ When the Committee asked Graves himself about this incident, he told a different story. According to Graves, he relied on a recommendation from his team and never reviewed the relevant materials himself.⁸⁹ Following Graves's decision, the statute of limitations related to tax years 2014 and 2015 ended up lapsing notwithstanding defense counsel's willingness to enter into a tolling agreement.⁹⁰

⁸⁵ Ex. C (Shapley Interview) at 23-25.

⁸⁶ *Id.* at 24.

⁸⁷ *Id.*

⁸⁸ *Id.* at 24.

⁸⁹ Ex. G (Interim Staff Report) at 47.

⁹⁰ *See id.* at 33.

53. Although the Committee has now uncovered examples of how DOJ seemingly operated by different rules during the Hunter Biden investigation, it must still determine what motivated DOJ's irregular conduct and whether the legal and organizational framework in place facilitated unequal treatment under the law. Indeed, to effectively craft legislative solutions to prevent future abuse or maladministration, the Committee must understand how the current framework failed. And to uncover whether President Biden was involved directly or indirectly, and whether he may have committed an impeachable offense, the Committee must understand exactly why DOJ decided to deviate from its standard protocols. Likewise, the Committee must understand whether political interference played any role in the investigation, including the refusal of two U.S. Attorneys—whom President Biden appointed—to partner with the Hunter Biden prosecution team and the decision to let the statute of limitations for charges involving the tax years 2014 and 2015 lapse. To do this, the Committee requires testimony from witnesses with firsthand knowledge of DOJ's investigation; Daly and Morgan, who were assigned to DOJ's investigative team, have information the Committee needs.

C. Daly and Morgan were assigned to the team that was tasked with investigating Hunter Biden and thus have firsthand knowledge that is critical to the Committee's investigation

54. The Tax Division of DOJ handles all criminal proceedings “arising under the internal revenue laws.”⁹¹ “The Tax Division must approve any and all criminal charges that a United States Attorney’s Office intends to bring against a defendant for conduct arising under the internal revenue laws, regardless of which criminal statute(s) the United States Attorney’s Office proposes to use in charging the defendant.”⁹² Presumably because of these requirements, the Tax

⁹¹ 28 C.F.R. § 0.70.

⁹² DOJ, *Justice Manual* § 6-4.200 (2018), <https://perma.cc/9A99-RH9H>.

Division was, and is, closely involved with the Hunter Biden investigation, which deals with tax-related crimes. As a result, Daly, a Tax Division Senior Litigation Counsel, and Morgan, then a Tax Division Trial Attorney, were assigned to work on the Hunter Biden matter.⁹³

55. Based on the information the Committee has developed to date, Daly and Morgan have “knowledge of the day-to-day operation of the Hunter Biden investigation [that] is critical to” its investigation.⁹⁴

56. For example, both were present at an October 2021 “tax summit” where all the prosecutors, including Daly and Morgan themselves, agreed to move forward with generating a prosecution memorandum that would recommend charges against Hunter Biden for tax years 2014 to 2019, with felony charges for 2014 and 2018.⁹⁵ In line with this agreement, the IRS finalized a Special Agent Report on January 27, 2022, which recommended charges for 2014 to 2019.⁹⁶ Prosecutors, including Daly, agreed with the report’s recommendation.⁹⁷ However, in an apparently abrupt about-face, Daly and Morgan then gave a presentation on June 15, 2022, arguing that Hunter Biden should *not* be charged for the 2014 and 2015 tax years, the same tax years for which DOJ ultimately allowed the statute of limitations to lapse without bringing charges.⁹⁸

⁹³ Ex. C (Shapley Interview) at 36; Ex. D (Ziegler Interview) at 134.

⁹⁴ Ex. G (Interim Staff Report) at 75.

⁹⁵ Ex. D (Ziegler Interview) at 32-33.

⁹⁶ Ex. C (Shapley Interview) at 42-43.

⁹⁷ *Id.* at 43.

⁹⁸ Ex. G (Interim Staff Report) at 33 (citing Ex. D (Ziegler Interview) at 160, 164).

57. The Committee intends to ask Daly and Morgan about these decisions, including why they initially agreed with bringing charges for the 2014 and 2015 tax years, why they then reversed their opinion just a few months later, what additional (if any) information they received that changed their minds, and whether they were in any way pressured to change their views by other people inside or outside of DOJ, and if so, by whom.

58. Moreover, Morgan told one IRS whistleblower that the investigation was “not a typical case” due to it involving Hunter Biden, raising the specter that Morgan gave Hunter Biden preferential treatment.⁹⁹

59. The Committee intends to ask Morgan about his statement. For example, Morgan can explain whether he treated the case differently, including by applying the law to the facts in a way that he would not in a run-of-the-mill case. Morgan can also shed light on whether he arrived at this view on his own or was influenced or directed by someone else. The Committee also intends to ask if the Hunter Biden investigation was handled differently than other investigations within the Tax Division, such as there being additional reviews by superiors that are not present in other investigations.

60. Daly’s behavior, according to one whistleblower, is even more suspicious: he flat out told Hunter Biden’s counsel about potential plans for searching a storage unit and thus ruined any chance of getting valuable evidence from that unit.¹⁰⁰

61. The Committee intends to ask Daly about his decision, including why he tipped off Hunter Biden’s counsel, what he intended to accomplish by doing so, whether he came to this decision on his own or was influenced by others, and if so, by whom, whether he discussed his

⁹⁹ *Id.* at 32 (citing Ex. C (Shapley Interview) at 59).

¹⁰⁰ *Id.* at 28 (citing Ex. C (Shapley Interview) at 21); Ex. D (Ziegler Interview) at 28.

decision with others, and if so, whom, and whether this is something that typically happens in criminal investigations.

62. Daly also has unique insight into the decision to let the statute of limitations for the 2014 and 2015 tax charges lapse. As discussed above, according to one of the IRS whistleblowers, Daly was part of the team of prosecutors that participated in a March 2022 meeting with the U.S. Attorney's Office for the District of Columbia. During that meeting, the Hunter Biden prosecutors discussed partnering with the U.S. Attorney's Office for the District of Columbia to prosecute the 2014 and 2015 tax offenses.¹⁰¹ After the meeting, Daly called the other IRS whistleblower and informed him that the first assistant at the U.S. Attorney's Office for the District of Columbia was optimistic about moving forward and would be assigning a prosecutor to assist.¹⁰² However, Daly called the other IRS whistleblower just a few days later to tell him that U.S. Attorney Graves had personally reviewed the relevant materials and did not support bringing any charges.¹⁰³

63. The Committee intends to ask Daly about his participation in the March 2022 meeting with the U.S. Attorney's Office for the District of Columbia. Specifically, the Committee intends to ask, among other things, whether the first assistant in that office informed Daly that she would be assigning a prosecutor to assist the Hunter Biden prosecution team, what other matters were discussed at the meeting, whether Graves was present at that meeting, and if so, what he said and how he reacted to the presentation, what materials Graves reviewed as part of that presentation, how Daly heard a few days later that Graves did not support bringing

¹⁰¹ Ex. C (Shapley Interview) at 24.

¹⁰² *Id.*

¹⁰³ *Id.*; see also Ex. D (Ziegler Interview) at 36, 153.

charges against Hunter Biden, and Daly's view as to why Graves decided not to partner with Weiss to bring charges against Hunter Biden in the District of Columbia.

64. The Committee also intends to question Daly about his interactions with the U.S. Attorney's Office for the Central District of California. According to one of the IRS whistleblowers, Daly gave a presentation to that office about bringing charges against Hunter Biden for the 2016 through 2019 tax years.¹⁰⁴ However, that presentation did not happen until mid-September 2022.¹⁰⁵ The Committee intends to question Daly about his presentation, including what he presented and discussed with that office, and what caused the delay in approaching that office as compared to when prosecutors discussed bringing charges with the U.S. Attorney's Office for the District of Columbia.

65. The Committee's investigation raises serious questions about how DOJ conducted, and continues to conduct, its investigation of the President's son. Daly and Morgan have firsthand knowledge of many of the potential improprieties that occurred during DOJ's investigation of Hunter Biden because they engaged in and/or directly observed those alleged improprieties. They are therefore uniquely positioned to aid the Committee's investigation, and the Committee must obtain their testimony.

66. The Committee has attempted to get this information from other sources but has been unable to do so. For example, the Committee interviewed Weiss, the special counsel DOJ appointed to oversee the Hunter Biden matter after the plea agreement collapsed in August 2023. But he "declined to answer a host of questions about decisions he has made during the

¹⁰⁴ Suppl. Produc. of Gary Shapley, Supervisory Special Agent, IRS (Sept. 22, 2022) (attached as Ex. N).

¹⁰⁵ *Id.*

investigation,” including why DOJ permitted the statute of limitations to lapse for charges related to tax years 2014 and 2015.¹⁰⁶ Weiss told the Committee he would address many of the questions in a report that he is legally required to write *after* the investigation concludes.¹⁰⁷

67. The Committee also interviewed Lesley Wolf, a former senior member of the prosecution team, but she too “refused to answer most of the [C]ommittee’s questions.”¹⁰⁸ Indeed, Wolf “testified 79 times ... that she was ‘not authorized’ by [DOJ] to answer questions about the case.”¹⁰⁹ Wolf, like Weiss, refused to answer questions about DOJ permitting the statute of limitations to lapse for charges related to tax years 2014 and 2015.

68. The Committee has also interviewed Stuart Goldberg, the Acting Deputy Assistant Attorney General of DOJ’s Tax Division, but he, unlike Daly and Morgan, was not involved in the Hunter Biden investigation on a day-to-day basis and thus lacks the familiarity that Daly and Morgan have.¹¹⁰ And although the Committee has interviewed FBI agents who worked on the investigation, they are not familiar with all of the legal issues that inform charging decisions. For example, when the Committee asked one FBI witness about the statute of limitations expiring for charges related to 2014 and 2015, the witness said “as the FBI ... I have

¹⁰⁶ See Betsy Woodruff Swan, *What Hunter Biden’s prosecutor told Congress: Takeaways from closed-door testimony of David Weiss*, Politico (Nov. 10, 2023, 2:05 PM), <https://perma.cc/4Q2X-3XBM>.

¹⁰⁷ See *id.*

¹⁰⁸ See Rebecca Kaplan, *Prosecutor Lesley Wolf defends herself in House testimony about Hunter Biden*, NBC News (Dec. 14, 2023, 5:11 PM), <https://perma.cc/84EZ-ZQRJ>.

¹⁰⁹ Steven Nelson, *Prosecutor who allegedly shielded Joe, Hunter Biden testified 79 times she’s ‘not authorized’ by DOJ to give answers*, N.Y. Post (Dec. 21, 2023, 9:14 PM), <https://perma.cc/NQ6L-X3LY>.

¹¹⁰ Transcript of Interview of Stuart Goldberg, Assistant Att’y Gen., Tax Division, DOJ, at 18 (Oct. 25, 2023) (attached as Ex. O).

no general knowledge of what the IRS charges are as far as when they lapse or when they don't lapse."¹¹¹

69. Finally, although the Committee has interviewed Graves, the U.S. Attorney for the District of Columbia, and Estrada, the U.S. Attorney for the Central District of California, they either refused to answer the Committee's questions or gave testimony that heightened the Committee's need to hear from Daly and Morgan.

70. For example, Graves declined to elaborate on his decision to not partner with Weiss to bring charges against Hunter Biden for tax years 2014 and 2015, citing that the investigation was ongoing.¹¹² He also claimed that he did not review any of the underlying source materials related to bringing charges for the 2014 and 2015 tax years.¹¹³ But this is inconsistent with the testimony of the IRS whistleblower who claimed that Graves personally reviewed the prosecution memorandum before declining to bring charges.¹¹⁴ Given Graves's stonewalling and the discrepancy between his testimony and the whistleblower's, it is critical that the Committee talk with another witness, such as Daly, who, according to one of the whistleblowers, was present at the March 2022 meeting and can shed light on Graves's role in declining the charges.

¹¹¹ Transcript of Interview of Thomas J. Sobocinski, Special Agent in Charge, Baltimore Field Off., FBI, at 9 (Sept. 7, 2023) (attached as Ex. P).

¹¹² Transcript of Interview of Matthew M. Graves, U.S. Att'y for D.C., DOJ, at 24 (Oct. 3, 2023) (Graves Deposition) (attached as Ex. Q).

¹¹³ Ex. G (Interim Staff Report) at 47.

¹¹⁴ Ex. C (Shapley Interview) at 24.

71. Estrada, when asked about his decision not to partner with Weiss to bring charges against Hunter Biden, pointed to resource constraints.¹¹⁵ But he refused to answer specific questions about the materials he reviewed.¹¹⁶ Beyond that, he would not have insight into why DOJ waited until September 2022 to approach the office about partnering to bring charges. Estrada also testified that one of his predecessors appointed prosecutors from Weiss's office to serve as Special Assistant U.S. Attorneys in the U.S. Attorney's Office for the Central District of California.¹¹⁷ If so, those prosecutors presumably could have filed charges against Hunter Biden in the Central District of California.¹¹⁸ But Estrada was unaware of how many prosecutors were appointed and when they were appointed.¹¹⁹ And Weiss did not remember any particulars about this issue.¹²⁰ The Committee thus plans to ask Daly whether he knew about these Special Assistant U.S. Attorneys, whether they ever came up in his communications with the U.S. Attorney's Office for the Central District of California, and if they did exist, why Weiss needed to partner with Estrada to file charges against Hunter Biden in the Central District of California.

72. In sum, Daly and Morgan have personal knowledge of information that is critical to the Committee's investigation, information the Committee has diligently tried, unfortunately without success, to obtain from other sources.

¹¹⁵ Transcript of Interview of Esteban Martin Estrada, U.S. Att'y for Cent. Dist. of Cal., DOJ, at 33-34 (Oct. 24, 2023) (Estrada Deposition) (attached as Ex. R).

¹¹⁶ *Id.* at 20, 29.

¹¹⁷ *Id.* at 42.

¹¹⁸ *See id.* at 42-43.

¹¹⁹ *Id.* at 18.

¹²⁰ Transcript of Interview of David Weiss, Special Couns., DOJ, at 102 (Nov. 7, 2023) (Weiss Deposition) (attached as Ex. S); Ex. G (Interim Staff Report) at 49.

D. The Judiciary Committee’s attempts to get testimony from Daly and Morgan

73. On June 29, 2023, the Committee sent a letter to DOJ where it sought voluntary transcribed interviews with several DOJ employees involved in the Hunter Biden investigation, including Daly and Morgan.¹²¹ There, the Committee explained that it “must obtain the first-hand testimony from these individuals to fully assess the serious allegations raised by these brave IRS whistleblowers.”¹²²

74. A voluntary transcribed interview is one method that Congressional committees use to obtain and document oral testimony from witnesses. Generally speaking, transcribed interviews, while still on the record, are a less formal investigative method than depositions. Unlike a person who is subpoenaed to appear for a deposition, witnesses asked to appear for a transcribed interview have no legal obligation to do so.

75. On July 13, 2023, DOJ responded to the Committee’s June 29 letter.¹²³ DOJ agreed to make only Special Counsel Weiss available and failed to address the Committee’s request to interview the other nine DOJ employees, including Daly and Morgan. While DOJ’s letter did not directly explain why it ignored the Committee’s request to speak with the other DOJ employees, it did state that DOJ’s policy is to ensure “that appropriate supervisory personnel, rather than line attorneys and agents, answer Congressional questions.”¹²⁴

¹²¹ Ex. J (Garland June 29, 2023 Letter) at 1.

¹²² *Id.*

¹²³ Letter from Carlos Uriarte, Assistant Att’y Gen., DOJ, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 13, 2023) (attached as Ex. T).

¹²⁴ *Id.* at 3-4.

76. On July 21, 2023, the Committee wrote back to DOJ, again requesting interviews with all the “witnesses identified in [its] June 29 letter.”¹²⁵ The Committee further explained that DOJ’s supposed policy of offering only supervisory personnel has no basis in precedent as DOJ “has made available non-Senate-confirmed and line-level employees for testimony to Congress in the past.”¹²⁶ Indeed, the Committee’s initial letter to DOJ listed numerous line-level DOJ employees who have given testimony to Congress, going as far back as 2011.¹²⁷

77. While DOJ technically responded to the Committee’s July 21, 2023 letter three days later, the response again entirely failed to mention, much less address, the Committee’s request to interview the remaining employees.¹²⁸

E. The Committee subpoenas Daly and Morgan to advance its investigation

78. Although DOJ eventually agreed over the summer to make a few other employees available for voluntary transcribed interviews, it did not make Daly and Morgan available. Therefore, on September 14, 2023, the Committee exercised its delegated authority and subpoenaed Daly and Morgan for depositions on September 27 and 28, 2023, respectively.¹²⁹

¹²⁵ Ex. H (Garland July 21, 2023 Letter) at 3.

¹²⁶ *Id.*

¹²⁷ *See* Ex. J (Garland June 29, 2023 Letter) at 2 n.2.

¹²⁸ *See generally* Letter from Carlos Uriarte, Assistant Att’y Gen., DOJ, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 24, 2023) (attached as Ex. U).

¹²⁹ Subpoena from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark Daly, Senior Litig. Couns., Tax Division, DOJ (Sept. 14, 2023) (attached as Ex. V); Subpoena from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Jack Morgan, Trial Att’y, Tax Division, DOJ (Sept. 14, 2023) (attached as Ex. W).

79. Daly and Morgan have a legal obligation to comply with their Subpoenas.¹³⁰

80. The cover letters that accompanied the Subpoenas noted how critical Daly’s and Morgan’s testimony is to the Committee’s investigation because of their “first-hand” knowledge.¹³¹ The letters explained how Congress has “‘broad and indispensable’ power to conduct oversight, which ‘encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them.’”¹³² It then explained how some of the “potential legislative reforms” it is studying include “strengthening laws protecting whistleblowers from retaliation, reforming the ‘special attorney’ statute, codifying the special counsel regulations, and reforming the Department’s Tax Division.”¹³³ The Committee believes that Daly and Morgan “have unique information that is relevant and necessary to inform [its] oversight and potential legislative reforms.”¹³⁴ Among other examples, the letter explained that Daly and Morgan gave a presentation in June 2022 where they discussed why DOJ should not bring charges against

¹³⁰ See, e.g., *Watkins v. United States*, 354 U.S. 178, 187-88 (1957) (noting the “unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees and to testify fully with respect to matters within the province of proper investigation”).

¹³¹ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark Daly, Senior Litig. Couns., Tax Division, DOJ, at 1 (Sept. 14, 2023) (Daly Sept. 14, 2023 Letter) (attached as Ex. X); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Jack Morgan, Trial Att’y, Tax Division, DOJ, at 1 (Sept. 14, 2023) (Morgan Sept. 14, 2023 Letter) (attached as Ex. Y).

¹³² Ex. X (Daly Sept. 14, 2023 Letter) at 2 (citation omitted); Ex. Y (Morgan Sept. 14, 2023 Letter) at 2 (citation omitted).

¹³³ Ex. X (Daly Sept. 14, 2023 Letter) at 2 (citations omitted); Ex. Y (Morgan Sept. 14, 2023 Letter) at 2 (citations omitted).

¹³⁴ Ex. X (Daly Sept. 14, 2023 Letter) at 2 (citation omitted); Ex. Y (Morgan Sept. 14, 2023 Letter) at 2 (citation omitted).

Hunter Biden, charges that DOJ prosecutors and investigators recommended bringing just months before.¹³⁵

81. Further, as the full House confirmed by adopting House Resolution 917,¹³⁶ the Subpoenas to secure Daly’s and Morgan’s testimony are also critical to the impeachment inquiry. Indeed, House Resolution 917 confirms that the Committee had authority to issue subpoenas to further the impeachment inquiry from the beginning of that inquiry and empowers the Committee to take legal action to enforce its impeachment-related subpoenas, including specifically the Subpoenas issued to Daly and Morgan.¹³⁷ Their testimony will help the Committee determine whether President Biden abused his power by obstructing, or attempting to obstruct, the DOJ investigation into his son.¹³⁸ In sum, Daly’s and Morgan’s deposition testimony is critical to the Committee’s ability to craft legislative solutions and to determine whether President Biden committed an impeachable offense.

82. Under House Resolution 5, which was adopted by the full House, and regulations promulgated by the House Committee on Rules (Rules Committee) that govern Committee depositions, agency counsel could not attend Daly’s or Morgan’s deposition.¹³⁹ As explained

¹³⁵ Ex. X (Daly Sept. 14, 2023 Letter) at 2 (citation omitted); Ex. Y (Morgan Sept. 14, 2023 Letter) at 2 (citation omitted).

¹³⁶ By adopting House Resolution 918, the House also adopted House Resolution 917. *See* H. Res. 918, 118th Cong. § 6 (2023) (“House Resolution 917 is hereby adopted.”).

¹³⁷ H. Res. 917, 118th Cong. §§ 2, 4(a)(1) (2023). House Resolution 917 also “ratifies and affirms any subpoenas” that had been issued pursuant to the impeachment inquiry. *Id.* § 3.

¹³⁸ Ex. F (Impeachment Memorandum) at 29.

¹³⁹ H. Res. 5, 118th Cong. § 3(k)(3) (2023); 169 Cong. Rec. H147 (Jan. 10, 2023), <https://perma.cc/ZUK8-CECR>.

below, the decision of the 118th Congress to not allow agency counsel to attend depositions is consistent with the House’s longstanding approach to this issue.

83. After the Subpoenas were issued, DOJ and Committee staffers communicated about scheduling. Specifically, DOJ requested that Daly’s and Morgan’s depositions be moved back due to “a few timing conflicts for Morgan/Daly.”¹⁴⁰ After some back-and-forth, DOJ “confirm[ed] there are no scheduling conflicts for Daly on October 26 or Morgan on October 30 (or later that week), [and] so [] would appreciate the Committee moving the return dates to those days,” which the Committee ended up doing.¹⁴¹

84. On October 24, 2023, two days before Daly was scheduled to testify, Daly’s personal attorney wrote to the Committee stating that Committee staff “were exceedingly gracious and professional regarding the [S]ubpoena,” and that Daly would abide by the Subpoena, with the caveat that if DOJ directed Daly to ignore the Subpoena, he would “follow whatever instructions are clearly given by the Justice Department.”¹⁴² In essence, Daly made clear that but for DOJ directing him to ignore the Committee’s Subpoena, he would abide by it.

85. The next day, October 25, 2023, DOJ directed Daly not to obey the duly authorized and lawful Congressional Subpoena.¹⁴³ The only reason proffered by DOJ to Daly was that because agency counsel could not accompany Daly to the deposition, the Subpoena

¹⁴⁰ Email from Sara Zdeb, Off. of Legis. Affs., DOJ, to Stephen Castor, Gen. Couns., H. Comm. on the Judiciary (Sept. 23, 2023, 1:14 PM) (attached as Ex. Z at 2).

¹⁴¹ Email from Sara Zdeb, Off. of Legis. Affs., DOJ, to Stephen Castor, Gen. Couns., H. Comm. on the Judiciary (Sept. 26, 2023, 1:35 PM) (attached as Ex. Z at 1).

¹⁴² Letter from Robert Driscoll, Couns. for Mark Daly, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, at 2 (Oct. 24, 2023) (attached as Ex. AA).

¹⁴³ *See generally* Letter from Bradley Weinsheimer, Assoc. Deputy Att’y Gen., DOJ, to Robert Driscoll, Couns. for Mark Daly (Oct. 25, 2023) (attached as Ex. BB).

lacked legal effect.¹⁴⁴ As support for its view, DOJ’s letter cited a single source: a 2019 opinion issued by DOJ’s Office of Legal Counsel (OLC).¹⁴⁵ According to DOJ, because the Committee would “ask questions regarding information Mr. Daly learned within the scope of his official duties, including potentially privileged information,” without agency counsel present, the Subpoena “lacks legal effect and cannot constitutionally be enforced.”¹⁴⁶

86. The same day, DOJ also wrote a letter to the Committee.¹⁴⁷ It too declared that the Subpoenas sent to lower-level DOJ employees lacked legal effect due to the agency counsel issue and cited the same OLC Opinion.¹⁴⁸ Daly did not appear for his scheduled deposition the next day, on October 26, 2023. At the deposition, Committee staff noted Daly’s noncompliance with the Subpoena and entered the Subpoena as well as other documentary evidence into the record as exhibits.¹⁴⁹

87. By this time, Morgan also acquired personal counsel, and his deposition was moved again to November 6, 2023. In communications to the Committee, Morgan’s personal counsel also stated that Morgan had no “per se” objection to appearing for the deposition, but

¹⁴⁴ *Id.* at 2.

¹⁴⁵ *Id.* (citing *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. __ (May 23, 2019) (OLC Opinion)).

¹⁴⁶ *Id.* (citing OLC Opinion, *supra* note 145, at *2).

¹⁴⁷ Letter from Carlos Uriarte, Assistant Att’y Gen., DOJ, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Oct. 25, 2023) (attached as Ex. CC).

¹⁴⁸ *Id.* at 8.

¹⁴⁹ *See generally* Transcript of Deposition of Mark Daly, Senior Litig. Couns., Tax Division, DOJ (Oct. 26, 2023) (attached as Ex. DD).

that he too would follow DOJ's guidance.¹⁵⁰ On November 2, 2023, DOJ directed Morgan to not appear for his deposition for the same reasons it offered to Daly: the Subpoena purportedly lacks legal effect.¹⁵¹ Morgan did not show up to his November 6, 2023 deposition. At the deposition, Committee staff noted Morgan's noncompliance with the Subpoena and entered the Subpoena as well as other documentary evidence into the record as exhibits.¹⁵²

88. Although the full House authorized the Committee to file suit to enforce the Subpoenas issued to Daly and Morgan when it passed House Resolution 917 on December 13, 2023,¹⁵³ the Committee made a final attempt to obtain Daly's and Morgan's testimony without having to resort to litigation.

89. On February 22, 2024, the Committee again exercised its delegated authority and issued new Subpoenas that required Daly and Morgan to appear for depositions on March 1, 2024.¹⁵⁴

90. The cover letters that accompanied the Subpoenas noted that Daly's and Morgan's testimony is critical to the impeachment inquiry: it "is necessary to assist the Committee in determining whether sufficient grounds exist to draft articles of impeachment against President

¹⁵⁰ Email from Catherine Duval, Couns. for Jack Morgan, to Betsy Ferguson, Deputy Gen. Couns., H. Comm. on the Judiciary, et al. (Nov. 3, 2023, 1:52 PM) (attached as Ex. EE at 1).

¹⁵¹ Letter from Bradley Weinsheimer, Assoc. Deputy Att'y Gen., DOJ, to Catherine Duval, Couns. for Jack Morgan, at 2 (Nov. 2, 2023) (attached as Ex. FF).

¹⁵² *See generally* Transcript of Deposition of Jack Morgan, Trial Att'y, Tax Division, DOJ (Nov. 6, 2023) (attached as Ex. GG).

¹⁵³ H. Res. 917, 118th Cong. § 4(a)(1) (2023).

¹⁵⁴ *See* Ex. A at 1; Ex. B at 1.

Joseph R. Biden.”¹⁵⁵ The letters explained how “[a]s part of its impeachment inquiry, the Committee is investigating, among other things, whether President Biden ‘abuse[d] his power as President to impede, obstruct, or otherwise hinder investigations or the prosecution of Hunter Biden.’”¹⁵⁶ It then noted that “[s]ome of the information the Committee has uncovered suggest[s] that political interference may have impeded the Hunter Biden investigation and prosecution.”¹⁵⁷ Given their “firsthand knowledge of the investigation’s day-to-day operations,” the Committee believes that Daly and Morgan will help them determine “whether President Biden (directly or through his political appointees) has in any way attempted to meddle in the investigation” of his son.¹⁵⁸ The Committee stressed that it “has attempted to get this information from other sources but has been unable to do so.”¹⁵⁹

91. The letters, like the earlier ones, highlighted the presentation that Daly and Morgan gave in June 2022 where they argued that DOJ should not bring charges against Hunter Biden for the 2014 and 2015 tax years, despite their team writing a prosecution memorandum three months earlier recommending bringing such charges for those years.¹⁶⁰ Given their

¹⁵⁵ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark Daly, Senior Litig. Couns., Tax Division, DOJ, at 1 (Feb. 22, 2024) (Daly Feb. 22, 2024 Letter) (attached as Ex. HH); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Jack Morgan, Trial Att’y, Tax Division, DOJ, at 1 (Feb. 22, 2024) (Morgan Feb. 22, 2024 Letter) (attached as Ex. II).

¹⁵⁶ Ex. HH (Daly Feb. 22, 2024 Letter) at 1; Ex. II (Morgan Feb. 22, 2024 Letter) at 1.

¹⁵⁷ Ex. HH (Daly Feb. 22, 2024 Letter) at 2; Ex. II (Morgan Feb. 22, 2024 Letter) at 2.

¹⁵⁸ Ex. HH (Daly Feb. 22, 2024 Letter) at 2; Ex. II (Morgan Feb. 22, 2024 Letter) at 2.

¹⁵⁹ Ex. HH (Daly Feb. 22, 2024 Letter) at 3; Ex. II (Morgan Feb. 22, 2024 Letter) at 3.

¹⁶⁰ Ex. HH (Daly Feb. 22, 2024 Letter) at 2-3; Ex. II (Morgan Feb. 22, 2024 Letter) at 2-3.

“personal knowledge of this aspect of the investigation,” the Committee believes that Daly and Morgan will be able to provide insight as to why DOJ ultimately declined to bring charges for those years, “including whether [DOJ’s decision] was impacted by political interference.”¹⁶¹ The Committee also believes Daly and Morgan “may be able to shed light on why the U.S. Attorney for the District of Columbia and the U.S. Attorney for the Central District of California”—whom President Biden appointed—“refused to partner with the prosecution team to bring charges against Hunter Biden,” including, again, whether political influence played any role in their failure to partner.¹⁶² After all, Daly, according to whistleblower testimony, communicated with each U.S. Attorney’s Office about potentially partnering, and Morgan was a member of the team that needed to partner.¹⁶³

92. Beyond assisting the Committee’s impeachment inquiry, the Committee noted that Daly’s and Morgan’s testimony “is ... related to several of the Committee’s legislative and oversight objectives” and “will inform potential legislation” the Committee is considering.¹⁶⁴

93. The Committee also explained that “concerns about revealing information related to an ongoing investigation or the deliberative process privilege”—which other witnesses cited when refusing to answer the Committee’s questions—“have no factual or legal basis” and thus do not prevent Daly and Morgan from providing the information the Committee needs.¹⁶⁵

¹⁶¹ Ex. HH (Daly Feb. 22, 2024 Letter) at 2; Ex. II (Morgan Feb. 22, 2024 Letter) at 2.

¹⁶² Ex. HH (Daly Feb. 22, 2024 Letter) at 2-3; Ex. II (Morgan Feb. 22, 2024 Letter) at 2-3.

¹⁶³ Ex. HH (Daly Feb. 22, 2024 Letter) at 3; Ex. II (Morgan Feb. 22, 2024 Letter) at 3.

¹⁶⁴ Ex. HH (Daly Feb. 22, 2024 Letter) at 5; Ex. II (Morgan Feb. 22, 2024 Letter) at 4-5.

¹⁶⁵ Ex. HH (Daly Feb. 22, 2024 Letter) at 3-4; Ex. II (Morgan Feb. 22, 2024 Letter) at 3-4.

94. Finally, the Committee emphasized that the House’s decision not to allow agency counsel to attend depositions is a legitimate exercise of its constitutional authority to adopt its own rules and procedures.¹⁶⁶ But in its February 22, 2024 letters, the Committee nonetheless offered “an extraordinary accommodation” to allow the Executive Branch to protect its purported interests and avoid the need for the Committee to initiate litigation: it stated that it will “allow agency counsel to remain physically present just outside the Committee room in which the deposition will occur and will permit a recess at any time for [Daly and Morgan] and/or [their] counsel to consult with agency counsel about any matters that may arise during the deposition.”¹⁶⁷ This accommodation will allow Daly, Morgan, and their personal counsel “to consult with agency counsel as necessary and alleviates the concerns that DOJ has articulated about proceeding without agency counsel.”¹⁶⁸

95. On February 24, 2024, Daly’s personal attorney told the Committee, among other things, that he and Daly planned to appear at the deposition, with the caveat that he “will counsel Mr. Daly to follow any instructions from his employer, the Department of Justice, with respect to whether to appear or whether to limit his testimony in any respect due to the pending prosecution.”¹⁶⁹ In essence, Daly again made clear that if not for DOJ directing him to ignore the Committee’s Subpoena, he would comply with it.

¹⁶⁶ Ex. HH (Daly Feb. 22, 2024 Letter) at 5; Ex. II (Morgan Feb. 22, 2024 Letter) at 5.

¹⁶⁷ Ex. HH (Daly Feb. 22, 2024 Letter) at 5; Ex. II (Morgan Feb. 22, 2024 Letter) at 5.

¹⁶⁸ Ex. HH (Daly Feb. 22, 2024 Letter) at 5; Ex. II (Morgan Feb. 22, 2024 Letter) at 5.

¹⁶⁹ Letter from Robert Driscoll, Couns. for Mark Daly, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, at 2 (Feb. 24, 2024) (attached as Ex. JJ).

96. On February 29, 2024, the day before the scheduled depositions, DOJ directed both Daly and Morgan not “to appear before the Committee pursuant to the [S]ubpoena[s].”¹⁷⁰ As it did when it directed them not to comply with the original Subpoenas, DOJ again claimed that, per the OLC Opinion, the latest Subpoenas lacked legal effect because agency counsel could not attend the depositions.¹⁷¹ Morgan’s personal counsel wrote to the Committee the same day and explained that Morgan would follow DOJ’s guidance and would not appear to testify.¹⁷² Neither Daly nor Morgan appeared for their scheduled depositions the next day. At the depositions, Committee staff noted Daly’s and Morgan’s noncompliance with the Subpoenas, despite the Committee’s accommodation efforts, and entered the Subpoenas and other documentary evidence into the record as exhibits.¹⁷³

97. On February 29, 2024, the same day that DOJ directed Morgan and Daly not to appear for their depositions, it also wrote to the Committee.¹⁷⁴ DOJ claimed that the cover letters accompanying the Subpoenas to Daly and Morgan (and to two other witnesses the Committee

¹⁷⁰ *See generally* Letter from Bradley Weinsheimer, Assoc. Deputy Att’y Gen., DOJ, to Robert Driscoll, Couns. for Mark Daly, at 3 (Feb. 29, 2024) (Daly Feb. 29, 2024 Direction Letter) (attached as Ex. KK); Letter from Bradley Weinsheimer, Assoc. Deputy Att’y Gen., DOJ, to Catherine Duval, Couns. for Jack Morgan, at 3 (Feb. 29, 2024) (Morgan Feb. 29, 2024 Direction Letter) (attached as Ex. LL).

¹⁷¹ Ex. KK (Daly Feb. 29, 2024 Direction Letter) at 3; Ex. LL (Morgan Feb. 29, 2024 Direction Letter) at 3.

¹⁷² Letter from Catherine Duval, Couns. for Jack Morgan, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, at 1-2 (Feb. 29, 2024) (attached as Ex. MM).

¹⁷³ *See generally* Transcript of Deposition of Mark Daly, Senior Litig. Couns., Tax Division, DOJ (Mar. 1, 2024) (attached as Ex. NN); Transcript of Deposition of Jack Morgan, Trial Att’y, Tax Division, DOJ (Mar. 1, 2024) (attached as Ex. OO).

¹⁷⁴ *See generally* Letter from Carlos Uriarte, Assistant Att’y Gen., DOJ, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Feb. 29, 2024) (attached as Ex. PP).

subpoenaed) “identify no evidence of any efforts by President Biden or the White House to interfere with the ongoing investigation or prosecution.”¹⁷⁵ The letter conceded, of course, that the testimony the Committee has received thus far from DOJ witnesses “was necessarily scoped”¹⁷⁶—meaning DOJ permitted the witnesses to address only certain topics. DOJ repeated its view that the Subpoenas lack legal effect due to the agency counsel issue and asked the Committee to instead send interrogatories so that DOJ could “assess whether additional information can be provided at this time.”¹⁷⁷ To do so, however, DOJ claimed that the Committee would need to send it “copies of the transcripts of the testimony in this matter.”¹⁷⁸ DOJ failed to acknowledge the accommodations the Committee offered to allow agency counsel to sit outside the room where the deposition would be conducted and to allow the Daly and Morgan to request a recess at any time to confer with agency counsel.

98. The Committee responded to DOJ on March 7, 2024. It explained that DOJ’s position—“that because voluntary transcribed interviews with the Department’s approved witnesses—who were subject to the Department’s unilateral and arbitrary scoping limitations—did not meet the Department’s self-selected threshold for wrongdoing, the Committee is not entitled to obtain any additional testimony”—“is ... absurd on its face” and ignores Congress’s broad investigative authority.¹⁷⁹ Although “the Committee has been able to document numerous

¹⁷⁵ *Id.* at 3.

¹⁷⁶ *Id.* at 2.

¹⁷⁷ *Id.* at 4-5.

¹⁷⁸ *Id.*

¹⁷⁹ See Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Merrick Garland, Att’y Gen., DOJ, at 2 (Mar. 7, 2024) (Garland Mar. 7, 2024 Letter) (attached as Ex. QQ).

irregularities in the Department’s handling of its investigation into the President’s son,” the Committee explained, no DOJ witness has provided any explanation for those irregularities.¹⁸⁰ The Committee emphasized that Daly and Morgan “are in a prime position to know why these irregularities occurred,” and it is not enough for the Committee to hear only from DOJ-approved witnesses who answer only questions DOJ approves.¹⁸¹ Next, the Committee explained its view that not only are written interrogatories a less effective tool than live depositions, but DOJ’s request that the Committee send those interrogatories to DOJ—rather than Daly and Morgan—suggests DOJ “intends to exert a degree of influence or control over the substance of the witnesses’ answers,”¹⁸² which is precisely why agency counsel have historically been prevented from attending depositions under the relevant rules.¹⁸³ Finally, the Committee explained why it would not send transcripts from previous interviews: “[w]itnesses do not need to review the testimony of others to provide truthful information about their own knowledge of the matters at issue,” and DOJ “is insisting on a condition that it would not accept in its own investigations.”¹⁸⁴

99. In sum, Daly and Morgan each violated his legal duty to comply with the Committee’s lawfully issued Subpoenas, and their defiance is obstructing the Committee’s investigation. The parties’ negotiations are at an impasse, and judicial intervention is necessary.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 2-3.

¹⁸² *Id.* at 5.

¹⁸³ *See infra* Section III.E.

¹⁸⁴ Ex. QQ (Garland Mar. 7, 2024 Letter) at 5.

House Resolution 917 expressly authorizes the Committee to take legal action against Daly and Morgan—indeed, it mentions them by name—to secure their compliance with the Subpoenas.¹⁸⁵

100. DOJ’s position that the Subpoenas are unenforceable because they do not permit agency counsel to attend has no merit. The Constitution empowers the House to adopt its own rules. It has had a version of this deposition rule for decades, and numerous Executive Branch employees have testified in Congressional depositions without agency counsel present.

III. The House has delegated deposition authority to committees for over thirty years, and the relevant rules have never allowed agency counsel to attend depositions

101. The Constitution grants the House the authority to adopt its own rules and procedures.¹⁸⁶ Promulgating a rule that dictates who may and may not attend depositions is a valid exercise of that authority.

A. Decades ago, the House began delegating deposition authority to committees charged with investigating a discrete subject, and the relevant rules did not allow agency counsel to attend depositions

102. In the 1980s and 1990s, the House delegated the authority to conduct depositions to the Select Committee to Investigate Covert Arms Transactions with Iran and to the Task Force of Members of the Foreign Affairs Committee to Investigate Certain Allegations Concerning the Holding of Americans as Hostages by Iran in 1980.¹⁸⁷

¹⁸⁵ H. Res. 917, 118th Cong. § 4(a) (2023). And the Speaker of the House has approved the Committee’s decision to do so here. *See id.*

¹⁸⁶ U.S. Const. art. I, § 5, cl. 2.

¹⁸⁷ *See, e.g.*, H. Res. 12, 100th Cong. §§ 1, 6 (1987) (attached as Ex. RR); H. Res. 258, 102d Cong. §§ 1, 6 (1991) (attached as Ex. SS).

103. In providing this authority, the House permitted the select committee and the task force to adopt rules regulating depositions, including regulations regarding who could attend.¹⁸⁸

104. In turn, the select committee and task force adopted rules that allowed personal counsel to accompany witnesses to advise them of their rights but did not allow agency counsel to attend.¹⁸⁹

105. The rules alleviated the concern that the presence of agency counsel could hinder investigations by pressuring a witness not to disclose information relevant to a committee's investigation, particularly when an investigation involved issues of agency corruption or abuse or when the witness's interests diverged from the agency's interests.

¹⁸⁸ See, e.g., Ex. RR (H. Res. 12, 100th Cong. § 2 (1987)) (authorizing the committee to adopt rules that “may govern the conduct of the depositions, ... including the persons present”); Ex. SS (H. Res. 258, 102d Cong. § 2 (1991)) (same).

¹⁸⁹ See, e.g., Rule 7.3, Rules of the Select Committee to Investigate Covert Arms Transactions with Iran of the U.S. House of Representatives, 100th Cong. (Comm. Print 1987) (“Witnesses may be accompanied at a deposition by personal counsel to advise them of their rights ...; observers or *counsel for other persons or for the agencies under investigation may not attend.*” (emphasis added)) (attached as Ex. TT); Rule 7.3, Rules of the Task Force to Investigate Certain Allegations Concerning the Holding of American Hostages by Iran in 1990 of the U.S. House of Representatives, 102d Cong. (Comm. Print 1992) (“Witnesses may be accompanied at a deposition by counsel representing the witness to advise them of their rights ...; observers or *counsel for other persons or for agencies may not attend.*” (emphasis added)) (attached as Ex. UU).

Years later, in 2014, the House established the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi and delegated its deposition authority, subject to regulations issued by the Rules Committee, see H. Res. 567, 113th Cong. §§ 1, 4(c)(4)-(5) (2014), <https://perma.cc/ZB5U-Z4F7>, and the Rules Committee issued regulations that said “[n]o one may be present at depositions except ... the witness[] and the witness’s counsel. Observers or *counsel for other persons, or for agencies under investigation, may not attend.*” 160 Cong. Rec. H4056 (daily ed. May 9, 2014) (emphasis added), <https://perma.cc/5Y5G-27GW>.

B. The House delegated deposition authority to the Oversight Committee, and the Oversight Committee continued the tradition of not allowing agency counsel to attend

106. Beginning in 2007, the House delegated deposition authority to the Oversight Committee and gave it the authority to adopt its own rules “authorizing and regulating” depositions.¹⁹⁰

107. Under this authority, the Oversight Committee adopted a rule not allowing “[o]bservers or counsel for other persons, or for agencies under investigation,” to attend depositions.¹⁹¹

108. Since 2007, the House, under both Democratic and Republican leadership, has continued to delegate general deposition authority to the Oversight Committee each Congress, including this one, the 118th Congress.¹⁹²

109. The Oversight Committee in each Congress has continued to adopt a rule that does not permit agency counsel to attend depositions.¹⁹³

¹⁹⁰ H. Res. 6, 110th Cong. § 502 (2007), <https://perma.cc/6PJ6-8TD3>; House Rule X.4(c)(3)(A), 110th Cong. (2007), <https://perma.cc/V4GZ-FDVH>.

¹⁹¹ See Rule 22, Rules of the Committee on Oversight & Government Reform of the U.S. House of Representatives, 110th Cong. (2007), <https://perma.cc/FA5E-NJH8>.

¹⁹² See House Rule X.4(c)(3)(A), 111th Cong. (2009), <https://perma.cc/L2NY-7975>; House Rule X.4(c)(3)(A), 112th Cong. (2011) (attached as Ex. VV); House Rule X.4(c)(3)(A), 113th Cong. (2013) (attached as Ex. WW); House Rule X.4(c)(3)(A), 114th Cong. (2015), <https://perma.cc/939M-WJMW>; House Rule X.4(c)(3)(A), 115th Cong. (2017) (attached as Ex. XX); House Rule X.4(c)(3)(A), 116th Cong. (2020), <https://perma.cc/N76S-TM98>; House Rule X.4(c)(3)(A), 117th Cong. (2022), <https://perma.cc/HH35-VJKY>; House Rule X.4(c)(3)(A), 118th Cong. (2023).

¹⁹³ See Rule 22, Rules of the Committee on Oversight & Government Reform of the U.S. House of Representatives, 111th Cong. (Comm. Print 2009) (“Observers or counsel for other persons, or for agencies under investigation, may not attend.”), <https://perma.cc/5JVT-S8JT>; Rule 15(d), Rules of the Committee on Oversight & Government Reform of the U.S. House of Representatives, 112th Cong. (2011) (same), <https://perma.cc/3F3E-5XQW>; Rule 15(d), Rules of

C. Next, the House delegated deposition authority to more standing committees, including the Judiciary Committee, and the governing regulations and rules still did not allow agency counsel to attend

110. In 2015, the House provided deposition authority to four more committees: the Committees on Energy and Commerce; Financial Services; Science, Space, and Technology; and Ways and Means.¹⁹⁴ The authorizing resolution that delegated this authority said that depositions “shall be subject to regulations issued by the chair of the Committee on Rules and printed in the Congressional Record.”¹⁹⁵

111. The Rules Committee then published Regulations for the Use of Deposition Authority (Deposition Regulations) stating that “[o]bservers or counsel for other persons, or for agencies under investigation, may not attend” depositions.¹⁹⁶

the Committee on Oversight & Government Reform of the U.S. House of Representatives, 113th Cong. (2013) (same), <https://perma.cc/WD3D-26VE>; Rule 15(d), Rules of the Committee on Oversight & Government Reform of the U.S. House of Representatives, 114th Cong. (2015) (same), <https://perma.cc/BX67-292H>; Rule 15(e), Rules of the Committee on Oversight & Government Reform of the U.S. House of Representatives, 115th Cong. (2017) (same), <https://perma.cc/5VLJ-4FYC>; Rule 15(e), Rules of the Committee on Oversight & Reform of the U.S. House of Representatives, 116th Cong. (2019) (same), <https://perma.cc/2U7N-UXTQ>; Rule 15(e), Rules of the Committee on Oversight & Reform of the U.S. House of Representatives, 117th Cong. (2021) (same), <https://perma.cc/CHD7-NTJ9>; Rule 15(e), Rules of the Committee on Oversight & Accountability of the U.S. House of Representatives, 118th Cong. (2023) (“No one may be present at depositions except members, Committee staff designated by the Chair of the Committee or the Ranking Minority Member of the Committee, an official reporter, the witness, and the witness’s two designated attorneys. Other persons, including government agency personnel, may not attend.”), <https://perma.cc/3PRQ-GDJW>.

¹⁹⁴ H. Res. 5, 114th Cong. § 3(b) (2015), <https://perma.cc/G85G-QPG9>.

¹⁹⁵ *Id.* § 3(b)(2).

¹⁹⁶ 161 Cong. Rec. E21 (daily ed. Jan. 7, 2015), <https://perma.cc/UF2U-DQ94>.

112. In 2017, the House delegated deposition authority to all standing committees, except for the Committee on House Administration and the Rules Committee.¹⁹⁷ The House has continued to delegate general deposition authority (subject to the Deposition Regulations) to these committees, under Democratic and Republican leadership, each Congress since 2017, including this one (the 118th Congress).¹⁹⁸

113. During each Congress from 2017 to 2023, the Deposition Regulations adopted by the Rules Committee have not permitted government agency counsel to attend depositions.¹⁹⁹

D. In the current Congress, the full House adopted a provision as part of its rules package that does not permit agency counsel to attend depositions

114. In the 118th Congress, rather than relying solely on the Rules Committee's Deposition Regulations, the full House adopted language as part of its rules package that expressly prevents agency counsel from attending depositions.²⁰⁰

115. Additionally, in the 118th Congress, the Rules Committee again promulgated Deposition Regulations that do not allow agency counsel to attend depositions.²⁰¹ The Judiciary

¹⁹⁷ H. Res. 5, 115th Cong. § 3(b) (2017), <https://perma.cc/45K6-PTF3>.

¹⁹⁸ H. Res. 6, 116th Cong. § 103(a) (2019), <https://perma.cc/V5X8-GQ5C>; H. Res. 8, 117th Cong. § 3(b) (2021), <https://perma.cc/HU3Y-TDMS>; H. Res. 5, 118th Cong. § 3(k)(1)-(2) (2023).

¹⁹⁹ 163 Cong. Rec. H536 (daily ed. Jan. 13, 2017), <https://perma.cc/52VG-3MMB>; 165 Cong. Rec. H1216 (daily ed. Jan. 25, 2019), <https://perma.cc/VJ8J-N9TN>; 167 Cong. Rec. H41 (daily ed. Jan. 4, 2021), <https://perma.cc/3F9B-DHDL>; 169 Cong. Rec. H147.

²⁰⁰ H. Res. 5, 118th Cong. § 3(k)(3) (2023) (“Deponents may be accompanied at a deposition by two designated personal, nongovernmental attorneys to advise them of their rights. Only members, committee staff designated by the chair or ranking minority member, an official reporter, the witness, and the witness’s two designated attorneys are permitted to attend. Other persons, including government agency personnel, may not attend.”).

²⁰¹ 169 Cong. Rec. H147.

Committee's Rules also specifically note that the Deposition Regulations govern its depositions.²⁰²

116. Thus, in the 118th Congress, language adopted by the full House, the Rules Committee's Deposition Regulations, and the Judiciary Committee's Rules all make clear that the longstanding rule continues to apply, and agency counsel are not permitted to attend depositions.

E. The House, under both Democratic and Republican control, has concluded that the presence of agency counsel in depositions could interfere with investigations

117. Under both Democratic and Republican leadership, the House has concluded that agency counsel's presence in depositions could interfere with investigations, especially when the investigation involves issues of agency corruption or abuse.²⁰³

118. A committee's right to exclude agency counsel is especially important when a witness's personal interests depart from the interests of the agency employing the witness. A witness may be less willing to divulge information that reflects poorly on his employing agency if the agency's lawyer is in the room.

²⁰² Judiciary Committee Rule XI (2023).

²⁰³ See, e.g., H. Rep. No. 116-125, at 33 (2019) (report from the Oversight Committee, which was under Democratic control), <https://perma.cc/2NQH-KUXP>; H. Comm. on the Judiciary, *Abuse of Power, Waste of Resources, and Fear: What Internal Documents and Testimony From Career Employees Show About the FTC Under Chair Lina Khan* 5 (Feb. 22, 2024) ("Repeatedly during the Committee's transcribed interviews of FTC staff, the FTC officials present at the interview—who were there to represent the interests of the FTC and Chair Khan, not the witnesses—attempted to impede the Committee's fact-finding. For example, the Committee's questioning of FTC witnesses was repeatedly interrupted by FTC counsel, and witnesses were directed not to answer the Committee's questions on a number of topics") (Khan Report), <https://perma.cc/77JH-Q3M3>; Oversight Comm. Democrats, *Committee Depositions in the House of Representatives: Longstanding Republican and Democratic Practice of Excluding Agency Counsel* 4-5 (last visited Mar. 12, 2024) (*Longstanding Practice*), <https://perma.cc/3ZS3-4EEX>.

119. Here, this interest is not abstract, either. Both Daly and Morgan have represented that they personally have no objections to being interviewed by the Committee. Yet DOJ has instructed them not to testify, even though it has permitted other officials involved in the Hunter Biden investigation to speak with the Committee. This at least raises the possibility that the presence of DOJ counsel next to Daly and Morgan is meant to chill whatever they have to say to the Committee.

120. Beyond protecting the integrity of investigations, excluding agency counsel also helps protect witnesses from the possibility of threats, abuse, or coercion from their employers.²⁰⁴

121. The House rule thus aims to protect agency witnesses who may share information that is damaging to their employing agency just as federal law aims to protect whistleblowers who disclose information that could reflect poorly on their employing agency.²⁰⁵

F. House committees have deposed more than 175 Executive Branch witnesses without agency counsel

122. More than 175 Executive Branch witnesses have appeared for depositions—under both Democratic and Republican control of the House—without agency counsel present.²⁰⁶

²⁰⁴ See H. Rep. No. 116-125, at 33; Khan Report, *supra* note 203, at 5 (“With FTC officials closely monitoring their testimony, it is reasonable that these witnesses feared retaliation for negative testimony”); *Longstanding Practice*, *supra* note 203, at 1; Morton Rosenberg, *When Congress Comes Calling: A Study on the Principles, Practices, and Pragmatics of Legislative Inquiry* 38 (2017), <https://perma.cc/HM9G-87E9>.

²⁰⁵ Cf. 5 U.S.C. § 2302(b)(8)(C) (“Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority ... take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of ... any disclosure to Congress (including any committee of Congress)”).

²⁰⁶ See generally *Longstanding Practice*, *supra* note 203.

123. Indeed, despite DOJ’s current position, the OLC Opinion on which it relies was not published until 2019—decades after Congress’s practice of excluding agency counsel began.

124. And Wolf, one of the lead prosecutors on the Hunter Biden investigation, appeared for her transcribed interview before the Committee without agency counsel present. Although Wolf was no longer a DOJ employee when she appeared, according to the same OLC Opinion that DOJ relied on to prevent Daly and Morgan from testifying, Wolf was still “disclosing the Executive Branch’s information.”²⁰⁷ DOJ’s unprincipled approach here lacks merit and, as its own practice shows, is unnecessary to protect the Executive Branch’s purported interests.

125. Given that the Supreme Court has long held that “the respective powers of those who are equally the representatives of the people[] are to be adjusted . . . by the practice of the government [and] ought to receive a considerable impression from that practice,”²⁰⁸ the OLC Opinion attempts to impede Congress’s ability to discharge its constitutional authority and elevates the Executive Branch’s interests over a power expressly delegated to Congress in the Constitution. The Court should reject this self-interested gambit and order that Daly and Morgan comply with the lawful Congressional Subpoenas.

²⁰⁷ See OLC Opinion, *supra* note 145, at *10 n.3 (citing *Assertion of Executive Privilege Concerning the Dismissal and Replacement of U.S. Attorneys*, 31 Op. O.L.C. 1 (2007) (concluding that the President may assert executive privilege with respect to testimony by two former White House officials)).

²⁰⁸ *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 401 (1819); *see also PHH Corp. v. CFPB*, 839 F.3d 1, 21-25 (D.C. Cir. 2016) (summarizing Supreme Court cases using historical practices as a method of constitutional interpretation in separation-of-powers cases).

IV. Beyond simply appearing before the Committee, Daly and Morgan must answer the Committee's questions

126. The Subpoenas are lawful, and Daly and Morgan have a legal obligation to appear before the Committee without agency counsel present, as the House Rules require.

127. But they must do more than that: Daly and Morgan must also answer the Committee's questions, especially questions related to the decision to let the statute of limitations lapse for tax years 2014 and 2015 and the U.S. Attorneys' failure to partner with Weiss's prosecution team to bring charges against Hunter Biden.

128. To date, the other witnesses who have spoken to the Committee have refused to answer questions about certain topics—including the decision to allow the statute of limitations to lapse for charges related to tax years 2014 and 2015 and deliberations surrounding the U.S. Attorneys' failure to partner with Weiss to bring charges against Hunter Biden—because they purportedly implicate an ongoing criminal investigation and prosecution or involve internal DOJ deliberations.²⁰⁹ There is no legal support for these witnesses' refusal to discuss these topics.

129. For starters, there is no ongoing investigation into or prosecution of Hunter Biden for tax crimes related to tax years 2014 or 2015. Given DOJ's decision to let the statute of limitations for those charges lapse, any investigation into those issues has necessarily ended, and the Committee's questions about DOJ's decision not to bring charges, as well as questions about U.S. Attorney Graves's decision not to partner with Weiss to bring those charges, do not implicate an ongoing investigation.

²⁰⁹ See, e.g., Transcript of Interview of Lesley Wolf, Former Assistant U.S. Att'y, DOJ, at 16, 19, 21 (Dec. 14, 2023) (attached as Ex. YY); Ex. S (Weiss Deposition) at 22-24, 29, 31; Ex. R (Estrada Deposition) at 23, 25-26, 34; Ex. Q (Graves Deposition) at 22, 24, 110.

130. But even if the Committee’s questions did implicate an ongoing investigation, the Committee is legally entitled to that information. Indeed, neither the Constitution, nor federal statutes, nor the common law recognizes a privilege for materials that could implicate an ongoing investigation. There is no ongoing-investigation privilege, and this objection is a political one, not a legal one.²¹⁰ As the Supreme Court has explained, “a congressional committee ... engaged in legitimate legislative investigation need not grind to a halt” in the face of an ongoing criminal investigation.²¹¹ In fact, DOJ has provided materials related to ongoing criminal investigations to Congress many times in the past.²¹²

131. Attempts to rely on a purported deliberative-process privilege fare no better. Indeed, that “privilege disappears altogether when there is any reason to believe government misconduct occurred.”²¹³ That is exactly what the Committee is investigating here: it is investigating why DOJ deviated from standard investigative procedures and how, under the existing legal framework, it was able to do so. It is also investigating whether President Biden

²¹⁰ See William McGurn, Opinion, *The ‘Ongoing Investigation’ Dodge on Hunter Biden*, Wall St. J. (July 10, 2023, 6:36 PM) (quoting former Assistant U.S. Attorney Andrew McCarthy as stating “[t]he executive branch response of ‘ongoing investigation’ is really a political objection, rather than a legal one” and noting that “[t]here is no ‘ongoing investigation’ privilege”), <https://www.wsj.com/articles/the-ongoing-investigation-dodge-hunter-biden-david-weiss-bribe-question-informant-67c31868> (attached as Ex. ZZ).

²¹¹ See *Hutcheson v. United States*, 369 U.S. 599, 618 (1962); see also Christopher R. Smith, *I Fought the Law and the Law Lost: The Case for Congressional Oversight Over Systemic Department of Justice Discovery Abuse in Criminal Cases*, 9 Cardozo Pub. L. Pol’y & Ethics J. 85, 107 (2010) (“To preclude Congress from investigating prosecutorial misconduct because of open investigations would completely undermine Congress’s constitutional duty to investigate government misconduct, an important legislative branch check on the executive branch.”).

²¹² See, e.g., Rosenberg, *supra* note 204, at 75-82 (listing numerous examples of Congress obtaining testimony related to an ongoing criminal investigation).

²¹³ See *In re Sealed Case*, 121 F.3d 729, 746 (D.C. Cir. 1997).

committed an impeachable offense, including by using his political appointees to obstruct DOJ's investigation.

132. In sum, Daly and Morgan must appear before the Committee, and they must answer, among others, questions about the decision to let the statute of limitations for charges related to 2014 and 2015 lapse and about the U.S. Attorneys' failure to partner with Weiss and his team.

SPECIFIC CLAIM FOR RELIEF

COUNT I

133. The Judiciary Committee incorporates by reference and realleges the preceding paragraphs, as if set forth fully here.

134. The Subpoenas were duly authorized, issued, and served pursuant to the Judiciary Committee's legislative and impeachment powers under Article I of the Constitution of the United States.

135. The Subpoenas required Daly and Morgan to appear to testify at depositions before the House Judiciary Committee on March 1, 2024, yet they did not appear as required.

136. The Judiciary Committee has attempted to make reasonable accommodations for Daly's and Morgan's testimony, but those efforts are at an impasse, and Daly and Morgan continue to refuse to appear for their depositions.

137. There is no lawful basis for Daly's and Morgan's refusals to appear before the Judiciary Committee for their depositions.

138. Daly and Morgan have violated and continue to violate their legal obligations by refusing to appear before the Judiciary Committee as required by their Subpoenas and by

refusing to answer questions when there has been no assertion of privilege by the Executive Branch.

139. As a result, the Judiciary Committee has been, and will continue to be, injured by Daly's and Morgan's actions.

PRAYER FOR RELIEF

WHEREFORE, the Judiciary Committee respectfully prays that this Court:

A. Pursuant to 28 U.S.C. §§ 2201 and 2202, enter declaratory and injunctive relief as follows:

1. Declare that Daly's and Morgan's refusal to appear before the Committee in response to their respective Subpoenas lacks legal justification;

2. Issue an injunction ordering Daly and Morgan to appear and testify immediately before the Committee;

3. Issue an injunction ordering Daly and Morgan to testify about the decision to allow the statute of limitations to lapse for charges against Hunter Biden related to the 2014 and 2015 tax years, including but not limited to (i) why they apparently changed their views about whether charges should be brought for those years, (ii) whether they were pressured in any way to argue in their June 15, 2022 presentation that charges should not be brought for those years, and (iii) whether Hunter Biden's lawyer offered to toll the statute of limitations for those years and, if so, why DOJ did not accept that offer;

4. Issue an injunction ordering Daly and Morgan to testify about the refusal of the U.S. Attorney's Office for the District of Columbia to partner with Weiss, including but not limited to (i) any discussions Daly had about that office's plans to assign an assistant U.S. attorney to the Hunter Biden matter, (ii) whether that office's views and willingness to partner

with Special Counsel Weiss changed after U.S. Attorney Graves became personally involved in the matter, and (iii) whether political interference played any role in that office's ultimate decision not to partner with Weiss; and

5. Issue an injunction ordering Daly and Morgan to testify about the refusal of the U.S. Attorney's Office for the Central District of California to partner with Weiss, including but not limited to (i) why the prosecution team approached that office in September 2022, (ii) any discussions that Daly had with that office, including with U.S. Attorney Estrada himself, (iii) whether Special Assistant U.S. Attorneys worked in that office and could have filed charges against Hunter Biden in the Central District of California, and, if so, why Weiss's team did not pursue that avenue, and (iv) whether political interference played any role in that office's ultimate decision not to partner with Weiss.

B. Retain jurisdiction to review any disputes that may arise over compliance with the Court's order.

C. Grant the Committee such other and further relief as may be just and proper under the circumstances.

Respectfully submitted,

/s/ Matthew B. Berry

Matthew B. Berry (D.C. Bar No. 1002470)

General Counsel

Todd B. Tatelman (VA Bar No. 66008)

Deputy General Counsel

Bradley Craigmyle (IL Bar No. 6326760)

Associate General Counsel

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Assistant General Counsel

OFFICE OF GENERAL COUNSEL²¹⁴

U.S. HOUSE OF REPRESENTATIVES

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*Counsel for Plaintiff Committee on the Judiciary of
the U.S. House of Representatives*

March 21, 2024

²¹⁴ Attorneys for the Office of General Counsel for the U.S. House of Representatives are “entitled, for the purpose of performing the counsel’s functions, to enter an appearance in any proceeding before any court of the United States or of any State or political subdivision thereof without compliance with any requirements for admission to practice before such court.” 2 U.S.C. § 5571(a).

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit A

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Mark F. Daly, Senior Litigation Counsel, Tax Division, U.S. Department of Justice

You are hereby commanded to be and appear before the
Committee on the Judiciary

of the House of Representatives of the United States at the place, date, and time specified below.

- ☐ to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: _____
Date: _____ Time: _____

- ☒ to testify at a deposition touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: 2237 Rayburn House Office Building
Date: March 1, 2024 Time: 2:00 p.m.

- ☐ to testify at a hearing touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
Date: _____ Time: _____

To The U.S. Marshals Service, or any authorized Member or congressional staff

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at
the city of Washington, D.C. this 22nd day of February, 2024

Attest:


Kevin F. McAuliffe

Clerk

J. Jordan
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for

Mark F. Daly, Senior Litigation Counsel, Tax Division, U.S. Department of Justice 

Address U.S. Department of Justice, 950 Pennsylvania Avenue, N.W. Washington, DC 20530

before the Committee on the Judiciary 

U.S. House of Representatives
118th Congress

Served by (print name) _____

Title _____

Manner of service _____

Date _____

Signature of Server _____

Address _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit B

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Jack Morgan, U.S. Department of Justice

You are hereby commanded to be and appear before the
Committee on the Judiciary

of the House of Representatives of the United States at the place, date, and time specified below.

- ☐ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: _____
Date: _____ Time: _____

- ☒ **to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: 2237 Rayburn House Office Building
Date: March 1, 2024 Time: 10:00 a.m.

- ☐ **to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
Date: _____ Time: _____

To The U.S. Marshals Service, or any authorized Member or congressional staff

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 22nd day of February, 2024

Attest:

Kevin F. McCulley

Clerk

Jim Jordan
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for

Jack Morgan, U.S. Department of Justice 

Address U.S. Department of Justice, 950 Pennsylvania Avenue, N.W. Washington, DC 20530

before the Committee on the Judiciary 

*U.S. House of Representatives
118th Congress*

Served by (print name) _____

Title _____

Manner of service _____

Date _____

Signature of Server _____

Address _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit C

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

INTERVIEW OF: GARY A. SHAPLEY, JR.

Friday, May 26, 2023

Washington, D.C.

The interview in the above matter was held in 5480 O'Neill House Office Building,
commencing at 9:33 a.m.

Appearances:

For the COMMITTEE ON WAYS AND MEANS:

[REDACTED], MAJORITY COUNSEL

[REDACTED], MAJORITY COUNSEL

[REDACTED], MAJORITY COUNSEL

[REDACTED], MAJORITY STAFF

[REDACTED], MAJORITY STAFF

[REDACTED], MAJORITY COUNSEL

[REDACTED], MINORITY COUNSEL

[REDACTED], MINORITY COUNSEL

[REDACTED], MINORITY COUNSEL

For GARY A. SHAPLEY, JR.:

MARK D. LYTLER,

PARTNER,

NIXON PEABODY LLP

TRISTAN LEAVITT,

PRESIDENT,

EMPOWER OVERSIGHT

MAJORITY COUNSEL 1. Good morning. This is a transcribed interview of Internal Revenue Service Criminal Supervisory Special Agent Gary Shapley.

Chairman Jason Smith has requested this interview following a letter sent to the committee through counsel on April 19th, 2023, indicating Mr. Shapley's desire to make protected whistleblower disclosures to Congress.

This interview is being conducted as part of the committee's oversight of the Internal Revenue Code and the Internal Revenue Service.

Would the witness please state your name for the record?

Mr. Shapley. Gary Shapley.

MAJORITY COUNSEL 1. Could counsel for the witness please state your names for the record?

Mr. Lytle. Mark Lytle.

Mr. Leavitt. Tristan Leavitt.

MAJORITY COUNSEL 1. On behalf of the committee, I want to thank you for appearing here today to answer our questions and for coming forward to make these disclosures to Congress.

My name is [REDACTED]. I'm an attorney on Chairman Smith's Ways and Means Committee staff.

I'll now have everyone else from the committee who is here at the table introduce themselves as well.

MAJORITY COUNSEL 2. [REDACTED] with the majority staff.

MAJORITY COUNSEL 3. [REDACTED], majority staff.

MAJORITY STAFF. [REDACTED], majority staff.

MAJORITY COUNSEL 4. [REDACTED], majority staff.

MAJORITY STAFF. [REDACTED], majority staff.

MINORITY COUNSEL 1. [REDACTED], minority staff.

MINORITY COUNSEL 2. [REDACTED], minority staff.

MINORITY COUNSEL 3. [REDACTED], minority.

MAJORITY COUNSEL 1. Thank you.

I'd like to now go over the ground rules and guidelines we'll follow during today's interview.

Because you have come forward as a whistleblower and seek to make disclosures to Congress, we will first give you an opportunity to make an opening statement.

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

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

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

Do you understand?

Mr. Shapley. Yes, I do.

MAJORITY COUNSEL 1. So the court reporter can take down a clear record, we will do our best to limit the number of people directing questions at you during any given hour to just those people on staff whose turn it is.

Please try and speak clearly so the court reporter can understand and so everyone at the end of the table can hear you. It is important that we don't talk over one another or interrupt each other if we can help it, and that goes for everyone present at today's interview.

We want you to answer our questions in the most complete, truthful manner as possible, so we will take our time. If you have any questions or if you do not understand one of our questions, please let us know.

Our questions will cover a wide range of topics, so if you need clarification on any point, just say so. If you honestly don't know the answer to a question or do not remember, it is best not to guess. Please give us your best recollection.

It is okay to tell us if you learned the information from someone else. Just indicate how you came to know the information. If there are things you don't know or can't remember, just say so and please inform us who, to the best of your knowledge, might be able to provide a more complete answer to the question.

If you need to confer with counsel, we can go off the record and stop the clock until you are prepared to respond.

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

Do you understand?

Mr. Shapley. Yes, I do.

MAJORITY COUNSEL 1. This also applies to questions posed by congressional staff in an interview.

Do you understand?

Mr. Shapley. Yes, I do.

MAJORITY COUNSEL 1. Witnesses that knowingly provide false testimony could be subject to criminal prosecution for perjury or making a false statement under 18 U.S.C. 1001.

Do you understand?

Mr. Shapley. Yes, I do.

MAJORITY COUNSEL 1. Is there any reason you are unable to provide truthful answer to today's questions?

Mr. Shapley. There is not.

MAJORITY COUNSEL 1. Finally, I'd like to note the information discussed here today is confidential. As an IRS agent, I know you understand the significance of our tax privacy laws. Chairman Smith takes our tax privacy laws extremely seriously, and we have worked diligently to make sure that you can provide your disclosures to Congress in a legal manner and with the assistance of counsel.

As I'm sure you know, 26 U.S.C. Section 6103 makes tax returns and return information confidential, subject to specific authorizations or exceptions in the statute.

The statute anticipates and provides for whistleblowers like yourself to come forward and share information with Congress under Section 6103(f)(5).

Specifically, that statute permits a person with access to returns or return information to disclose it to a committee referred to in subsection (f)(1) or any individual authorized to receive or inspect information under paragraph (4)(A) if the whistleblower believes such return or return information may relate to possible misconduct, maladministration, or taxpayer abuse.

In your position at the IRS, do you or did you have access to return or return information covered by Section 6103 of the Internal Revenue Code?

Mr. Shapley. Yes.

MAJORITY COUNSEL 1. Have you had access to return information that you believe may relate to possible misconduct, maladministration, or taxpayer abuse?

Mr. Shapley. Yes.

MAJORITY COUNSEL 1. Do you wish to disclose such information to the committee today?

Mr. Shapley. Yes, I do.

MAJORITY COUNSEL 1. In addition to Section 6103(f)(5), the chairman of the committee on Ways and Means has authority under Section 6103(f)(4)(A) to designate agents to receive and inspect returns and return information.

To facilitate the disclosures you wish to make here today, Chairman Smith has designated the individuals in this room for the purposes of receiving the information you wish to share. The chairman considers this entire interview and the resulting transcript as protected confidential information under Section 6103.

That means that this interview can only proceed so long as everyone in the room is properly designated to receive the information. The chairman has designated the court reporter and the related individuals that provide transcription services to the House of Representatives.

I'd like to remind the witness and everyone in the room that 26 U.S.C. Section 7213 makes it unlawful to make any disclosure of returns or return information not authorized by Section 6103. Unauthorized disclosure of such information can be a felony punishable by fine or imprisonment.

Given the statutory protection for this type of information, we ask that you not speak about what we discuss in this interview to individuals not designated to receive such information.

For the same reason, the marked exhibits that we use today will remain with the court reporter so that they can go in the official transcript, and any copies of those exhibits will be returned to us when we wrap up.

We also understand that you have alleged that you have been retaliated against for seeking to blow the whistle inside your agency and to Congress. We will discuss that issue in more detail, but I will note that Chairman Smith values whistleblowers and knows

that whistleblowers take significant risks when disclosing wrongdoing. That is why there are legal protections in place for whistleblowers making disclosures to Congress, such as the protections in 5 U.S.C. Section 2302(b)(8)(C), which your counsel identified in your initial letter to the committee.

At a hearing before the Ways and Means Committee on April 27th, 2023, Chairman Smith asked IRS Commissioner Werfel to commit that there will be no retaliation against whistleblowers. The IRS Commissioner replied, quote, "I can say without hesitation, any hesitation, there will be no retaliation for anyone making an allegation," end quote.

Since that time, you have shared additional information with the committee regarding allegations of retaliation. This is very troubling, particularly given Commissioner Werfel's testimony before the committee. We will discuss your allegations in greater detail today.

That is the end of my preamble. Is there anything my colleagues from the minority would like to add?

MINORITY COUNSEL 1. Thanks, [REDACTED].

Thank you very much for appearing before us today. I personally am very happy that you were able to share with us some information in advance, because I think that helped us get prepared for this meeting today. I look forward to hearing what you have to say. Thank you for coming in.

MAJORITY COUNSEL 1. And with that, we invite you to begin with an opening statement, after which we will begin questioning.

Mr. Shapley. So thank you for having me here today.

My name is Gary Shapley. I am a supervisory special agent with the Internal Revenue Service Criminal Investigation. I have been an IRS agent since July 2009, and

have served as a supervisory special agent or acting assistant special agent in charge since April 2018.

I grew up in a little town in upstate New York and never thought that I would be in this position I am today. I was taught to be proud of this country that had afforded me so many opportunities and to always do the right thing -- the right thing, a simple philosophy that has me sitting here today. There is no reward for me for becoming a whistleblower. The only win for me is to not be fired or arrested or retaliated against.

Before October of 2022, I had received the highest awards available to me in my agency and multiple awards from DOJ. In October 2022, I was a senior leader, assistant special agent in charge of the Chicago Field Office, and received the highest performance rating available that year as an outstanding.

I was planning to transition to a new position in headquarters for an international collaboration of foreign tax organizations that I was picked to help set up and operated since 2018. I have led, planned, and executed undercover operations and/or search warrants in over a dozen countries. I have investigated and managed some of the largest cases in U.S. history and of the history of the agency, recovering over \$3.5 billion for the United States Government.

Since October 2022, IRS CI has taken every opportunity to retaliate against me and my team.

I was passed over for a promotion for which I was clearly most qualified.

The special agent in charge and assistant special agent in charge of the Washington, D.C. Field Office have sent threats to the field office, suppressing additional potential whistleblowers from coming forward.

Even after IRS CI senior leadership had been made aware on a recurring basis that the Delaware U.S. Attorney's Office and the Department of Justice was acting improperly,

they acquiesced to a DOJ request to remove the entire team from the Hunter Biden investigation, a team that had been investigating it for over 5 years. Passing the buck and deferring to others was a common theme with IRS CI leadership during this investigation.

After you hear my testimony, I believe you will understand why my conscience would not be silenced. My oath of office would have been unfulfilled if I did nothing. I went from a senior leader to a pariah, and the only thing that happened in between was that I blew the whistle.

I am blowing the whistle because the Delaware U.S. Attorney's Office, Department of Justice Tax, and Department of Justice provided preferential treatment and unchecked conflicts of interest in an important and high-profile investigation of the President's son, Hunter Biden.

The mission of IRS CI is to investigate potential criminal violations of Internal Revenue Code and related financial crimes in a manner that fosters confidence in the Code and compliance with the law.

That mission can only be met by treating every taxpayer we encounter the same. The normal process must be followed. If search warrants or witness interviews or document requests that include the actual subjects' names are not allowed, for example, that is simply a deviation from the normal process that provided preferential treatment, in this case to Hunter Biden.

The case agent on this case is one of the best agents in the entire agency. Without his knowledge and persistence, DOJ would have prevented the investigative team from collecting enough evidence to make an informed assessment, which ultimately included even DOJ agreeing on the recommended criminal charges.

I am alleging, with evidence, that DOJ provided preferential treatment,

slow-walked the investigation, did nothing to avoid obvious conflicts of interest in this investigation.

I have absolutely no political activities in my past. I vote in the general election and recently voted in the midterms because of an interest in the process for my children, who I took to witness one of the pillars of this Nation, the right to vote.

I have never given a dollar to any campaign, never attended a campaign event at any level of government, never had a campaign sign on my car, lawn, et cetera. I do not own and have never owned a tee shirt or hat with any election topic. I vote for the candidate, not the party. I have voted for Presidents with both an R and/or a D in front of their names.

I speak on this topic so I can try to head off time that might be spent on it. In the end, a fact is a fact, regardless of the political affiliation of the person who brought it to you.

I am hoping the whistleblower process will allow me to give this protected disclosure and leave it to you to make your determinations based on what my testimony and the documents say about the investigation.

I respect this institution and have faith that the issues I raise will be considered appropriately. I beg of you to protect me from the coming retaliatory storm. You are my only hope, and your actions send a message to all those out there that see wrongdoing but are terrified to bring it to light.

In this country, we believe in the rule of law, and that applies to everyone. There is not a two-track justice system depending on who you are and who you're connected to.

But the criminal tax investigation of Hunter Biden, led by the United States Attorney's Office for the District of Delaware, has been handled differently than any investigation I've ever been a part of for the past 14 years of my IRS service.

Some of the decisions seem to be influenced by politics. But whatever the motivations, at every stage decisions were made that had the effect of benefiting the subject of the investigation. These decisions included slow-walking investigative steps, not allowing enforcement actions to be executed, limiting investigators' line of questioning for witnesses, misleading investigators on charging authority, delaying any and all actions months before elections to ensure the investigation did not go overt well before policy memorandum mandated the pause. These are just only a few examples.

The investigation into Hunter Biden, code name Sportsman, was first opened in November 2018 as an offshoot of an investigation the IRS was conducting into a foreign-based amateur online pornography platform. Special Agent [REDACTED] developed the investigative lead and was assigned to be the original case agent.

In October 2019, the FBI became aware that a repair shop had a laptop allegedly belonging to Hunter Biden and that the laptop might contain evidence of a crime. The FBI verified its authenticity in November of 2019 by matching the device number against Hunter Biden's Apple iCloud ID.

When the FBI took possession of the device in December 2019, they notified the IRS that it likely contained evidence of tax crimes. Thus, Special Agent [REDACTED] drafted an affidavit for a Title 26 search warrant, which a magistrate judge approved that month.

In January 2020, I became the supervisor of the Sportsman case. The group, known as the International Tax and Financial Crimes group, or the ITFC, is comprised of 12 elite agents who were selected based on their experience and performance in the area of complex high-dollar international tax investigations.

The IRS direct investigative team, including the co-case agent, case agent, and me, were working closely with the FBI and the Delaware U.S. Attorney's Office and Department of Justice Tax in biweekly prosecution team meetings, or pros meetings.

Yet, it soon became clear to me this case was being handled differently than any I'd seen before.

As early as March 6th, 2020, I sent a sensitive case report up through my chain of command at IRS reporting that by mid-March the IRS would be ready to seek approval for physical search warrants in California, Arkansas, New York, and Washington, D.C.

Special Agent [REDACTED] drafted an April 1st, 2020, affidavit establishing probable cause for these physical search warrants. We also planned to conduct approximately 15 contemporaneous interviews at that time.

Yet, after former Vice President Joseph Biden became the presumptive Democratic nominee for President in early April 2020, career DOJ officials dragged their feet on the IRS taking these investigative steps.

By June 2020, those same career officials were already delaying overt investigative actions. This was well before the typical 60- to 90-day period when DOJ would historically stand down before an election. It was apparent that DOJ was purposely slow-walking investigative actions in this matter.

On a June 16th, 2020, call Special Agent [REDACTED] and I had with our chain of command up to the Director of Field Operations, I pointed out that if normal procedures had been followed we already would have executed search warrants, conducted interviews, and served document requests. Nevertheless, my IRS chain of command decided we would defer to DOJ.

Thus, I became the highest-ranking IRS CI leader to participate in our prosecution team calls, be up to date on specific case strategies, to discuss the investigation with DOJ and the Delaware U.S. Attorney's Office, and to address concerns as they arose.

From around October 2020 through October 2022, I was the IRS CI manager who interacted directly with the United States Attorney, David Weiss, and individuals at DOJ

Tax Division the most.

Even after investigative steps were denied, enforcement operations were rejected by DOJ, leading to the election in November 2020, we continued to obtain further leads in the Sportsman's case and prepared for when we could go overt.

For example, in August 2020, we got the results back from an iCloud search warrant. Unlike the laptop, these came to the investigative team from a third-party record keeper and included a set of messages. The messages included material we clearly needed to follow up on.

Nevertheless, prosecutors denied investigators' requests to develop a strategy to look into the messages and denied investigators' suggestion to obtain location information to see where the texts were sent from.

For example, we obtained a July 30th, 2017, WhatsApp message from Hunter Biden to Henry Zhao, where Hunter Biden wrote: "I am sitting here with my father and we would like to understand why the commitment made has not been fulfilled. Tell the director that I would like to resolve this now before it gets out of hand, and now means tonight. And, Z, if I get a call or text from anyone involved in this other than you, Zhang, or the chairman, I will make certain that between the man sitting next to me and every person he knows and my ability to forever hold a grudge that you will regret not following my direction. I am sitting here waiting for the call with my father."

Communications like these made it clear we needed to search the guest house at the Bidens' Delaware residence where Hunter Biden stayed for a time.

In a September 3rd, 2023 [2020], pros meeting, the Assistant United States Attorney, Lesley Wolf, told us there was more than enough probable cause for the physical search warrant there, but the question was whether the juice was worth the squeeze. She continued that optics were a driving factor in the decision on whether to

execute a search warrant. She said a lot of evidence in our investigation would be found in the guest house of former Vice President Biden, but said there is no way we will get that approved.

The prosecutors even wanted to remove Hunter Biden's name from electronic search warrants, 2703(d) orders, and document requests. Special Agent [REDACTED] said on the call he felt uncomfortable with removing the subject's name from those documents just based on what might or might not be approved, as that seemed unethical. But his concerns were ignored.

And Department of Justice Tax Line Attorney Jack Morgan said, doing it without Hunter Biden's name would probably still get us, in quote, "most" of the data we sought. I have never been part of an investigation where only getting most of the data was considered sufficient.

On September 3rd, 2020, the slow-walking of process continued when AUSA Wolf stated that a search warrant for the emails for Blue Star Strategies was being sat on by OEO. That's the Department of Justice Office -- actually, I'm sorry. I don't know what it means, the acronym.

She indicated it would likely not get approved. This was a significant blow to the Foreign Agents Registration Act piece of the investigation.

On September 4th, 2020, Deputy Attorney General Donoghue issued a cease and desist of all overt investigative activities due to the coming election. AUSA Wolf made several odd statements, to include that DOJ was under fire and it was self-inflicted. She stated that DOJ needed to repair their reputation.

At the next pros meeting, on September 21st, 2020, the FBI tried to dictate that we only do five of the planned interviews so FBI management could reevaluate if they wanted to continue assisting. Special Agent [REDACTED] told them it seems inappropriate for

them to dictate in an IRS investigation who should be interviewed.

Later that day, I learned the FBI case agent in Delaware had only recently moved back to his hometown of Wilmington with his wife and family and was concerned about the consequences for him and his family if they conducted these sensitive interviews and executed a search warrant of the President Biden guest house.

On October 19th, 2020, I emailed Assistant United States Attorney Wolf: "We need to talk about the computer. It appears the FBI is making certain representations about the device, and the only reason we know what is on the device is because of the IRS CI affiant search warrant that allowed access to the documents. If Durham also executed a search warrant on a device, we need to know so that my leadership is informed. My management has to be looped into whatever the FBI is doing with the laptop. It is IRS CI's responsibility to know what is happening. Let me know when I can be briefed on this issue."

My email led to a special meeting on October 22nd, 2020, with the prosecution team and the FBI's computer analysis team to discuss Hunter Biden's laptop. We once again objected that we still had not been given access to the laptop.

Special Agent [REDACTED] asked about the full filter reviewed copy of the contents of the devices. He stated he had not been provided with the data. AUSA Lesley Wolf stated that she would not have seen it because, for a variety of reasons, prosecutors decided to keep it from the investigators. This decision is unprecedented in my experience.

Investigators assigned to this investigation were obstructed from seeing all the available evidence. It is unknown if all the evidence in the laptop was reviewed by agents or by prosecutors.

Based on guidance provided by the prosecutors on a recurring basis to not look

into anything related to President Biden, there is no way of knowing if evidence of other criminal activity existed concerning Hunter Biden or President Biden.

AUSA Wolf acknowledged that there was no reason to believe that any data was manipulated on devices by any third party. She further supported this belief by mentioning that they corroborated the data with other sources of information received.

Also on an October 22nd, 2020, pros team call, AUSA Wolf stated that United States Attorney David Weiss had reviewed the affidavit for search warrant of Hunter Biden's residence and agreed that probable cause had been achieved.

Even though the legal requirements were met and the investigative team knew evidence would be in these locations, AUSA Wolf stated that they would not allow a physical search warrant on Hunter Biden.

The case agent and I raised the issue to IRS CI leadership on a continued basis, to include in a June 16th, 2020, meeting with the Director of Field Operations, where I stated: "DOJ Tax has made a concerted effort to drag their feet concerning conducting search warrants and interviewing key witnesses in an effort to push those actions to a timeframe where they can invoke the Department of Justice rule of thumb concerning affecting elections." No follow-up questions were asked and no action was taken by IRS CI senior leadership.

Because the 2020 election was contested, our original plan to go overt on or around November 17th was delayed. DOJ pushed back against the day of action date because they did not want to approach Hunter Biden while he was in Delaware, potentially collocated with President Biden.

United States Attorney Weiss stated on November 10th, 2020, that he had to delay the day of action because it was a contested election. He also stated that because there was no leak in the investigation to date, therefore not public at the time, that the

primary focus was to protect the integrity of the investigation, which meant to keep it concealed from the public.

We began preparing for what we called our day of action on December 8th, 2020. That included document requests and approximately 12 interviews around the country. The search warrant had been rejected by DOJ, and we included a possibility of a potential consent search of Hunter Biden's residence, which was a Hail Mary.

On December 3rd, 2020, we had around a 12-hour long meeting at the United States Attorney's Office in Delaware with the prosecution team. United States Attorney Weiss came in at the beginning of the meeting and jubilantly congratulated the investigative team for keeping the investigation a "secret," quote.

Weiss was in and out for the rest of the meeting, but it went downhill from there. We shared with prosecutors our outline to interview Hunter Biden's associate, Rob Walker. Among other things, we wanted to question Walker about an email that said: "Ten held by H for the big guy." We had obvious questions like who was H, who the big guy was, and why this percentage was to be held separately with the association hidden.

But AUSA Wolf interjected and said she did not want to ask about the big guy and stated she did not want to ask questions about "dad." When multiple people in the room spoke up and objected that we had to ask, she responded, there's no specific criminality to that line of questioning.

This upset the FBI too. And as I'll explain in a moment, the IRS and FBI agents conducting this interview tried to skirt AUSA Wolf's direction.

Hunter Biden was assigned Secret Service protection on or around our December 3rd meeting. So we developed a plan for the FBI Los Angeles special agent in charge to reach out at 8 a.m. on December 8th to the Secret Service Los Angeles special agent in charge and tell them that we would be coming to the residence to seek an interview with

Hunter Biden and that it was part of an official investigation.

However, the night before, December 7th, 2020, I was informed that FBI headquarters had notified Secret Service headquarters and the transition team about the planned actions the following day. This essentially tipped off a group of people very close to President Biden and Hunter Biden and gave this group an opportunity to obstruct the approach on the witnesses.

The next morning, when I saw my FBI counterpart, Supervisory Special Agent Joe Gordon, he was clearly dejected about how our plan had been interfered with. FBI SSA Gordon memorialized the new plan in an email the morning of December 8th, 2020, that stated the subject and the Secret Service protectees would be given the phone numbers of the FBI SSA Joe Gordon and I and the subject would call us if he wanted to speak with us.

SSA Gordon and I waited in the car outside of Hunter Biden's California residence waiting for a phone call. It was no surprise that the phone call SSA Gordon received was from his ASAC Alfred Watson, who informed us that Hunter Biden would contact us through his attorneys.

We received a telephone call later that morning from Hunter Biden's attorneys, who said he would accept service for any document requests, but we couldn't talk to his client. The public news of our investigation hit the press the next day.

I can't know for certain whether FBI's advance notice played a role or not, but of the 12 interviews we hoped to conduct on our day of action, we only got one substantive interview. It was with Rob Walker in Arkansas, and it was exactly the sort of interview we expected to have if the FBI hadn't tipped off Secret Service and the transition team.

In the interview, the FBI agent tried to get Rob Walker to talk about the "ten held by H" email while not directly contradicting AUSA Wolf's direction not to ask about the,

quote, "big guy." The FBI agent said, this is a quote: "The famous email that Tony was pointing out like the equity split, can you tell me your opinion of that, when it's going through like, you know, ten B dot-dot-dot held by H?"

Walker answered: "I think that maybe James was wishful thinking or maybe he was just projecting that, you know, if this was a good relationship and this was something that was going to happen, the VP was never going to run, just protecting that, you know, maybe at some point he would be a piece of it, but he was more just, you know -- it looks terrible, but it's not. I certainly never was thinking at any time the VP was a part of anything we were doing."

And yet it was clearly valuable for the investigators to ask about Hunter Biden's dad, as Walker went on to describe an instance in which the former Vice President showed up at a CEFC meeting.

Walker said: "We were at the Four Seasons and we were having lunch and he stopped in, just said hello to everybody. I don't even think he drank water. I think Hunter Biden said, 'I may be trying to start a company or try to do something with these guys and could you?' And I think he was like, if I'm around and he'd show up."

The FBI agent asked: "So you definitely got the feeling that that was orchestrated by Hunter Biden to have like an appearance by his dad at that meeting just to kind of bolster your chances at making a deal work out?"

Walker answered: "Sure."

The FBI agent continued: "Any times when he was in office, or did you hear Hunter Biden say that he was setting up a meeting with his dad with them while dad was still in office?"

Walker answered: "Yes."

And, inexplicably, the FBI agent changed the subject.

On December 10th, 2020, the prosecutorial team met again to discuss the next steps. One piece of information that came out of the day of action was that Hunter Biden vacated the Washington, D.C., office of Owasco. His documents all went into a storage unit in northern Virginia. The IRS prepared an affidavit in support of a search warrant for the unit, but AUSA Wolf once again objected.

My special agent in charge and I scheduled a call with United States Attorney Weiss on December 14th just to talk about that specific issue. United States Attorney Weiss agreed that if the storage unit wasn't accessed for 30 days we could execute a search warrant on it.

No sooner had we gotten off the call then we heard AUSA Wolf had simply reached out to Hunter Biden's defense counsel and told him about the storage unit, once again ruining our chance to get to evidence before being destroyed, manipulated, or concealed.

My special agent in charge at the time emailed that she would be informing the director of field operations and the deputy chief of IRS CI of her, quote, "frustration with the United States Attorney's Office not allowing us to go forward with a search warrant."

To this day, I have no way of knowing if the documents from that unit were among those ultimately provided to our team.

This was the second search warrant where prosecutors agreed that probable cause was achieved, but would not allow the investigators to execute a search warrant, a clear indication of preferential treatment of Hunter Biden.

In a briefing that I requested to make to Director of Field Operations Batdorf and SAC Waldon on March 2nd, 2021, investigators mentioned the possibility of blowing the whistle on how DOJ was handling this case. My special agent in charge disengaged and was minimally involved moving forward.

This same sort of unprecedented behavior continued through 2021. For example, as I wrote to my chain of command on a May 3rd, 2021, memo: "This investigation has been hampered and slowed by claims of potential election meddling. Through interviews and review of evidence obtained, it appears there may be campaign finance criminal violations. AUSA Wolf stated on the last prosecution team meeting that she did not want any of the agents to look into the allegation. She cited a need to focus on the 2014 tax year, that we could not yet prove an allegation beyond a reasonable doubt, and that she does not want to include their Public Integrity Unit because they would take authority away from her. We do not agree with her obstruction on this matter," end quote.

After we shared on August 18th, 2021, and multiple times thereafter about interviews we had planned, on September 9th, 2021, AUSA Wolf emailed us: "I do not think you are going to be able to do these interviews as planned." She told us they would require approval from the Tax Division.

These delays extended through September and into October. Then the United States Attorney's Office raised other objections. Part of what we examined were charges made with Hunter Biden's card that might conceivably have been done by his children. However, on October 21st, 2021, AUSA Wolf told us it will get us into hot water if we interview the President's grandchildren.

As a result of this behavior, I went to my Director of Field Operations in November 2021 to express how poorly DOJ was handling this case. Despite these obstacles, around this time Special Agent [REDACTED] began drafting the Special Agent Report, or SAR, which is a document in which IRS recommends what charges should be brought.

A[nother] troubling issue occurred with IRS criminal tax attorneys, commonly known as CT counsel, related to their review of the SAR [that recommended] charging

Hunter Biden that laid out the evidence for each element of each violation.

The CT Counsel Line Attorney Christine Steinbrunner worked with the case agent to get questions answered and to understand the case and the evidence. She indicated to the case agent that she was going to concur with all the recommended charges in the SAR.

On February 9th, 2022, a CT counsel attorney at the national office reached out to the co-case agent and told her that Ms. Steinbrunner had sent it forward with concur for all charges and that the five members of the review team at the national office concurred with the line attorney.

It then went to CT senior leadership Rick Lunger and Elizabeth Hadden, and direction was given to the line attorney, Ms. Steinbrunner, to change it to a nonconcur for all charges.

I informed SAC Waldon, and he telephoned Ms. Steinbrunner's supervisor, Veena Luthra. Ms. Luthra stated it had always been a nonconcur. I then communicated with SAC Waldon that CT was misrepresenting the facts.

On February 11th, 2022, CT counsel issued the memorandum nonconcurring with all counts. In a documented exchange with Ms. Steinbrunner, the case agent told her: "Did you know that they were saying that it's always been a nonconcur?"

Ms. Steinbrunner responded: "What? No, I sent them a yellow light."

I have no idea why Ms. Luthra would provide false information about this topic.

Since CT counsel's opinion is only advisory, on February 25th, 2022, the IRS sent the SAR to the Delaware U.S. Attorney's Office -- I'm sorry, that's incorrect. They sent it to the Department of Justice Tax Division.

AUSA Wolf supported charging Hunter Biden for tax evasion and false return in 2014, 2018, and 2019, and failure to file or pay for 2015, 2016, and 2017. It is my

understanding that the Tax Division then authored a 90-plus-page memo that recommended prosecution.

The proper venue for a tax case is where the subject resides or where the return is prepared or filed. That meant the proper venue for the years we were looking into would either be Washington, D.C., or California, not Delaware.

In March 2022, DOJ's Tax Division presented its prosecution memo to the United States Attorney's Office for the District of Columbia, which had venue over the 2014 and 2015 tax years. The case agent and I requested to be part of the presentation to the D.C. U.S. Attorney's Office, but were denied.

Department of Justice Tax Division Mark Daly telephoned the case agent and stated that the First Assistant at the D.C. U.S. Attorney's Office was optimistic and had stated she would assign an AUSA to assist.

Just a couple days later, Mark Daly called the case agent back and told him that the President Biden appointee to the United States Attorney for the District of Columbia, Matthew Graves, personally reviewed the report and did not support it. We in the IRS didn't realize at the time that meant there was no ability to charge there.

Attorney General Merrick Garland appeared before the Senate Appropriations Committee on April 26th, 2022. Senator Bill Hagerty asked him how the American people could be confident that the administration was conducting a serious investigation into the President's own son.

Garland testified: "Because we put the investigation in the hands of a Trump appointee from the previous administration, who is the United States Attorney for the District of Delaware, and because you have me as the Attorney General, who is committed to the independence of the Justice Department from any influence from the White House in criminal matters."

Garland said: "The Hunter Biden investigation is being run by and supervised by the United States Attorney for the District of Delaware. He is in charge of that investigation. There will not be interference of any political or improper kind."

We knew that President Biden-appointed U.S. Attorney Matthew Graves did not support the investigation, but DOJ and United States Attorney Weiss allowed us to believe that he had some special authority to charge.

From March 2022 through October 7th, 2022, I was under the impression that, based on AG Garland's testimony before Congress and statements by U.S. Attorney Weiss and prosecutors, that they were still deciding whether to charge 2014 and 2015 tax violations.

However, I would later be told by United States Attorney Weiss that the D.C. U.S. Attorney would not allow U.S. Attorney Weiss to charge those years in his district. This resulted in United States Attorney Weiss requesting special counsel authority from Main DOJ to charge in the District of Columbia. I don't know if he asked before or after the Attorney General's April 26th, 2022, statement, but Weiss said his request for that authority was denied and that he was told to follow DOJ's process.

That process meant no charges would ever be brought in the District of Columbia, where the statute of limitations on the 2014 and '15 charges would eventually expire. The years in question included foreign income from Burisma and a scheme to evade his income taxes through a partnership with a convicted felon. There were also potential FARA issues relating to 2014 and 2015. The purposeful exclusion of the 2014 and 2015 years sanitized the most substantive criminal conduct and concealed material facts.

Hunter Biden still has not reported approximately \$400,000 in income from Burisma and has not paid the tax due and owing of around \$125,000 even after being told multiple times by his partner, Eric Schwerin, that he had to amend his 2014 return to

report that income.

To make matters worse, defense counsel was willing to sign statute of limitations extensions for 2014 and 2015 and had done so several times. Because United States Attorney Weiss had no ability to charge 2014 and 2015, DOJ allowed the statute of limitations to expire. There is no mechanism available to collect the tax owed by Hunter Biden for 2014 other than in a voluntary fashion.

In the first week of May 2022, I received a call from FBI Supervisory Special Agent Joe Gordon. Gordon was preparing a briefing for FBI leadership. He told me that his field office thought they should push for this case to be given to a special counsel and said, quote: "My leadership is wondering why your leadership isn't asking for a special counsel in this investigation."

I relayed that information to my Director of Field Operations, who simply responded: "I wouldn't even know how to go about that."

But since we didn't know D.C., District of Columbia, had refused to bring charges and that United States Attorney Weiss had no authority to overrule them, we believed at that time that the case could still be prosecuted.

It is common practice for DOJ to ask for the case agents' communications in discovery, as they might have to testify in court. However, it's much more unusual to ask for management communications, because it is simply not discoverable.

In March of 2022, DOJ requested of the IRS and FBI all management-level emails and documents on this case. I didn't produce my emails, but I provided them with my sensitive case reports and memorandums that included contemporaneous documentation of DOJ's continued unethical conduct.

Much of that information was being provided up my chain of command for over 2 years on how I thought their handling of the case was unethical. I didn't hear anything

back about this at the time, leading me to believe no one read the discovery I provided.

In our July 29th, 2022, prosecution team call, AUSA Wolf told us that United States Attorney Weiss indicated that the end of September would be his goal to charge the 2014 and 2015 years, because they did not want to get any closer to a midterm election. She also said: "The X factor on timing will include any delay defense counsel has requested."

Two weeks later, I learned how defense counsel felt about the case when prosecutors told us on a pros team call that Chris Clark, Hunter Biden's counsel from Latham and Watkins, told them that if they charge Hunter Biden, they would be committing "career suicide," end quote.

Around this time, there began to be discussions of the fact that the remaining tax years, 2016, '17, '18 and '19, needed to be brought in the Central District of California. There was no explanation as to why, after being declined in D.C. for 2014 and 2015, that it took until mid-September 2022 to present the case to the Central District of California United States Attorney's Office.

Prosecutors stated that they presented the case to the Central District of California in mid-September. That happened to correspond with the confirmation of the President Biden appointee to the United States Attorney, Martin Estrada. The case agent and I asked to participate in that presentation, but it was denied.

On a September 22nd, 2022, pros team call, AUSA Wolf announced we wouldn't be taking any actions until after the midterm elections, asking: Why would we shoot ourselves in the foot by charging before the election? This was decided even though DOJ's Public Integrity Section had provided instruction that there did not need to be a cease and desist on investigative actions due to the upcoming midterms. It still appeared that decisions were being made to conceal from the public the results of the investigation.

The next meeting was in person on October 7th, 2022, and it took place in the Delaware U.S. Attorney's Office. This meeting included only senior-level managers from IRS CI, FBI, and the Delaware U.S. Attorney's Office. This ended up being my red-line meeting in our investigation for me.

United States Attorney Weiss was present for the meeting. He surprised us by telling us on the charges, quote: "I'm not the deciding official on whether charges are filed," unquote.

He then shocked us with the earth-shattering news that the Biden-appointed D.C. U.S. Attorney Matthew Graves would not allow him to charge in his district.

To add to the surprise, U.S. Attorney Weiss stated that he subsequently asked for special counsel authority from Main DOJ at that time and was denied that authority. Instead, he was told to follow the process, which was known to send U.S. Attorney Weiss through another President Biden-appointed U.S. Attorney.

This was troubling, because he stated that, if California does not support charging, he has no authority to charge in California. Because it had been denied, he informed us the government would not be bringing charges against Hunter Biden for the 2014-2015 tax years, for which the statute of limitations were set to expire in one month.

All of our years of effort getting to the bottom of the massive amounts of foreign money Hunter Biden received from Burisma and others during that period would be for nothing.

Weiss also told us that if the new United States Attorney for the Central District of California declined to support charging for the 2016 through 2019 years, he would have to request special counsel authority again from the Deputy Attorney General and/or the Attorney General.

I couldn't understand why the IRS wasn't told in the summer of 2022 that D.C. had

already declined charges. Everyone in that meeting seemed shellshocked, and I felt misled by the Delaware United States Attorney's Office.

At this point, I expressed to United States Attorney Weiss several concerns with how this case had been handled from the beginning. The meeting was very contentious and ended quite awkwardly. It would be the last in-person meeting I had with United States Attorney Weiss.

We had one more call 10 days later on October 17th, 2022. United States Attorney Weiss wasn't on this call. In response to questions about more subpoena requests, we were told there was no grand jury any longer to issue subpoena requests out of.

When we asked when the Central District of California might make its decision on the case, DOJ Tax Mark Daly responded, quote: "I'm not the boss of them."

After this call, DOJ either stopped scheduling prosecution team meetings or else just stopped inviting the IRS to them.

Disclosing our concerns to United States Attorney Weiss produced other problems too. In May, I had produced all my sensitive case reports for enforcement to date. And now suddenly 5 months later, on October 24th, 2022, DOJ started asking for all those reports since May.

They also renewed the request for all my emails on the case, saying they needed to ensure they were aware of any exculpatory or impeachment effort in the case. But their extraordinary request looked to us just like a fishing expedition to know what we'd been saying about their unethical handling of the case.

On November 7th, 2022, the FBI special agent on the case, Mike Dzielak, called me to tell me the United States Attorney's Office had requested both management- and senior management-level documents from the FBI related to the investigation. He said

that had never happened before and that he was shocked at the request. The FBI refused to provide any further discovery to the Delaware U.S. Attorney's Office.

I also shared with my leadership how inappropriate the whole situation was. On December 12th, 2022, I emailed – “the United States Attorney's Office was so eager to get my emails, which they already had 95 percent of, then surprise they might have a problem with a few of them that memorialized their conduct. If the content of what I documented in report or email is the cause of their consternation, I would direct them to consider their actions instead of who documented them.

I documented issues that I would normally have addressed as they occurred, because the United States Attorney's Office and Department of Justice Tax continued visceral reactions to any dissenting opinions or ideas. Every single day was a battle to do our jobs.

I continually reported these issues up to IRS CI leadership beginning in the summer of 2020. Now, because they realize I documented their conduct, they separate me out, cease all communication, and are now attempting to salvage their own conduct by attacking mine. This is an attempt by the U.S. Attorney's Office to tarnish my good standing and position with IRS CI, and I expect IRS CI leadership to understand that.

As recent as the October 7th meeting, the Delaware U.S. Attorney's Office had nothing but good things to say about me and the team. Then they finally read discovery items which were provided 6 months previous that are actually not discoverable, and they are beginning to defend their own unethical actions.

I have called into question the conduct of the United States Attorneys and DOJ Tax on this investigation on a recurring basis and am prepared to present these issues.

For over a year, I've had trouble sleeping and wake all hours of night thinking about this. After some time, I realized it was because I subconsciously knew they were

not doing the right thing, but I could not fathom concluding that the United States Attorney's Office or DOJ Tax were in the wrong.

After I wrapped my mind around the fact that they were not infallible, I started to sleep better. My choice was to turn a blind eye to their malfeasance and not sleep or to put myself in the crosshairs by doing the right thing. My conscience chose the latter.

I hope IRS CI applauds the incredibly difficult position I have been put into instead of entertaining United States Attorney's Office attacks. If they bring up something legitimate, I am sure we can address it, because it was not intentional. Everything I do is with the goal of furthering IRS CI's mission, protecting the fairness of our tax system, and representing IRS CI with honor."

In January of this year, I learned United States Attorney Estrada had declined to bring the charges in the Central District of California. For all intents and purposes, the case was dead, with the exception of one gun charge that could be brought in Delaware.

And yet, when Senator Chuck Grassley asked Attorney General Garland about the case on March 1st, 2023, Garland testified, quote: "The United States Attorney had been advised that he has full authority to make those referrals you're talking about or to bring cases in other districts if he needs to do that. He has been advised that he should get anything he needs. I have not heard anything from that office that suggests they are not able to do anything that the U.S. Attorney wants them to do."

I don't have any firsthand information into why Garland said that, but to all of us who have been in the October 7th meeting with Weiss, this was clearly false testimony.

On March 16th, 2023, DOJ Tax Mark Daly was overheard on his telephone by one of my agents. Mark Daly was talking to DOJ Tax Attorney Jack Morgan. Mr. Daly stated that they would give United States Attorney Weiss the approvals required if he wanted them, but that he had no idea where he planned to charge Hunter Biden.

This indicates that after the Central District of California declined to allow charges to be brought there, the only route to United States Attorney Weiss was to request special counsel authority. It appears that this case was not moving forward until Senator Grassley asked pointed questions that held AG Garland accountable.

After my attorney sent the first letter to Congress on April 19th, I started to hear rumblings that DOJ was picking the case back up again. I don't believe that would have happened were it not for me blowing the whistle.

However, on Monday, May 15th, my special agent in charge called me and told me that DOJ had requested an entirely new team from the IRS and that none of the 12 agents in my group would be able to work the case. This seems like clear retaliation for me making my disclosures.

What's worse, after Special Agent [REDACTED] emailed the Commissioner to point out the human cost of the IRS simply implementing DOJ's retaliatory direction, my assistant special agent in charge threatened him with leaking (6)(E) material.

And my special agent in charge sent me and other supervisors an email at the same time that said we had to stay within our chain of command. I interpreted this as a clear warning to me and anyone else who might be thinking of blowing the whistle.

I did not choose to sit here before you today. I was compelled by my conscience when decision after decision has been made to deviate from our normal investigative processes. I believe Congress needs to know this information. I trust you'll do the right thing, because we have nothing if I can't trust this body.

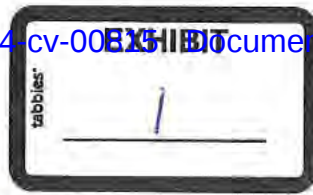
MAJORITY COUNSEL 1. Thank you very much for your thorough opening statement.

The time is 10:24. We'll start the clock with majority questions.

To start, I'd like to mark this document as exhibit 1.

[Shapley Exhibit No. 1

Was marked for identification.]



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Mark D. Lytle
Partner

T / [REDACTED]
F / [REDACTED]
[REDACTED]

April 19, 2023

Via Electronic Transmission

The Honorable Ron Wyden
Chairman, Committee on Finance
Co-Chair, Whistleblower Protection Caucus
United States Senate

The Honorable Jason Smith
Chairman, Committee on Ways & Means
United States House of Representatives

The Honorable Mike Crapo
Ranking Member, Committee on Finance
United States Senate

The Honorable Richard Neal
Ranking Member, Committee on Ways & Means
United States House of Representatives

The Honorable Richard Durbin
Chairman, Committee on the Judiciary
United States Senate

The Honorable Jim Jordan
Chairman, Committee on the Judiciary
United States House of Representatives

The Honorable Lindsey Graham
Ranking Member, Committee on the Judiciary
United States Senate

The Honorable Jerrold Nadler
Ranking Member, Committee on the Judiciary
United States House of Representatives

The Honorable Charles Grassley
Co-Chair, Whistleblower Protection Caucus
Member, Committee on Finance
United States Senate

Dear Chairs and Ranking Members:

I represent a career IRS Criminal Supervisory Special Agent who has been overseeing the ongoing and sensitive investigation of a high-profile, controversial subject since early 2020 and would like to make protected whistleblower disclosures to Congress. Despite serious risks of retaliation, my client is offering to provide you with information necessary to exercise your constitutional oversight function and wishes to make the disclosures in a non-partisan manner to the leadership of the relevant committees on both sides of the political aisle.

My client has already made legally protected disclosures internally at the IRS, through counsel to the U.S. Treasury Inspector General for Tax Administration, and to the Department of Justice, Office of Inspector General. The protected disclosures: (1) contradict sworn testimony to Congress by a senior political appointee, (2) involve failure to mitigate clear conflicts of interest in the ultimate disposition of the case, and (3) detail examples of preferential treatment

April 19, 2023
Page 2

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and politics improperly infecting decisions and protocols that would normally be followed by career law enforcement professionals in similar circumstances if the subject were not politically connected.

Some of the protected disclosures contain information that is restricted by statute from unauthorized disclosure to protect taxpayer and tax return information.

My client would like to share the same legally protected disclosures with Congress—pursuant to 26 U.S.C. § 6103(f)(5) and the protections afforded by 5 U.S.C. 2302(b)(8)(C)—that he has already shared with other oversight authorities. Out of an abundance of caution regarding taxpayer privacy laws, my client has refrained from sharing certain information even with me in the course of seeking legal advice. Thus, it is challenging for me to make fully informed judgments about how best to proceed.

My goal is to ensure that my client can properly share his lawfully protected disclosures with congressional committees. Thus, I respectfully request that your committees work with me to facilitate sharing this information with congress legally and with the fully informed advice of counsel. With the appropriate legal protections and in the appropriate setting, I would be happy to meet with you and provide a more detailed proffer of the testimony my client could provide to Congress.

Sincerely



Mark D. Lytle
Partner

cc: The Honorable Michael Horowitz
Inspector General, U.S. Department of Justice

The Honorable Russell George
Inspector General for Tax Administration, U.S. Department of the Treasury

EXAMINATION

BY MAJORITY COUNSEL 1:

Q Do you recognize this document?

A Yes, I do.

Q What is it?

A This is the April 19th, 2023, letter sent to the chairs and ranking members identified here by my attorneys Mark Lytle and -- oh, it's just from Mark Lytle.

Q And this is the initial reason why we're here today?

A This initiated what's happening, yes.

Q Okay. I'd like to talk a little bit about your background.

You mentioned, I believe, that you started at the IRS in 2009. Is that correct?

A Yes, that's correct.

Q And what is your educational background?

A I have an accounting and business degree from the University of Maryland, and I have a master's in business administration from the University of Baltimore.

Q And before you joined the IRS, what did you do for employment?

A I was in the Office of Inspector General with the National Security Agency.

Q And when did you begin in that position?

A 2007.

Q Did you hold any other positions prior to that?

A Internships and stuff like that.

Q What was your motivation for joining the IRS?

A I always planned on going into law enforcement and I really had a desire to serve. And that was why I went with the accounting degree and business degree and I

got my MBA, was for the purpose of getting that special agent job with the Federal Government.

Q And you talked through sort of your history at the IRS during your opening statement. Can you briefly summarize your roles and responsibilities in your current position?

A Yes. So I oversee 12 agents. They are handpicked. They sit all across the country. We work all high-dollar, complex, international cases. We work foreign financial institutions. We do undercover operations and search warrants and all that stuff in other countries and in this country.

And I'm responsible for reviewing all enforcement actions and recommendation reports and case initiations and so on and so forth. That's like my main job as the supervisory special agent of ITFC.

I'm also a representative in the Joint Chiefs of Global Tax Enforcement, working I guess directly under the Chief of IRS CI. And it works with four other partner countries in trying to collaborate and attack tax noncompliance on a global scale and share information where we can legally.

Q And who do you directly report to?

A My current report is Assistant Special Agent in Charge Lola Watson.

BY MAJORITY COUNSEL 2:

Q Where does she sit?

A Washington, D.C.

Q She sits in Washington. And your office is in Baltimore?

A Yeah. I either sit in D.C. or Baltimore. I kind of split time.

Q Okay.

BY MAJORITY COUNSEL 1:

Q In the typical situation in the criminal tax investigation, what is your understanding of the leadership and management structure at the Tax Division at the Department of Justice?

A Well, with most of our cases, because they're complex and high-dollar and they usually align with the very top priorities in the agency, we usually have Department of Justice Tax attorneys that assist on the cases with us.

That's not typical for small cases, normal cases. But in our cases and in this particular case, from the very beginning there were two Department of Justice Tax Division attorneys working side by side with us the entire time. So they worked as prosecutors alongside the AUSAs in Delaware.

And then ultimately what happens is the prosecution recommendation report that is produced by Criminal Investigation gets sent to DOJ Tax. And they absorb that report, and they usually put out a memo either approving, providing discretion, or declining. And in the normal course, it's usually a pretty quick turnaround, 30 days, 45 days.

Q You mentioned two prosecutors in this case at DOJ Tax. Who are those two individuals?

A At the beginning, it was Jason Poole and Mark Daly. And Mark Daly was definitely the lead. Jason Poole took a different position at some point and Jack Morgan took his spot.

Q And did those individuals sit in Washington, D.C.?

A I know Mark Daly does. I'm pretty sure -- yeah, Jack Morgan does as well, yes, yes.

Q In the course of this investigation, did you interact with anyone else at the DOJ Tax Division?

A I interacted with Jason Poole a lot, but in his new role, because he became

the chief of the Northern Division of the Department of Justice's Tax Division, and I had to call him on several occasions concerning issues we were having.

MAJORITY COUNSEL 2. On this case?

Mr. Shapley. Yes.

MAJORITY COUNSEL 1. Okay. And in a typical case, what is IRS CI's relationship with any given U.S. Attorney's Office?

Mr. Shapley. I'm sorry, can I add to my last question there?

MAJORITY COUNSEL 1. Please.

Mr. Shapley. So I also interacted with Stuart Goldberg, who I think is a Deputy Assistant Attorney General, I think is his title, on a few occasions.

MAJORITY COUNSEL 2. And he's the head of the Tax Division?

Mr. Shapley. I believe he's the head of the Civil Tax Division and the head of the Criminal is different, but there is not currently a person who's been confirmed there, I believe.

Usually Stuart Goldberg would not be the person overseeing the criminal tax stuff. It usually would go to the personal -- the Criminal Division.

MAJORITY COUNSEL 2. Is it fair to say he was the senior-most official in the Tax Division?

Mr. Shapley. Yes. That's fair, yes.

BY MAJORITY COUNSEL 1:

Q On this investigation?

A That's correct.

Q Okay. What in a typical case would be IRS CI's relationship with the U.S. Attorney's Office?

A On a case, we would talk strategy. We would go and get the evidence,

bring the evidence to them. We would be requesting to do, get certain document requests from them.

There are things like search warrants and undercover operations that all go through the United States Attorney's Office prosecutors. And generally, the way it works is the agents go out and they get the information, and they have to be proactive in doing so. And they bring that information to the prosecutor, and we kind of go forward from there.

Q In your opening statement, you described prosecution team meetings. In this case, individuals from which organizations participated in those meetings?

[10:32 a.m.]

Mr. Shapley. Sure, yeah. The prosecution team is the United States Attorney's Office for Delaware, Department of Justice Tax Division.

At some point in time, a Department of Justice National Security Division attorney came on.

MAJORITY COUNSEL 2. Who was that?

Mr. Shapley. McKenzie. Brian McKenzie.

And then it was FBI. And that was usually from the SSA to the case agents, and there was around four or five of them.

BY MAJORITY COUNSEL 1:

Q Sorry. What's SSA?

A I'm sorry. Supervisory special agent, SSA.

And then it was IRS. And it was me, [REDACTED], and the co-case agent, Christine Puglisi. And there was also an IRS CI agent out of the Philadelphia Field Office that was working some ancillary issues, Anthony LoPiccolo, who would also participate in those.

And United States Attorney Weiss would be on those, but it wasn't scheduled. He'd be on some -- pop in, pop out, that type of thing.

Q And is the structure of that prosecution team typical for a case of this size and profile?

A It was -- we met more often, I think, because there were so many moving parts. I wouldn't say that it's typical to have a prosecution team meeting every 2 weeks in other cases. But it was just a way to get everybody at one spot at one time to have the conversations.

Q And how did this specific investigation begin?

A So Special Agent [REDACTED] was working on another case, and during that case he found some reports that had some individuals' names in it. And it was basically a case development tool he was using, and he looked at those and was seeing if he can initiate criminal investigations on that list of people, and Hunter Biden was one of the people on that list.

Q And from that stage, how does an investigation open? What's the process around that?

A So the agent can write a PI evaluation report, and they send it to my level, the SSA, supervisory special agent. And if it's a Title 26 case, it can just be approved and put on our system.

Now, under a PI, it's kind of unique at IRS CI. There are only a few techniques you can use, and it does [not] include third-party contacts and stuff like that.

So there's a whole other effort to make a subject criminal investigation, and that's a more involved form, called the 9131, and it has a bunch of attachments. And really it's an analysis of all the steps taken in the primary investigative phase.

And that 9131, in this case, if it's -- it goes forward to Department of Justice Tax Division for approval and -- yeah, yeah. I'm sorry.

Generally. If it's generally like a 9131, if it's going to be a grand jury investigation, request a grand jury investigation, generally a 9131 goes to Department of Justice Tax Division, who approves it, and you're allowed to participate in that grand jury.

Q When a matter develops in this way, is there interaction on the civil side related to civil audits? Are audits opened in connection with this process?

A Audits aren't opened in partner with a criminal investigation. Part of the primary investigative phase, as one of the things you would do, you would request all the information from IDRS, our internal system. That would include checks for audits and

things like that in the past, but there would be no request to initiate any civil activity.

It's actually the exact opposite. A form is issued that says -- the title of the form is Suspend Civil Activity, and the subject's identifiers are included.

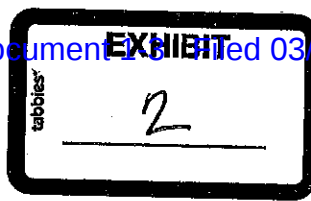
Q So in your opening statement you discussed tax years 2014 through 2019 for this particular taxpayer. Do you know whether there are any issues related to 2020 or 2021?

A No. We never included that as part of the investigation.

We did get the returns, but we didn't.

[Shapley Exhibit No. 2

Was marked for identification.]



ROBERT DOE ("RHB")

[REDACTED]
[REDACTED] : [REDACTED]
[REDACTED]

Years: 2014, 2015, 2016, 2017, 2018, 2019

Violation(s): Title 26, United States Code, Section 7201
Title 26, United States Code, Section 7206(1)
Title 26, United States Code, Section 7203

Special Agent: [REDACTED]
Revenue Agent: [REDACTED]

Supervisory Special Agent, Criminal Investigation

Cellular [REDACTED]

BY MAJORITY COUNSEL 1:

Q Okay. I'd like to talk now a little bit about the specific tax years at issue.

The document being handed to you is marked as exhibit 2.

Are you familiar with this document?

A Yes, I am.

Q What is it?

A This is the special agent report.

Q And who is the subject of this report?

A Yeah. To clarify the last response, it's an excerpt from the special agent report.

Q And who is the subject of this report?

A So it says Robert Doe. That was the name that was put into our internal system to attempt to keep anyone from revealing the name, and "RHB" stands for Robert Hunter Biden.

Q And turning to the second page of the document, this excerpt includes the "Conclusions and Recommendations" section. Can you describe the conclusions and recommendations made in this report?

A Yes, I can. The report includes itemized elements of each violation for each year up above it that I couldn't provide because of grand jury (6)(e) material.

This recommended felony tax evasion charges, that's 7201, is tax evasion, and 7206(1) is a false tax return, also a felony, for the tax years 2014, 2018, and 2019. And for Title 26 7203, which is a failure to file or pay, that is a misdemeanor charge for '15, '16, '17, '18, and '19.

Also under that is a paragraph that is common when we work directly with

Department of Justice Tax Division and AUSA so closely. We usually would give a statement saying what they wanted as well at that time.

This report was reviewed extensively with Mark Daly, and also a lot with AUSA Lesley Wolf, and each of them agreed with the recommendations as posed in this report.

Q Okay. And when was this document finalized and signed?

A It was, I believe, January 27th of 2022.

BY MAJORITY COUNSEL 2:

Q And can you just walk us through the process for this document? This is an IRS document?

A It is, yeah.

Q And it is sent to who?

A Yeah. This document is a very robust document that includes everything that we do. Internally it would go to CT counsel for their review. They provide a memo, concur or nonconcur. It's just advisory. We don't have to follow what they say.

Q Did they concur?

A They nonconcurred.

Q They did not concur?

A Yeah. There was a portion in my opening statement that described that event where the line attorney concurred with all charges and then it went to the national office to review on sensitive case.

The panel at the national office agreed with the line attorney that it was concur. And when it went up to their top two people at the CT counsel, they sent it back to the line attorney and told her to change it to nonconcur.

Q Okay.

A So I'm not even sure. That could happen on occasion. What was

incredibly outside the norm here was that they usually tell us, and we ask them to tell us if anything is going to be a nonconcur. And all along they were saying it's a concur, it's a concur -- with all charges. It was green for 2018, yellow for other years, which is all in the concur range.

And when we got the nonconcur, I went to my special agent in charge who called the line attorney's supervisor and she said, it's always been nonconcur.

And then it was really incredible that that statement was made, and maybe only IRS CI geeks care about that. But then we communicate in an instant message that's captured with the line attorney saying, "They are telling us that this has always been a nonconcur," and she's like, "What, no, no. It was a concur when I sent it up."

So for some reason, that got miscommunicated.

Q Was any feedback provided as to why?

A There's a robust document that was created by CT counsel -- I spent time rebutting it, but there was nothing that we hadn't considered in the investigative team with the prosecution team for the 3-plus years we'd been investigating.

Yeah, and this advisory. Yeah, it is, I would say, 90-plus percent of everything that I do in my international tax group is nonconcur by CT counsel, and we ignore what they say.

So then this report goes, after that, to the Department of Justice Tax Division. It's transmitted to them. And that's when they take it and they review it. And usually it's approve, discretion, or declined in a normal course. But we sent it to them on February 25th of 2022, and I have yet to see an approval, discretion, or declination.

Q And what's the U.S. Attorney's Office in Delaware's role with this particular document?

A So it's just to help advise them. After DOJ Tax, if they approve a charge,

then that's DOJ Tax saying that you have to charge it. And if the United States Attorney's Office, they can say, "We don't want to charge it here," but DOJ Tax then has to go and charge it. They have the authority to do so.

Q So did the U.S. Attorney's Office in Delaware concur with this?

A They would never have [to as part of the process, but] they did when it was written, right? They were on board with all the charges when it was written. But there would never be an official time where we requested their concur or nonconcur.

Q So did they review it before you submitted it to DOJ?

A Oh, yes, yes.

Q Okay.

A Yes.

Q And they had an opportunity to make suggestions or --

A Yes.

Q -- tell you to tweak things?

A Yes.

Q And they didn't.

A Well, we did, but --

Q The final document though --

A Yeah.

Q -- they concurred.

A The final document was a compilation of everyone's understanding of what the evidence said and what should be charged.

Just a little bit more about this document. I mean, this document is around -- it's incredibly robust. So I think it was around 85 pages, just the report, and it goes through the theory of investigation. And then it goes, like I said, into each year and each

element.

And it's each piece of evidence in each element, and it's cited to evidence. So this report, in reality, crashes my computer every time it comes up because it includes all the evidence attached to it. It's like 8-, 9-, 10,000 pages of evidence and documents. It's an incredibly robust document.

[Shapley Exhibit No. 3

Was marked for identification.]

nue Service Office of Appeals may request non-binding mediation on any issue unresolved at the conclusion of—

(A) appeals procedures; or

(B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122.

(2) Arbitration

The Secretary shall establish a pilot program under which a taxpayer and the Internal Revenue Service Office of Appeals may jointly request binding arbitration on any issue unresolved at the conclusion of—

(A) appeals procedures; or

(B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122.

(Added Pub. L. 105-206, title III, § 3465(a)(1), July 22, 1998, 112 Stat. 768.)

PRIOR PROVISIONS

A prior section 7123 was renumbered section 7124 of this title.

§ 7124. Cross references

For criminal penalties for concealment of property, false statement, or falsifying and destroying records, in connection with any closing agreement, compromise, or offer of compromise, see section 7206.

(Aug. 16, 1954, ch. 736, 68A Stat. 850, § 7123; Pub. L. 97-258, § 3(f)(12), Sept. 13, 1982, 96 Stat. 1065; renumbered § 7124, Pub. L. 105-206, title III, § 3465(a)(1), July 22, 1998, 112 Stat. 767.)

AMENDMENTS

1998—Pub. L. 105-206 renumbered section 7123 of this title as this section.

1982—Subsec. (a). Pub. L. 97-258, § 3(f)(12)(A), struck out heading “Criminal penalties”.

Subsec. (b). Pub. L. 97-258, § 3(f)(12)(B), struck out subsec. (b) which set forth cross reference to R.S. 3469 (31 U.S.C. 194) relating to compromises after judgment.

CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

Subchapter	Sec. ¹
A. Crimes	7201
B. Other offenses	7261
C. Forfeitures	7301
D. Miscellaneous penalty and forfeiture provisions	7341

Subchapter A—Crimes

Part	
I.	General provisions.
II.	Penalties applicable to certain taxes.

PART I—GENERAL PROVISIONS

Sec.	
7201.	Attempt to evade or defeat tax.
7202.	Willful failure to collect or pay over tax.
7203.	Willful failure to file return, supply information, or pay tax.
7204.	Fraudulent statement or failure to make statement to employees.
7205.	Fraudulent withholding exemption certificate or failure to supply information.
7206.	Fraud and false statements.

¹Section numbers editorially supplied.

Sec.	
7207.	Fraudulent returns, statements, or other documents.
7208.	Offenses relating to stamps.
7209.	Unauthorized use or sale of stamps.
7210.	Failure to obey summons.
7211.	False statements to purchasers or lessees relating to tax.
7212.	Attempts to interfere with administration of internal revenue laws.
7213.	Unauthorized disclosure of information.
7213A.	Unauthorized inspection of returns or return information.
7214.	Offenses by officers and employees of the United States.
7215.	Offenses with respect to collected taxes.
7216.	Disclosure or use of information by preparers of returns.
7217.	Prohibition on executive branch influence over taxpayer audits and other investigations.

AMENDMENTS

1998—Pub. L. 105-206, title I, § 1105(b), July 22, 1998, 112 Stat. 711, added item 7217.

1997—Pub. L. 105-35, § 2(b)(2), Aug. 5, 1997, 111 Stat. 1105, added item 7213A.

1982—Pub. L. 97-248, title III, § 357(b)(2), Sept. 3, 1982, 96 Stat. 646, struck out item 7217 “Civil damages for unauthorized disclosure of returns and return information”.

1976—Pub. L. 94-455, title XII, § 1202(e)(2), Oct. 4, 1976, 90 Stat. 1687, added item 7217.

1971—Pub. L. 92-178, title III, § 316(b), Dec. 10, 1971, 85 Stat. 529, added item 7216.

1958—Pub. L. 85-321, § 3(b), Feb. 11, 1958, 72 Stat. 6, added item 7215.

§ 7201. Attempt to evade or defeat tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

(Aug. 16, 1954, ch. 736, 68A Stat. 851; Pub. L. 97-248, title III, § 329(a), Sept. 3, 1982, 96 Stat. 618.)

AMENDMENTS

1982—Pub. L. 97-248 substituted “\$100,000 (\$500,000 in the case of a corporation)” for “\$10,000”.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 329(e) of Pub. L. 97-248 provided that: “The amendments made by this section [amending this section and sections 7203, 7206, and 7207 of this title] shall apply to offenses committed after the date of the enactment of this Act [Sept. 3, 1982].”

§ 7202. Willful failure to collect or pay over tax

Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

(Aug. 16, 1954, ch. 736, 68A Stat. 851.)

EXHIBIT

3

tabbles

§ 7124. Cross references

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EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title III, § 329(e), Sept. 3, 1982, 96 Stat. 619, provided that: "The amendments made by this section [amending this section and sections 7203, 7206, and 7207 of this title] shall apply to offenses committed after the date of the enactment of this Act [Sept. 3, 1982]."

§ 7202. Willful failure to collect or pay over tax

Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

(Aug. 16, 1954, ch. 736, 68A Stat. 851.)

§ 7203. Willful failure to file return, supply information, or pay tax

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 60501, the first sentence of this section shall be applied by substituting

¹Section numbers editorially supplied.

"felony" for "misdemeanor" and "5 years" for "1 year".

(Aug. 16, 1954, ch. 736, 68A Stat. 851; Pub. L. 90-364, title I, §103(e)(5), June 28, 1968, 82 Stat. 264; Pub. L. 97-248, title III, §§327, 329(b), Sept. 3, 1982, 96 Stat. 617, 618; Pub. L. 98-369, div. A, title IV, §412(b)(9), July 18, 1984, 98 Stat. 792; Pub. L. 100-690, title VII, §7601(a)(2)(B), Nov. 18, 1988, 102 Stat. 4504; Pub. L. 101-647, title XXXIII, §3303(a), Nov. 29, 1990, 104 Stat. 4918.)

AMENDMENTS

1990—Pub. L. 101-647 substituted "substituting 'felony' for 'misdemeanor' and" for "substituting".

1988—Pub. L. 100-690 inserted at end "In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting '5 years' for '1 year'."

1984—Pub. L. 98-369 struck out "(other than a return required under the authority of section 6015)" after "to make a return".

1982—Pub. L. 97-248, §329(b), substituted "\$25,000 (\$100,000 in the case of a corporation)" for "\$10,000".

Pub. L. 97-248, §327, inserted last sentence providing that, in the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure.

1968—Pub. L. 90-364 struck out reference to section 6016.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-647, title XXXIII, §3303(c), Nov. 29, 1990, 104 Stat. 4918, provided that: "The amendment made by subsection (a) [amending this section] shall apply to actions, and failures to act, occurring after the date of the enactment of this Act [Nov. 29, 1990]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 applicable to actions after Nov. 18, 1988, see section 7601(a)(3) of Pub. L. 100-690, set out as a note under section 6050I of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 329(b) of Pub. L. 97-248 applicable to offenses committed after Sept. 3, 1982, see section 329(e) of Pub. L. 97-248, set out as a note under section 7201 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90-364, see section 103(f) of Pub. L. 90-364, set out as a note under section 243 of this title.

§ 7204. Fraudulent statement or failure to make statement to employees

In lieu of any other penalty provided by law (except the penalty provided by section 6674) any person required under the provisions of section 6051 to furnish a statement who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall, for each such of-

fense, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

(Aug. 16, 1954, ch. 736, 68A Stat. 852.)

§ 7205. Fraudulent withholding exemption certificate or failure to supply information

(a) Withholding on wages

Any individual required to supply information to his employer under section 3402 who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

(b) Backup withholding on interest and dividends

If any individual willfully makes a false certification under paragraph (1) or (2)(C) of section 3406(d), then such individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

(Aug. 16, 1954, ch. 736, 68A Stat. 852; Pub. L. 89-368, title I, §101(e)(5), Mar. 15, 1966, 80 Stat. 62; Pub. L. 97-34, title VII, §721(b), Aug. 13, 1981, 95 Stat. 341; Pub. L. 97-248, title III, §§306(b), 308(a), Sept. 3, 1982, 96 Stat. 588, 591; Pub. L. 98-67, title I, §§102(a), 107(b), Aug. 5, 1983, 97 Stat. 369, 382; Pub. L. 98-369, div. A, title I, §159(a), July 18, 1984, 98 Stat. 696; Pub. L. 101-239, title VII, §7711(b)(2), Dec. 19, 1989, 103 Stat. 2393.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101-239 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "If any individual willfully makes—

"(1) any false certification or affirmation on any statement required by a payor in order to meet the due diligence requirements of section 6676(b), or

"(2) a false certification under paragraph (1) or (2)(C) of section 3406(d), then such individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both."

1984—Pub. L. 98-369 in subsecs. (a) and (b) substituted "in addition to" for "in lieu of" and struck out reference to penalty under section 6682 after "penalty provided by law".

1983—Pub. L. 98-67 designated existing provisions as subsec. (a), added subsec. (b), and repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

1982—Pub. L. 97-248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, this section is amended by designating the existing provisions as subsec. (a) with a heading of "Withholding on wages", and by adding a new subsec. (b). Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted. Subsec. (b), referred to above, read as follows:

"(b) Withholding of interest and dividends

"Any person who—

then such individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both."

1984—Pub. L. 98-369 in subssecs. (a) and (b) substituted "in addition to" for "in lieu of" and struck out reference to penalty under section 6682 after "penalty provided by law".

1983—Pub. L. 98-67 designated existing provisions as subsec. (a), added subsec. (b), and repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

1982—Pub. L. 97-248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, this section is amended by designating the existing provisions as subsec. (a) with a heading of "Withholding on wages", and by adding a new subsec. (b). Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted. Subsec. (b), referred to above, read as follows:

"(b) Withholding of interest and dividends

"Any person who—

"(1) willfully files an exemption certificate with any payor under section 3452(f)(1)(A), which is known by him to be fraudulent or to be false as to any material matter, or

"(2) is required to furnish notice under section 3452(f)(1)(B), and willfully fails to furnish such notice in the manner and at the time required pursuant to section 3452(f)(1)(B) or the regulations prescribed thereunder,

shall, in lieu of any penalty otherwise provided, upon conviction thereof, be fined not more than \$500, or imprisoned not more than 1 year, or both."

1981—Pub. L. 97-34 substituted "\$1,000" for "\$500".

1966—Pub. L. 89-368 substituted "section 3402" and "any other penalty provided by law (except the penalty provided by section 6682)" for "section 3402(f)" and "any penalty otherwise provided" respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to returns and statements the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7711(e) of Pub. L. 101-239, set out as a note under section 6721 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §159(b), July 18, 1984, 98 Stat. 696, provided that: "The amendments made by this section [amending this section] shall apply to actions and failures to act occurring after the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 107(b) of Pub. L. 98-67 effective Aug. 5, 1983, see section 110(c) of Pub. L. 98-67, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to acts and failures to act after Dec. 31, 1981, see section 721(d) of Pub. L. 97-34, set out as a note under section 6682 of this title.

§ 7206. Fraud and false statements

Any person who—

(1) Declaration under penalties of perjury

Willfully makes and subscribes any return, statement, or other document, which contains

or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

(2) Aid or assistance

Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

(3) Fraudulent bonds, permits, and entries

Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or

(4) Removal or concealment with intent to defraud

Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title; or

(5) Compromises and closing agreements

In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully—

(A) Concealment of property

Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(B) Withholding, falsifying, and destroying records

Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

(Aug. 16, 1954, ch. 736, 68A Stat. 852; Pub. L. 97-248, title III, §329(c), Sept. 3, 1982, 96 Stat. 618.)

Editorial Notes

AMENDMENTS

1982—Pub. L. 97-248 substituted "\$100,000 (\$500,000 in the case of a corporation)" for "\$5,000".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to offenses committed after Sept. 3, 1982, see section 329(e) of Pub. L. 97-248, set out as a note under section 7201 of this title.

§ 7207. Fraudulent returns, statements, or other documents

Any person who willfully delivers or discloses to the Secretary any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than \$10,000 (\$50,000 in the case of a corporation), or imprisoned not more than 1 year, or both. Any person required pursuant to section 6047(b), section 6104(d), or subsection (i) or (j) of section 527 to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than \$10,000 (\$50,000 in the case of a corporation), or imprisoned not more than 1 year, or both.

(Aug. 16, 1954, ch. 736, 68A Stat. 853; Pub. L. 87-792, § 7(m)(3), Oct. 10, 1962, 76 Stat. 831; Pub. L. 91-172, title I, § 101(e)(5), Dec. 30, 1969, 83 Stat. 524; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-603, § 1(d)(5), Dec. 28, 1980, 94 Stat. 3505; Pub. L. 97-248, title III, § 329(d), Sept. 3, 1982, 96 Stat. 619; Pub. L. 98-369, div. A, title IV, § 491(d)(51), July 18, 1984, 98 Stat. 852; Pub. L. 100-203, title X, § 10704(c), Dec. 22, 1987, 101 Stat. 1330-463; Pub. L. 105-277, div. J, title I, § 1004(b)(2)(E), Oct. 21, 1998, 112 Stat. 2681-890; Pub. L. 107-276, § 6(d), Nov. 2, 2002, 116 Stat. 1933.)

Editorial Notes

AMENDMENTS

2002—Pub. L. 107-276 substituted “pursuant to section 6047(b), section 6104(d), or subsection (i) or (j) of section 527” for “pursuant to subsection (b) of section 6047 or pursuant to subsection (d) of section 6104”.

1998—Pub. L. 105-277 struck out “or (e)” after “subsection (d)”.

1987—Pub. L. 100-203 inserted reference to subsec. (e) of section 6104.

1984—Pub. L. 98-369 struck out “or (c)” after “subsection (b)”.

1982—Pub. L. 97-248 substituted “\$10,000 (\$50,000 in the case of a corporation)” for “\$1,000” wherever appearing.

1980—Pub. L. 96-603 substituted “subsection (b) or (c) of section 6047 or pursuant to subsection (d) of section 6104” for “sections 6047(b) or (c), 6056, or 6104(d)”.

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1969—Pub. L. 91-172 substituted “sections 6047(b) or (c), 6056, or 6104(d)” for “section 6047(b) or (c)”.

1962—Pub. L. 87-792 inserted sentence providing that any person required pursuant to section 6047(b) or (c) to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-276, § 6(h)(3), Nov. 2, 2002, 116 Stat. 1934, provided that: “The amendment made by subsection (d)

[amending this section] shall apply to reports and notices required to be filed on or after the date of the enactment of this Act [Nov. 2, 2002].”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 applicable to requests made after the later of Dec. 31, 1998, or the 60th day after the Secretary of the Treasury first issues the regulations referred to in section 6104(d)(4) of this title, see section 1004(b)(3) of Pub. L. 105-277, set out as a note under section 6104 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to returns for years beginning after Dec. 31, 1986, and on and after Dec. 22, 1987, in case of applications submitted after July 15, 1987, or on or before July 15, 1987, if the organization has a copy of the application on July 15, 1987, see section 10704(d) of Pub. L. 100-203, set out as a note under section 6552 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to offenses committed after Sept. 3, 1982, see section 329(e) of Pub. L. 97-248, set out as a note under section 7201 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-603 applicable to taxable years beginning after Dec. 31, 1980, see section 1(f) of Pub. L. 96-603, set out as a note under section 6033 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 22 of this title.

ANNUAL REPORTS

Pub. L. 110-428, § 2(e), Oct. 15, 2008, 122 Stat. 4840, provided that: “The Secretary of the Treasury shall annually submit to Congress and make publicly available a report on the filing of false and fraudulent returns by individuals incarcerated in Federal and State prisons. Such report shall include statistics on the number of false and fraudulent returns associated with each Federal and State prison.”

§ 7208. Offenses relating to stamps

Any person who—

(1) Counterfeiting

With intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed under authority of this title for the collection or payment of any tax imposed by this title, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device; or

(2) Mutilation or removal

Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument,

BY MAJORITY COUNSEL 1:

Q Okay. The document just handed to you is being marked exhibit 3. I'll give you a moment to look it over.

A Oh, okay, yes. Okay.

Q So this document contains the relevant statutory citations included in the special agent report document you just looked at, and I'd like to walk through each of the relevant statutes briefly.

A Okay.

Q 26 U.S.C. 7201 covers attempt to evade or defeat tax. Is that correct?

A That is.

Q What are the elements of a 7201 offense?

A So the elements are affirmative acts of evasion. They are that there's a tax due and owing and -- I'm not used to reading it in this setting, so I'm sorry. So it's willful attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof. There has to be tax due and owing. And the willfulness is a voluntary, intentional violation of a known legal duty. And those are the elements.

Q And what is the statute of limitations for this offense?

A It's 6 -- this says 5 years. Did that just change? It was 6 years -- 6 years from the date. Yeah. This says 5 years.

MINORITY COUNSEL 2. No, that's the prison sentence.

Mr. Shapley. Oh, thank you very much.

Yeah, the statute of limitations is 6 years from when the return is filed or of an affirmative act of evasion that could occur after the filing of the tax returns.

BY MAJORITY COUNSEL 1:

Q Okay. And based on the conclusion in your report, the elements for that offense were met in tax years 2014, 2018, and 2019. Is that correct?

A That's correct.

Q Okay. 26 U.S.C. 7203 covers willful failure to file, to supply information, or pay tax. Is that correct?

A It is.

Q And what are the elements of a 7203 offense?

A So that's that you had a requirement to file and that you had the knowledge that you did have to file, is how I know it. I mean, would you --

Q That's okay, you don't need to read the whole thing.

BY MAJORITY COUNSEL 2:

Q Yeah, we're just giving you the statute. And this isn't a pop quiz.

A Yeah, sorry, yeah.

Q We're just trying to understand what the elements of these crimes are --

A Yeah.

Q -- what the statute of limitations is and so forth. And since this is not a pop quiz, we just thought we would provide this as a resource.

A Yeah. I never see it in this format.

BY MAJORITY COUNSEL 1:

Q Understood.

And what's the statute of limitations for this?

A It's 6 years.

Q And based on this report, elements for that offense were met in 2015, 2016, 2017, 2018, and 2019. Is that correct?

A That's correct, yes.

Q And same exercise, 26 U.S.C. 7206 (1) covers fraud or false statement. Is that correct?

A It is.

Q And what are the elements of a 7206 (1) offense as you understand it?

A So that there's a material misrepresentation of an item on that tax return, that they subscribe to that under penalties of perjury, and the willfulness and knowledge.

Q Okay. And what is the statute of limitations for that offense?

A It's 6 years.

Q And the elements for that offense were met in tax years 2014, 2018, and 2019. Is that correct?

A That's correct, yes.

Q Is the tax liability at issue here related to just the individual taxpayer or to related companies controlled or that the taxpayer's --

A These charges include related companies as well.

Q Okay. Can you tell us which companies were involved?

A Yeah. He was responsible for filing personal income tax returns as well as returns for Owasco P.C.

Q And is there anything you can tell us about Owasco P.C., as far as what is the company, what does it do?

A Oh. So Owasco P.C., through the evidence that we obtained, was basically created with his partner Eric Schwerin. And the crux of this, as I understand it, is that Hunter Biden had a history of noncompliance with his taxes, and he would often get large sums of money and wouldn't withhold.

So Owasco P.C. -- was initially for the -- the whole purpose was, Eric Schwerin came in to help him with his tax situation so it didn't continue to be a problem in the

future.

So all of his consulting fees and all that type of stuff would go into Owasco. There would be withholdings from it. So then he didn't get -- when he filed his tax returns, they had withholdings to offset the taxes that he owed for that year.

Q Okay. Were there any other companies that you looked at in connection with this investigation?

A Yes.

Q A lot?

A Yes, a lot.

Q Okay. The U.S. House Committee on Oversight and Accountability has publicly identified a series of companies, mostly LLCs, that are connected to this taxpayer. I'd like to walk through a list of those companies and just ask whether any of these companies were part of your investigative work.

Lion Hall Group, LLC?

A Yes.

Q Owasco P.C.?

A Yes.

Q Robinson Walker, LLC?

A Yes.

Q Skaneateles, LLC?

A Yes.

Q Seneca Global Advisers, LLC?

A Yes.

Q Rosemont Seneca Partners, LLC?

A Yes.

Q Rosemont Seneca Principal Investments, LLC?

A Yes.

Q Rosemont Realty, LLC?

A Yes.

Q Rosemont Seneca Technology Partners, LLC?

A Not a hundred percent sure on that one.

Q Rosemont Seneca Thornton, LLC?

A Yes.

Q Rosemont Seneca Advisors, LLC?

A Yes.

Q Rosemont Seneca Bohai, LLC?

A Yes.

Q JBB SR, Inc?

A I'm not sure of that one.

Q RSTP II Alpha Partners, LLC?

A Yes.

Q RSTP II Bravo Partners, LLC?

A Yes.

Q Owasco, LLC?

A Yes.

Q Hudson West III, LLC?

A Yes.

Yes. Sorry.

Q Hudson West V, LLC?

A I'm not sure about V.

Q CEFC Infrastructure Investment U.S., LLC?

A Yes.

Q And in your line of work, are you familiar with what a form 1023 is?

MAJORITY COUNSEL 2. FBI form 1023?

Mr. Shapley. I don't know that form.

BY MAJORITY COUNSEL 1:

Q In the course of your investigation, did any FBI agent ever make you aware of a form 1023 related to Hunter Biden or any of his family members?

A We never discussed the form.

Q Okay. I think in your opening statement you discussed the jurisdiction in which the crimes we were just discussing took place, and you stated the District of Columbia. Is that correct?

A For 2014 and 2015, yes.

Q Okay. And Central District of California? Is that correct?

A That is correct.

Q Any other jurisdictions?

A The -- no, no. I mean, there was a possibility of some, but it was always that those were the strongest, those were the ones that should be.

Q And those are the jurisdictions related to the recommendations in the special agent report excerpt that we looked at earlier?

A Yes, that's correct.

Q And are you able to share details or estimates of the scope of the liability the taxpayer had to the U.S. Government or the loss to the U.S. Government in each of these tax years?

A I probably couldn't itemize it off the top of my head, but altogether it was

around \$2.2 million.

Q Spanning 2014 through 2019 tax years?

A Yes. And that only includes tax liabilities that were determined on a filed tax return, because there's still unreported income in 2014 that there's no way to collect because the statute of limitations is gone.

Q Okay. So let's talk about that.

So you stated earlier that at the October 7th, 2022, meeting there was only 1 month remaining to collect taxes owed for tax years -- for tax year 2014. Is that correct?

A To charge.

Q To charge?

A Yes.

Q For tax year 2014?

A I believe it was '14 and '15.

Q '14 and '15. Okay.

Do you know or can you clarify whether there was a deadline for collecting those taxes?

A I don't know if I understand your question. Sorry.

Q Is the deadline for collecting taxes the same as the statute of limitations period for the crime?

A The deadline to collect, I guess, is what I'm confused about. Like when the tax return is filed, even if it's only an extension and they're going to extend it, they have to pay the tax due and owing by the due date of the return.

And then if someone was charged and there was, say, a \$2.2 million tax due and owing, it would be the courts that define when the payments are made as part of the sentencing.

Q Okay. Understood.

MAJORITY COUNSEL 2. Was the statute about to run, though? You talked about the October 7th, 2022, meeting.

Mr. Shapley. Yeah. The statute was about to blow in March of 2022. And Department of Justice Tax Division and the U.S. Attorney's Office in Delaware were saying, "Get us the report, get us the report, get us the report." They were pushing really hard to get the report to them because they wanted to go to defense counsel and say that it's been recommended, because they were hoping to initiate conversations.

Their plan was, was to go to D.C. and to charge pretty soon thereafter, which is why they requested discovery from all the agents at that time. But what happened was the defense counsel said, "Whoa, whoa, whoa, whoa, don't charge, we'll sign statute of limitations waivers."

Mr. Lytle. Extensions.

Mr. Shapley. Extensions. I'm sorry. Statute of limitation extensions. So I believe at least two of those were signed by defense counsel, and the prosecutors told us that they were willing to sign that, more of them, but they just didn't request it after the November limitation expired.

BY MAJORITY COUNSEL 2:

Q Do you know when the extensions were signed and for what tax years?

A Well, these were specific to 2014 and '15 because the statute of limitations were expiring.

Q Okay.

A And they -- didn't -- they just wanted to say, "Well, don't indict, my guy, like, we'll talk to you about it, we'll sign the extensions, and then you can --"

Q And how long were the extensions good for?

A I believe it was 6 months, each extension, but I'm not a hundred percent on that. They could -- maybe they could be defined as well. I'm not -- because I know they signed at least two, and the last one was expiring in November of 2022.

Mr. Leavitt. So they were shorter than 6 months.

Mr. Shapley. Yeah, so they might be shorter than 6 months.

MAJORITY COUNSEL 2. And ultimately the statute ran?

Mr. Shapley. It was a conscious decision by DOJ to let that run. They could've had them extend '14 and '15, but they said no.

MAJORITY COUNSEL 1. And when you say DOJ, who, in your opinion, ultimately made that decision?

Mr. Shapley. So, it had to be United States Attorney Weiss. I don't know personally, but that's how it would usually work.

BY MAJORITY COUNSEL 2:

Q It's not DOJ Tax?

A In this case no. The U.S. Attorney's Office would likely take the lead. But then again, that's just based on my experience and how it would usually work, how I've seen it work.

Q And can you give us any more information about the statute running in that particular instance?

A I mean --

Q Did you get any feedback from the U.S. Attorney's Office as to the blow-by-blow between their office and the taxpayer's lawyers?

A They weren't very transparent with the interactions with defense counsel. I just know that in March when D.C. said no we still had that belief that he had some authority, because we were doing a lot of work to try to, like, overcome whatever issues

D.C. said that they had with the report.

And we thought that he still had the authority to charge. And then October 7th meeting comes and he said we couldn't charge it there, and he requested special counsel authority. It was denied. So there was really no ability to charge it there. He had no mechanism to charge it if what he said actually happened. So they let the statute expire.

MAJORITY COUNSEL 1. Okay. I'm going to talk about specific issues in specific tax years to the extent you're able. I know you said that special agent report was a very robust document. And if you don't know or you don't recall the answers, that's totally fine.

For tax year 2014, what evidence led to the recommendation for charges for attempt to evade and false statement?

Mr. Lytle. Can we just have a sort of an understanding that he can't speak about grand jury materials and protected (6)(E) just so it's clear that way?

MAJORITY COUNSEL 1. Absolutely. And if that's an issue, we'll certainly defer to you on that, what can and can't be talked about.

Mr. Lytle. Great.

Mr. Shapley. So, is the question for specific evidence or more of a theme of evidence?

MAJORITY COUNSEL 1. Let's start with a theme.

Mr. Shapley. So concerning the Burisma income, Hunter Biden basically used a nominee organization, Rosemont Seneca Bohai -- which a convicted felon was the partner of.

MAJORITY COUNSEL 2. That's Mr. Archer?

Mr. Shapley. Yes. Yes, Devon Archer.

And so the way the money worked is there's a document which is the contract between Burisma and Hunter Biden. Those are the two parties. It was for \$1 million per year. Of course this was 2014, and it was negotiated in April, so the payments in that year were reduced by the months. So it was \$666,000, \$83,000 a month he was receiving.

What Hunter Biden did with that is he told Burisma to send that income to Rosemont Seneca Bohai. And then when the money came back to him, he booked it as a loan.

So there's all this machinations of nonsense happening over here in this nominee structure that, "Oh, this is complex, this is complex," and, well, it's not complex, because this is -- it was a taxable event as soon as the income came from Burisma to Hunter Biden. And whatever he did with it after it was really just a scheme to evade taxes for that year.

And to add to it, is that Rosemont Seneca Bohai and Archer, when the money came back to Hunter Biden, they booked that as an expense on their books. So even the two parties didn't treat it the same way.

And then Eric Schwerin realized this and looked into it, and he even told Hunter Biden on multiple occasions, multiple communications, you need to amend your 2014 return to include the Burisma income. And he never did, and the statute's gone now.

[Shapley Exhibit No. 4

Was marked for identification.]

From: Eric Schwerin [REDACTED]
Subject: Income
Date: January 16, 2017 at 3:11 PM
To: Hunter Biden [REDACTED]

E+ (4)



In 2013, your taxes reported \$833,614 in income.

In 2014, your taxes reported \$847,328 in income. (To be amended at \$1,247,328)

In 2015, your taxes reported \$2,478,208 in income.

2013 and 2014 were normal years where your income was based pretty much solely on income from Rosemont Seneca and Boies. In 2014 you joined the Burisma board and we still need to amend your 2014 returns to reflect the unreported Burisma income. That is approximately \$400,000 extra so your income in 2014 was closer to \$1,247,328.

The reason for the increased income in 2015 was that your income broke down as follows:

\$166,666 from Burnham (for RSA)
\$216,000 from Boies
\$365,403 from Owasco (for RSA)
\$300,000 one time payment from Eudora (for the 1/3 of CitizensRx)

The above represents all the cash you received directly.

In addition, you reported \$1,000,000 of income that all went to RSB and you report \$188,616 in income that also went to RSB. You didn't receive this in cash and it is in reality "phantom income".

So, of the approximately \$2.5m in income you never really received almost \$1.2m of it. (My numbers are approximate but you get the idea.)

Of the \$1,300,000 in cash you received you had to pay \$751,294 in taxes. Since you couldn't have lived on approximately \$550,000 a year you "borrowed" some money from RSB in advance of payments.

FYI, in 2014 and 2015 you also had expenses beyond the norm because you renovated the house. Across 2014 and 2015 the renovation payments totaled approx. \$200,000.

The numbers for 2016 haven't been finalized yet but you made at least the following:

\$1,295,000 from Owasco, P.C. (representing Burisma and any Romania payments)
\$216,000 from Boies Schiller

Unlike the prior years you actually received the above cash but the total income for 2016 won't be close to 2015.

Hope this makes sense.

Eric D. Schwerin
[REDACTED]





 Consider the environment before printing this email.

BY MAJORITY COUNSEL 1:

Q What's been handed to you has been marked as exhibit 4. I'll give you a moment to review it.

A Yep.

Q Have you seen this document before?

A I haven't seen it in this form, but I've seen excerpts of this document.

Q Is this one of the communications you were referencing just a moment ago?

A I believe so, yes.

Q And it looks like it's about the fourth paragraph down, it reads: "In 2014 you joined the Burisma board and we still need to amend your 2014 returns to reflect the unreported Burisma income."

Do you see that?

A Yes.

Q And is that consistent with your understanding of the issues in the 2014 return?

A Yeah, this is. This is accurate, yes.

Q Is there anything else on this document that stands out to you as significant?

A Well, what's important to note here as well is that Owasco was set up for this exact reason, was to take in these type of consulting fees and to withhold taxes from it. And Hunter Biden communicated with several folks that he wanted to keep this outside of the D.C. people, and we believe that to be Eric Schwerin and Owasco, and the purpose was to evade income taxes on that, in my understanding of the evidence. So, that's kind of like laid over this as well.

And then when Eric Schwerin realizes there's money coming in, Hunter Biden is

telling him, "No, this is a loan, it's a loan, it's a loan, it's a loan," and then eventually Eric Schwerin is talking with Momtazi, who is the accountant for Devon Archer and Rosemont Seneca Bohai, and they start talking. And that's when Eric Schwerin realizes that this is actual income, and he's like, "We're going to have to book this as income." And there's multiple communications in the evidence that talk about that.

MAJORITY COUNSEL 2. So this was an affirmative scheme by the taxpayer to avoid paying taxes?

Mr. Shapley. This is, like, textbook, I learned at basic training nominee stuff. And in all of the defenses, it was a loan, got to have a promissory note, you got to have defined interest, and you got to have repayments, and none of those were included.

And we raised that to DOJ Tax, and in one particular instance to Jack Morgan, specifically saying this is not a loan. We don't have these three things. In any case, these are the things we determine if it's a loan or not, and he said that this is not a typical case.

MAJORITY COUNSEL 2. And do you think "This is not a typical case" referred to the fact that this was the Vice President's son?

Mr. Shapley. Yeah, yeah. I think that there was -- every single time the process could be bogged down by deferring to some other approval level, they took full advantage of that.

[Shapley Exhibit No. 5

Was marked for identification.]

Ex. 5

Mesires, George R.

Re: Tax Analysis - Attorney Communication

April 12, 2016 at 11:19 PM

Levinson, Kenneth S.

Eric Schwerin

Hunter Biden

MacPhail, Michael R.

Klinefeldt, Nicholas A.

GM

I am out at those times so please proceed without me. Even if Mike or Nick can't join then, I think Ken/Eric, and ideally Hunter, should connect. George.

George R. Mesires

Partner

Direct:

Mobile:

FaegreBD.com [Download vCard](#)

FAEGRE BAKER DANIELS LLP

Sent from my iPhone

On Apr 12, 2016, at 10:16 PM, Levinson, Kenneth S. < > wrote:

Eric, All

From my perspective, the 10 and 11:30 EDT time slots work for me tomorrow (Wednesday). I'm good with either of those, so when a critical mass is reached, please let us know and we'll have the call with whomever is available.

Thanks, and best regards,

Ken

On Apr 12, 2016, at 9:44 PM, Eric Schwerin < > wrote:

Not sure of Hunter's availability tomorrow for this call but other than a call at 10, 11:30 and 2:30 EDT tomorrow I am free. Each of those calls should take no more than 30 minutes.

Are there any times in there that work for everyone else?

I can answer pretty much all of the questions in the email.

Eric D. Schwerin

Sent from my iPhone

On Apr 12, 2016, at 7:09 PM, Mesires, George R. < > wrote:

Eric and Hunter:

Please see Ken's comments/questions attached. Please let us know when you are available for a call tomorrow to discuss this.

Thanks,

George



From: Eric Schwerin [mailto: [REDACTED]]
Sent: Monday, April 11, 2016 3:50 PM
To: Hunter Biden
Cc: Mesires, George R.
Subject: Tax Analysis - Attorney Communication

Hunter-

See below for analysis of Burisma payments through RSB for 2015.

For the first 10 months of 2015, total pre-tax Burisma payments through RSB = \$606,666

RSB Agreed to Hold Back \$245,498 of the above amount to cover taxes (approx. 38%) which left you with \$361,168 in "post-tax" dollars to draw down.

For the first 10 months of 2015, you drew down approximately \$413,000 from RSB. Therefore you drew down \$51,835 more than you should have.

If RSB counts the first 10 months of Burisma payments as income to you, they should send you the \$245,498 - \$51,835 or \$193,663 which could be put towards your tax liabilities for 2015.

So, on \$606,666 in income you'll have \$193,663 to go towards taxes.

Note that for November and December of 2015, the full \$83,333 for each month was sent to Owasco, PC via RSB and you withheld the appropriate taxes yourself. It is only the first 10 months of 2015 that need to be taken care of.

The only other point to keep in mind is that while Burisma paid you \$83,333 a month for the first 10 months of 2015, for the first 8 months, a portion of that (\$27,778 a month) went to Alex as his Board Finders Fee. RSB has taken that amount as an expense and we need to figure out a way to capture that expense so that you are only paying taxes on \$55,555 a month in income through the end of August 2015 instead of the full \$83,333. I am going to assume the accountants can take care of that.

Let me know if you have questions.

Best,

Eric

Eric D. Schwerin
Rosemont Seneca Advisors, LLC



 Consider the environment before printing this email.

<mime-attachment>

MAJORITY COUNSEL 2. We've just given you exhibit 5. I think it's more email communication with Schwerin and Hunter Biden's lawyer, George Mesires, partner at the Drinker Biddle firm or whatever the firm's called now, Faegre.

Have you seen this document before?

Mr. Lytle. Can we talk to our client just briefly.

MAJORITY COUNSEL 2. Of course. We can go off the record.

[Discussion off the record.]

MAJORITY COUNSEL 2. We're back on the record.

BY MAJORITY COUNSEL 2:

Q The question is whether you've seen this document before.

A No. Anything from George Mesires was considered privileged --

Q Okay.

A -- attorney-client privilege and was not provided to us.

Q Okay. And so that was kept from you by the FBI?

A No. It would be a filter team.

Q Okay.

A When we get any information, and even from the laptop and hard drive, it went through filter reviews, and we only saw what came back as nonprivileged.

Q But who ran the filter team?

A It was different each time. We had agents assigned, groups of noninvolved agents assigned that were --

Q With IRS or FBI?

A It was a little bit of both. I think that we took turns. I remember at least two different filter teams made up of noninvolved IRS agents.

Q Okay.

A And these eventually go to the prosecutors, like after the filter review.

Q Okay.

Mr. Lytle. I'm sorry. Is there DOJ attorneys assigned to the filter team as well?

Mr. Shapley. Yes, yes.

BY MAJORITY COUNSEL 2:

Q Okay. On page 2 -- it's an email chain, so it actually starts from the last page and works forward. The communication here is Eric Schwerin to Hunter Biden, correct?

A Appears so, yes.

Q And Eric Schwerin is not Hunter Biden's lawyer, correct?

A That's correct.

Q Okay. So you think they marked this attorney-client privilege just because they cc'd Mesires?

A Absolutely.

Q Okay.

A That was one of the things, just a search term was the known legal counsel and just immediately went to --

Q So if he cc's Mesires on every communication, it's all privileged?

A That was the direction to the filter teams, and then it would go to the DOJ attorney that oversaw that, and they would make the ultimate decision.

Q Okay.

A But they basically claimed privilege on a huge amount of information to include the return preparers, Morgan Wingate, later on, and they said it was because they had a verbal Kovel agreement with them.

Q Okay.

A A Kovel agreement, do you want me to explain? So I think it's from case law and it's basically that a defense team can bring in an accountant or CPA or return preparer into the defense team to assist them, so they become covered by the attorney-client privilege.

In this case, when we were attempting to interview the CPAs on it, Hunter Biden's legal team said there's a verbal Kovel team so you can't talk to them.

And we tried to get DOJ and U.S. Attorney's Office to pierce that, because everyone, even they said it was nonsense. But they just wouldn't. It took, like, 12

months to finally get to the CPAs to actually get information from them.

Q Okay. Looking at the content on page 2, if you and your team had access to this information, would that have been helpful, direct communication from Schwerin to Hunter Biden? And you previously told us that one of Schwerin's main functions was to help ensure that Hunter Biden was paying his taxes correctly, right?

A Yeah. I'm not reading it -- I haven't read it all, but any discussions in this area, we need to know, we need to know that if it's truly a loan, then we can't include it. We need all the pieces of information that discuss income, which is why it's so important to ask about 10 percent for anybody else.

MAJORITY COUNSEL 2. Let's go off the record for a second.

[Discussion off the record.]

MAJORITY COUNSEL 2. Back on the record.

BY MAJORITY COUNSEL 2:

Q Now, was your team, were they permitted to use open-source methods for looking at the materials for this case? Like, if materials were published on the internet related to Hunter Biden or related to Hunter Biden's business concerns, were you allowed to consult that?

A No. We were directed that if there's anything from the laptop from other sources to not look at it because then it's potential for it to be tainted.

Q Okay. So if it's posted on the internet, if it's written about in the newspaper, you were not allowed to consult that open source method?

A Yeah. We were directed not to.

Q Is that customary?

A I would say yes. Yes.

Q Okay. Going back to the special agent report, after you submitted the

report recommending charges, could you just walk us through the timeline of what then happened?

A From?

Q You told us about what happened inside of IRS.

A So February 25th, 2022, forward?

Q Correct.

A So we sent it to DOJ Tax Division, and that spurred their discussions with defense counsel. We did not participate in that.

And I would say that I think it's not typical for the investigative team and the agents to never be in on proffers or reverse proffers with defense counsel. We never once were allowed to do so.

And even though some communications occur with defense counsel without agents, I've never seen it where we've never been involved.

Then it went to D.C. U.S. Attorney's Office. Department of Justice Tax Division authored a 99-page memorandum that was requested by Stuart Goldberg. And my understanding is that it was for the purpose to support recommending that they move and be opened in D.C. It was like a document to support opening up and charging in D.C. for 2014 and '15.

Q Okay. So you send what's exhibit 2, or the IRS sends it to DOJ Tax, and the result was DOJ Tax Division produced a 99-page memo to support what your memo had recommended?

A I never saw it, but my understanding was, is that we were moving -- we were going to go to D.C., and we were going to charge, and here's the discovery. That was the trajectory there. So I've never seen the document, but it's been described to me as supporting those years and charging those years.

Q Do you feel like the document was kept from you and your team?

A Yeah. I don't know there's any reason not to share it with us. I don't know why. And it's also outside the norm. When a SAR goes to DOJ Tax, it usually gets -- if there's DOJ Tax attorneys working on that case, they -- those attorneys aren't the ones that get the report. It's like a third-party supposedly objective person who looks at the report and writes up whether it's approved, discretion, whatever.

This whole 99-page report was a whole separate event, and John Kane at Department of Justice Tax Division was assigned to be the objective reviewer, and I still have never seen a report from him approving, discretion, or declining.

Q Okay. So, after receiving the 99-page memo from DOJ Tax, the U.S. attorney in Delaware initiates prosecution in the District of Columbia, correct -- or he seeks permission from --

A Yeah, they send --

Q -- U.S. Attorney Graves?

A -- at least Mark Daly and I believe AUSA Wolf as well, to meet with the first assistant in D.C., and the first meeting was Mark Daly called my case agent and said, "Hey, looks good, they're going to assign AUSA."

Q That was Special Agent [REDACTED]?

A That's correct. And then it was 2 or 3 days later, Mark Daly calls [REDACTED] and says, "No, they don't support it. So we're basically dead in the water."

Q And that was the end of it?

A Yeah. At that point it became like a void. For 2 months we were working to combat the potential defenses. And I think it was all a ruse because we didn't know at the time that he requested special counsel authority and was denied. So he had no ability to charge there whatsoever, but I feel like he just sent us on a fool's errand to try

to rebut it.

Q And when was the decision made by the U.S. attorney in the District of Columbia not to go forward?

A It was in the March time frame. Like I said, we requested to be a part of that, but they didn't allow us to.

Q And when did you learn of that decision?

A I feel like it was same day. It was a date in March, and, unfortunately, I don't know the date.

Q Okay.

[Discussion off the record.]

Mr. Shapley. Yeah. So at the time we thought that he just didn't support it. And that David Weiss would still have the ability to charge at some point. But later on, on October 7th, David Weiss tells us straight out that he didn't allow it to be charged in his district. And then he says he also requested special counsel authority, which why would he request special counsel authority if he had the authority to charge.

So, yeah, it's a little bit nuanced, but what I knew then was that he just didn't support it.

BY MAJORITY COUNSEL 2:

Q I want to call your attention to some testimony, and I believe you mentioned it in your opener. But if the decision to not bring charges in D.C. was made in March of '22 --

A Yes.

Q -- okay, a month later, roughly, in April of 2022, at the Senate Appropriations Committee Subcommittee on Commerce, Justice, Science, held a hearing, a review of the DOJ's funding request. And during the hearing under questioning from Senator

Hagerty -- and, again, I think you mentioned this -- regarding the Hunter Biden investigation, the Attorney General testified -- this is a month later -- that U.S. Attorney Weiss is supervising the investigation, is in charge of that investigation. He also testified there will not be any interference of any political or improper kind.

Did you remember hearing that at the time?

A I did not hear that at the time.

Q And did anyone on your team ever bring that to your attention subsequently?

A I learned of it on and around October 7th meeting --

Q Okay.

A -- because that's when it became substantive to me, like, because we still were misled to believe that U.S. Attorney Weiss had the ability to charge in D.C. and that we were still talking about the '14, '15 year.

And then when he tells us in the October 7th meeting that he's not the deciding official and he doesn't have the authority to decide and that he requested special counsel authority and was denied, that's when the statements of Attorney General Garland became apparent that they were not accurate.

Q Right. And subsequently -- and you mentioned this in your testimony -- Senator Grassley, on March 1st of 2023, so a whole year had gone by, asked the Attorney General about this, and the Attorney General responded -- you mentioned this -- "I promised to leave the matter of Hunter Biden in the hands of the U.S. attorney for the District of Delaware...I have pledged not to interfere with that investigation, and I have carried through on my pledge."

Is that a true statement?

A It's not accurate. No, it's not accurate.

Q And by March of 2023, you had certainly known that the U.S. attorney in Delaware did not have special counsel authorities. Is that correct?

A By what he told us, yes.

Q And when the Attorney General made that statement, that had been almost a year after the decision was made not to move forward in the district in D.C., correct?

A Yes.

Q Senator Grassley followed up: "Without special counsel authority he could need permission of another U.S. attorney in certain circumstances to bring charges outside of the District of Delaware. I'd like clarification from you," Senator Grassley said to the Attorney General, "with respect to these concerns."

And the Attorney General responded: "The U.S. attorney in Delaware has been advised that he has full authority to make those kind[s] of referrals that you are talking about or bring cases in other jurisdictions."

Okay. I'll just say it again. The Attorney General said that he, meaning U.S. Attorney Weiss, "has full authority to make those kind[s] of referrals that you are talking about or bring cases in other jurisdictions if he feels it's necessary. And I will assure that if he does, he will be able to do that."

Are you aware that the Attorney General responded in that way?

A Yes, I am.

Q Is that true?

A No, that's not. Based on what actually happened, as well as the statements provided by U.S. Attorney Weiss, those statements are false.

Q And those statements were made in March of 2023, 1 year after the case was attempted to be brought in D.C. by the United States Attorney's Office for Delaware, correct?

A That's right.

Q And it also occurred many months after you learned in October of 2022 of this happening. Is that correct?

A Of this happening? I'm sorry.

Q Of the U.S. attorney in Delaware being denied the ability --

A Oh. Yes.

Q -- to bring the case in D.C.?

A Yes, that's correct, yes.

Q Senator Grassley followed up: "Does the Delaware U.S. attorney lack independent charging authority over certain criminal allegations against the President's son outside of the District of Delaware?"

And the Attorney General responded: "He would have to bring...if it's in another district, he'd have to bring the case in another district. But as I said, I have promised to ensure that he is able to carry out his investigation and that he be able to run it. And if he needs to bring it in another jurisdiction -- again, if he needs to bring it in another jurisdiction -- he will have full authority to do that."

Did that happen?

A No.

Q Senator Grassley then said: "Has the Delaware U.S. attorney sought permission of another United States Attorney's Office, such as the District of Columbia, or" -- presumably Senator Grassley meant the Central District of "California to bring charges? If so, was it denied?"

And what's the actual answer to that question?

A That he did bring it to both of them, and they both denied it.

Q And, just remind me again, what was the timing of the Central District of

California denying?

A We were informed that they denied it in and around January of 2023.

Q Okay. So 3 months before this testimony.

A Yes.

Q Approximately.

And the Attorney General followed up, and he said: "I don't know the answer to that, and I don't want to get into the internal elements of the decision making by the U.S. attorney. But he has been advised that he is not to be denied anything he needs. And if that were to happen, it should ascend through the Department's ranks. But I have not heard anything from that office to suggest that they're not able to do everything the U.S. attorney wants to do."

Do you think it's conceivable that the DAG's office or the head of DOJ Tax kept that information from the Attorney General?

A I feel like it's my opinion that you wouldn't make statements like that if you thought that was the case.

MAJORITY COUNSEL 2. I think our hour's up. Going to have to stop there as our hour's up.

Mr. Shapley. Sure.

[Recess.]

[11:40 a.m.]

BY MINORITY COUNSEL 2:

Q Thank you again for coming in and providing your testimony before the committee. I don't think we will take the full hour allotted. Hopefully we will be able to move things along a little bit.

I actually wanted to start by just going back, way back in your initial testimony. It is something our counterparts alluded to in the beginning of their questioning. Your initial testimony that over the course of your career you worked on teams or worked on cases that collected in the neighborhood of something along the lines of \$3.2 billion of previously uncollected tax revenue. Obviously, \$2 million or thereabouts, that amount at issue is relatively small, relative to the \$3.2 billion over the course of your career you've collected. I am just sort of trying to get a sense of the scope and scale of this investigation relative to what would be a normal size of a criminal investigation of the type that you work on.

You have a team of 12. How many investigations does your team generally work on at one time?

A I have 75 investigations that I am [in charge of] right now of 12 agents.

Q And how many man-hours would you say that your team spent on this investigation?

A I would just have to multiply it, right? We have at least one agent working full-time on it for 4 years -- at least 4 years. So it's 2,000 hours a year.

Q And is it typical to assign an agent full-time for 4 years on an amount in issue of \$2 million or thereabouts?

A It would be normal with an IRS CI, right? Like, the amount of time it takes,

we don't drive that bus. So we have to work with our partners. So they have an effect on the timing as well, but the case agent also had other cases as well.

Q When you say work with your partners, do you mean work with defense counsel and work with -- who do you mean --

A Like, FBI, DOJ.

Q And presumably, though, in terms of how agents and your team and you allocate your time in terms of looking at these cases, does that all receive review in terms of allocation of resources?

A Yeah, yeah. In this particular case, we also work large cases, the initial case is a \$6 billion case. And then we also have spinoffs from these larger cases that we work, and that is the way that we do to on some other large cases we are working now. So this is an example of one of those spinoff cases that had an international nexus, so we kept it within the group.

Q Right. But presumably, there was a \$6 billion case, and then evidence came to light and that evidence was referred to a spinoff case. Presumably if the evidence, was an amount at issue of \$1,000, the IRS wouldn't put a full-time employee on that audit for 4 years?

A My agents would not spend time on \$1,000. And we are not auditors, we are criminal investigators.

Q Criminal investigators.

A Yeah, yeah, yeah, yeah. Okay.

Q So there is some sort of threshold and some sort of judgment applied to how many man-hours are applied on any given case, correct?

A I don't know if there is any application of how many man-hours around each case. I have never seen that.

Q But somebody at some point does make a decision as to how many resources, how much in terms of CI's resources they are going to devote to any given case at any given time, right? And presumably, that, at least in part, is dependent upon the amount at issue?

A It is definitely not about the amount, right? If it is a case that is approved, then if it takes 3 years or 4 years or however long it takes, they are going to let that play out. At some point, if the charges look not viable, then we discontinue the case. But that never occurred in this case.

Q Right. So the size of the tax liability is irrelevant to the resources that CI puts into the investigation?

A Like a \$2.2 million case for 95 percent of the IRS CI special agents would be a huge case for them.

Q That is relevant information.

So this is generally considered within IRS CI to be a big case.

A Yes.

Q And a case of this size would typically have 12 or, for instance, 12 simultaneous interviews in terms of its investigatory step or something along those lines?

A I mean --

Q It wouldn't be unusual?

A It's case-by-case. Yeah, it is case by case, right? We don't always do days of actions. We do lots of days of actions, but it is based on the case because you want to do them simultaneously so that the witness pool isn't tainted by each other. So that is why the simultaneous interviews occurred in this particular case.

Q So, the resources that were being devoted to this case, at the end of the day, you did receive some sort of supervisory approval and up the chain, folks understood

what kind of resources were being devoted to the investigation here?

A I guess I was confused about the resources, like, yeah, there are hours that are applied to the case.

Q Think about hours being applied to the case as resources, so man-hours.

A Okay. So could you say the question again then?

Q It was relatively understood by folks senior in CI, probably at DOJ Tax, how many man-hours were being devoted to the investigation of Hunter Biden's taxes?

A Yeah, yeah.

Mr. Leavitt. Did you want to talk about the supervisory approval process?

MINORITY COUNSEL 2. If there is a supervisory approval process for the allocation of resources like that, then sure. I am under the impression that there is not.

Mr. Leavitt. I don't mean for the resources. I just mean just for the case, the case being briefed up in terms of awareness of supervisors?

Mr. Shapley. People are aware of the hours spent on the case, yes. But it is not -- it is definitely -- DOJ would never, DOJ U.S. Attorney's Office they would never, they don't care how many hours are applied to a case, right? And we even assigned a co-case agent to assist, try[ing] to keep the sphere small. They would never know it. It would really be hours applied to a case would be on our 17A CIMIS report, 17-As, and it is really like me as a supervisor or me as the ASAC, and I don't think that they go even higher than that. I don't think that anyone -- like a special agent in charge probably wouldn't even like look at the allocation of resources on a case. They just want to know if it is viable or if it is not viable.

Mr. Leavitt. But you were briefing your supervisors about the case, in which case --

Mr. Shapley. Oh, yeah, yeah. But if we are talking about resources, that is my

answer. If we are talking about case specifics, then that is a different story.

BY MINORITY COUNSEL 2:

Q That is totally fine.

I would like to ask you a little bit about the special agent report that was discussed earlier. Your special agent report was approximately 85 pages long and it recommended charging recommendations. Could you once again, and I know you did it before, but it would be helpful for us again -- what specifically was the process by which it went to an entity that gave it a nonconcurrency?

A Sure, yes. When a special agent report is still in draft, it comes past my desk and we send it to our criminal tax attorneys, called CT counsel, and they do a review of it. They create a -- it is called a CEM, I believe it is Criminal Enforcement Memorandum. So yes, that is the process.

Then we get that and then, the management and the agent. And then we sometimes take time to answer any concerns or to provide additional evidence that maybe they didn't see to make those recommendations. But then, when it is a nonconcur from CT counsel, in order for it to go forward to the department of [Justice] Tax division, it has to be approved by the director of field operations which is -- so an IRS investigation is the chief, deputy chief, and then there is three director of field operations. So, like, the third level. So when there is a nonconcur from CT counsel, the director of field operations has to approve that to be transmitted to the Department of Justice tax division.

Q Just -- sorry. The director of op has to approve it to override the nonconcur to transmit? When you say approve, what do you mean?

A I don't think override is the correct term because CT counsel is advisory.

Q Okay.

A But I think it is an extra step in the process to ensure that more people have reviewed it and agree with the evidence since the elements were met.

Q Could you say a little more about who comprises the makeup of the CT counsel?

A Just by title or names or --

Q If you have their names or what their experience is?

A So the head, I am not sure if it is a director or chief of criminal tax is Rick Lunger. And the number two there is Elizabeth Hadden, I believe. And then there is area counsel and that is like a middle layer of management. And for me on this case it was Veena Luthra. Then my line attorney, it was Christine Steinbrunner and she went by Christy and -- I'm sorry, did I answer your whole question?

Q What are their backgrounds? Why are they designated to be in this role, which appears to be something of an advisory review role?

A The --

Q Their professional backgrounds, what lead them to be put on this CT -- on this counsel?

A I mean --

Q Are they appointed?

A Oh, no, no, no, they are internal, just internal career hires.

Mr. Lytle. Also, could you just pause your question and give him time to answer because sometimes you guys are talking over each other. But he needs time to just digest what you are asking him. Are you asking -- does he know the process of how people's qualifications are determined to serve on CT counsel?

MINORITY COUNSEL 2. That is certainly a question I could be asking, yes. If that is the question he wants to answer --

Mr. Lytle. No, no. I just wanted to clarify.

MINORITY COUNSEL 2. He can answer it either or both ways, which is to say either do we know the specific individuals and what their qualification are, or if he does not -- what would make an individual qualified to serve on this counsel?

Mr. Leavitt. Elizabeth would know more about it, wouldn't --

Mr. Shapley. I mean, the only background I know is Elizabeth Hadden was at the Department of Justice tax division up until a year or 2 years ago maybe. Like, 2 years ago. And then she came over to be the number two in CT counsel. In terms of background, that is all I know about them.

BY MINORITY COUNSEL 2:

Q But in general, is it safe to say that they are experienced criminal tax attorneys, or criminal tax agents or having a fair amount of experience in criminal tax investigations?

A They review our reports, our enforcement actions for legal sufficiency based on the Internal Revenue manual, yeah.

Yeah, well, yes, CT counsel is not a respected organization within IRS CI. Their opinion, as I alluded to before, I bet you around 90 percent of everything that we do in the international realm are not concurred with them, and we just simply ignore them. I have heard AUSA's and prosecutors in the past when the agent will be, like, Well, you know, CT counsel nonconcurred, I have heard them say, I don't care anything of what they are saying. And then in this particular case -- it was either the August 16, 2022 meeting, or the October 7, 2022 meeting and -- Shawn Weede, who was the number two, I believe, at the U.S. Attorney's Office at Delaware actually had CT counsel's nonconcur memorandum, which, that is the first time I have ever seen a U.S. Attorney's office ever even interested in that document. And they ostensibly laughed at the legal reasonings

in that document.

Q Can you describe the legal reasonings?

A I couldn't with specificity. I really want to. So --

Mr. Lytle. If you recall.

Mr. Shapley. I don't recall. But internationally, there are things that they just in every single CEM they write, right? Like, availability of foreign witnesses, one. Admissibility of foreign evidence, two, right? There are these things, like, if a guy's 70-years-old, then they make some statement about how he could die before trial. So, I don't remember the specific items in their memorandum, but those are the types of things that I see like consistent in their reviews of the international work.

Mr. Leavitt. So you are saying it covers not just legal sufficiency but as a practical matter in success of trial for the ability to get to prosecution.

Mr. Shapley. Yeah, it could.

BY MINORITY COUNSEL 2:

Q Do charging decisions also depend on the practicality of success at trial as a general matter?

A From?

Q From the DOJ?

A Yeah.

Q If legal sufficiency is not solely the basis by which CT counsel makes its recommendations, then is that also true of the Department of Justice?

A Reasonable likelihood of prosecution is the statement, as I understand it, but I am also not an attorney.

Q Fair enough.

I want to go back to something you testified to -- you mentioned green light,

yellow light, red light on various [occasions] -- and I kind of wanted to flesh that out a little bit more. I think you testified that the line attorney had suggested that for every tax year other than 2018, she had a yellow light, and then for 2018, it was a green light. Can you describe to me what you view as a distinction between a yellow light and a green light?

A Sure, yeah. And this was described to me by CT counsel Christy Steinbrunner where a yellow and green [is a] concur and red is that she did not concur. Some of the reasons to be in yellow are that, like, I said before would be admissibility of foreign evidence, and availability of foreign witnesses and things of that nature. But to be yellow, the elements of the crimes and the minimum legal requirements have to be met.

Q But again, just for clarity, yellow indicates that notwithstanding [that] the legality of a crime has been met, there may be other considerations regarding the likelihood of success at trial?

A I don't know if it pertains to the likelihood of success, but it is definitely like maybe there's complexities, like, international type issues in there.

Q Do you have any indication of what, for instance, you described 2014 and you described a payment disguised as a loan, what would cause an evaluation of that year [to] impact your chances of being yellow as opposed to green?

A I don't recall what she said specifically. I could opine if you wanted me to.

Q If you had to guess, what would it be? If you had to venture your best professional judgment as to why it might be yellow?

A Sure. So, as I described the income flows, that is how I would see it presented to a jury, right? Because you have got to consider the jury might be a 20-year-old auto mechanic, right? As soon as a contract between the two parties

identified occurs and payments from that contract begin, that is the taxable path. For instance you can't send your paycheck to someone else, and then them send you money and tell you to say it is a loan and then you not pay taxes on it.

So if you go into the other side, this construct, this scheme to evade, of course it is incredibly complex and confusing because it is made up. So, that is an example of how that might work for 2014 as CT counsel's opinion.

Q Then sort of continuing along with the special agent report, we discussed before I guess the nonconcur was over[ridden] -- but it was passed on to DOJ as a result of concurrence by who exactly?

A Director of field operations.

Q Director of field operations. And then that went to DOJ tax. And then DOJ tax authored a 99-page memo?

A I don't want to commit to a timing of that memo, but it is around that time. And that was separate and distinct from the path of the SAR. That SAR would never be reviewed [for approval] by the DOJ tax attorneys who are working the case. It always would go to a separate person. And in this particular instance, it was DOJ tax John Kane is his name. So the 99 page [memo], I am sure it was being authored or maybe it was authored or it was said to author around that time. But it was in process because we knew since at least June of 2021, there was no venue in Delaware. So we knew that it had to go to D.C., it had to go to California. So, I think this document, which was outside the norm, but maybe -- I am not saying that it is wrong, right, it is just outside the norm -- maybe it was for the purpose of helping them present it to the D.C. U.S. Attorney's Office, and eventually to CDCA, the Central District of California.

Q Okay. So this was a memo that was I would say not written necessarily in the normal course of an investigation, and it would not normally be something that was

produced in response to an SAR?

A Yes.

Q Have you ever seen a DOJ tax memo?

A The 99-page memo?

Q The 99-page memo.

A I have not. I have seen excerpts in a presentation.

Q And did those excerpts give you a sense of whether or not DOJ tax was recommending charges?

A I don't think I could conclude from those excerpts that that happened. But I have worked with Mark Daly for 10 years and I talked to him almost daily, it was called the "daily Daly," that was extra. But you see all the action up until March, right? And you see the SAR being sent over on February 25, you see the discovery request. They anticipated it was going to go to D.C. and it was going to be opened in D.C. and it was going to be charged in D.C. So if they produced a 99-page memorandum that said something other than that, would be surprised but I have not read that document.

Q But you don't have any reason to believe that, or knowledge one way or the other of whether or not the DOJ tax memo contained information about litigation risk for instance?

A I did not see that. I wouldn't know that.

MINORITY COUNSEL 2. [REDACTED], that is all I have.

BY MINORITY COUNSEL 1:

Q Thank you for being here today. I appreciate it. I am going to go back over some of the things you said that I probably just missed in my notes. I just want to make sure that I have a clear record.

I think one of my colleagues had asked you when did this case begin. And you

noted that it started on another case, and then it had basically spun off of that and he was on a list of individuals. Do you have a date as to when the case started, like a year?

A So 2018, internally, the IRS CI, yes. And it went through like that PI, that primary investigation phase. And then it went through the 9131 process to go to the U.S. Attorney's Office, the DOJ tax approval to go to the U.S. Attorney's Office.

Q This was another question that I had. I think it is exhibit 2, and it is just the list of the tax years and the conclusion. On the front of it, it has a special agent and that person is redacted and the revenue agent is also redacted. Are you able to provide the names or are you one of these individuals? I just can't tell who wrote it.

A Sure. So special agent -- this report was written by [REDACTED]. He is the case agent on this.

Q Okay.

A The revenue agent -- he had zero input into the authoring of this document. What a revenue agent's traditional responsibilities are as a special agent we might get all these income streams and get a compilation of what we believe to be income. And we give it to these revenue agents -- and they are super educated in Tax Code and everything. And they put it into a RAR, Revenue Agent Report, and it basically spits out for each year what the additional tax due and owing, taking into account additional income, maybe additional expenses that would lower that tax income, the tax due and owing. But that is the role in it. So -- I don't know why he's on the front of --

Q Is that --

A I don't know why he's on the front of the report, but I think it is kind of to throw him a bone because --

Q Okay, okay. Do you know if that person, the revenue agent, do they review the final document, the draft before it comes across your desk?

A No.

Q Or it is just really you are using their numbers and that is why they --

A It's only numbers -- appendix A to every SAR is an additional tax [due] and owing for criminal purposes, that would be the revenue agent's -- that would be the only thing that they would create exhibits that populate that document, that document says all these years, this is how much they owe for criminal purposes. That would be the extent of their interaction with this document.

Q Okay. So I am going to come back to exhibit 1 in a minute, but I wanted to look at exhibit 4 and 5. So I want to start with exhibit 4. Did you provide this email to the committee?

A No.

Q Okay. Do you know where this email came from?

A As part of the investigation I wouldn't be able to answer that question, unless you are asking me like literally where it came from on the document.

Q Well, I am asking two things. I was going to get to the person. We have never seen these two documents on my side, and so I just don't know where they came from. And the documents that I have been provided are the ones that you gave to the committee. So I am just wondering if this is some second set of documents that we didn't receive, or where these documents actually came from?

A No, I'm --

Mr. Lytle. So two questions there.

MINORITY COUNSEL 1. Yes.

Mr. Lytle. Does he know how they were obtained?

MINORITY COUNSEL 1. Yes.

Mr. Lytle. Is a question. Do you know that?

Mr. Shapley. No, I don't.

Mr. Lytle. Okay. Second question, did you deliver Exhibit 4 to the committee?

Mr. Shapley. No, I did not.

MINORITY COUNSEL 1. Okay.

Mr. Leavitt. Or 5.

BY MINORITY COUNSEL 1:

Q Did you deliver exhibit 5 to the committee?

A I did not.

Q Because I did actually read the documents that you provided, so I was surprised by these two documents. Where they came from, I don't know, maybe the internet. I don't know.

Can we talk about the individuals that are listed in exhibit 4?

A Sure.

Q Do you know who Eric Schwerin is?

A Yes, I know who Eric Schwerin is, yes.

Q And is he an attorney, a person, an accountant? Do you know anything about his background or what is his relationship here? I guess I am trying to understand why we have an email from Eric here.

A Okay. So I don't know if he's an attorney or CPA, but he is a very close friend of the family of the Bidens and a close friend of Hunter Biden. And he is known to just be a very diligent guy. And he was brought in and helped create OWASCO P.C. Based on the documents that I have read and understand to -- for the sole purpose of getting Hunter Biden into tax compliance. Because in the early 2000s, he often had these large taxes due and owing, and then he couldn't pay them. And he used to have problems and that stuff. So he was brought in to help bring Hunter Biden into tax

compliance.

Q Okay. And this was back in 2017. Okay.

And then on exhibit 5, it's the same question, George Mesires, and I think you might have mentioned him earlier, do you know his relationship?

A Yeah. I know him to be a personal, quote, unquote attorney to Hunter Biden. And if I wasn't taken off the case, I would have been tainted by this document.

Q And do you know who Eric is? Eric is the same guy from exhibit 4, I guess.

A Yeah, Eric Schwerin.

Q And do you know if there is -- and maybe I missed it, do you see any response on here from Hunter Biden to these emails?

A I don't. This is the first time I have seen this so I don't see an email from Hunter Biden, or at least what this document shows.

Q And then it appears in the top in the header, right after the date there a number of names. But it also appears that there is a number of names that have been redacted. The first one is Eric Schwerin, and then Hunter Biden, Michael McPhail and then Nicholas Klinefeldt. But it seems some names that are missing. Would you happen to know who those names might be?

A I think they are there, but they are just grayed out.

Q Oh.

A I think it is email addresses.

Q Oh, okay.

A Yeah. That is why I looked to see if it was a bleed-through, or yeah, they are just very faint. So it looks like the email address is to those individuals.

Q Okay. Thank you.

Now I would like to go to exhibit 1. This is a letter that was sent, and these are

some basic questions. I want to make sure that I have my notes clear so that I remember what I am doing when I go back to look at this. Okay.

Mr. Leavitt. What was your question before whether there was an email from Hunter Biden or whether he was the recipient?

MINORITY COUNSEL 1. Oh, no. My question was I thought that there were names that had been redacted out. But it turns out that they were actually the email addresses of those individuals?

Mr. Leavitt. But prior to that you were asking about whether Hunter Biden was on this.

MINORITY COUNSEL 1. No, whether there was a response from him.

Mr. Shapley. That's how I understood it.

MINORITY COUNSEL 1. And he said there was no response.

BY MINORITY COUNSEL 1:

Q On the first letter which is dated April 19th, and is exhibit 1, it is mentioned in here that my client has already made legally protected disclosures internally at the IRS. I wanted to ask a little bit about those disclosures, when they were made and to whom they were made, and whether you made them by letter or email -- I know you can make them by phone call as well -- and if you received any acknowledgment.

So, we can break those down, but that is essentially it. I want to know a little bit more about the line with the disclosures within the IRS.

A I don't think I will be able to be all inclusive, but I will give you examples.

Q That is fine.

A I think that the first disclosure that I made that something was far outside the norm was a June 16th of 2020 memorandum. That memorialized a meeting with the director of field operations and down, so it would be the SAC, the ASAC, me, case

agent. I can't remember exact dates for some of these.

Q That is okay.

A It was something that the SCRs, these sensitive case reports, that went up to supposedly to the chief, they are authored for the chief. And there is only a finite number of sensitive case reports produced in CI, because they are there for the purpose of informing the chief on these more sensitive cases. And so, those were monthly on this case. There were multiple of those where I raised various concerns to the chief.

Q Do you know who the chief was at the time or maybe the chief changed over time, but --

A So Don Fort was the chief through December 31st of 2020 and since then, the chief is Jim Lee.

There were briefings, there were meetings, at least, like once a year those occurred, sometimes twice a year. And then as we got to 2022, we had those conversations more frequently, and they were surrounding bigger meetings, like a June 15th, 2022 meeting at Main DOJ, an October 7th, 2022 meeting.

Q That is good, yeah. Thank you.

At any time, did you make any disclosures outside of CI? Did you make any disclosures out of the chain to, I don't know, the deputy commissioner of services and enforcement, or anyone outside of CI?

Mr. Lytle. This is outside of CI, right?

MINORITY COUNSEL 1. Yeah.

Mr. Lytle. But within the IRS?

MINORITY COUNSEL 1. Within the IRS.

Mr. Shapley. So the chief would be, you know, that is the highest, right, like that we would usually go to unless of course I thought the chief was not doing something that

they should be doing. I raise these issues to the U.S. Attorney's Office in Delaware, and often to DOJ tax attorneys, but outside, I --

BY MINORITY COUNSEL 1:

Q But no one at Treasury?

A Oh, no.

Q No one at IRS above -- other than CI, no deputy commissioners, no commissioner?

A That is correct. And, there was a common theme that [REDACTED] and the co-case agent Christine Puglisi would -- after all these pros team calls we would have a follow-up call. And sometimes FBI agents would be on there as well. And it was basically talking about the strategy and it often became like, Wow, they are not letting us do this. Can you believe they said that? Like that type of thing.

And we -- in order to protect the record of the investigation basically it was me that could only document that, right? Because we wanted to make sure that the agents weren't documenting things that would eventually be turned over in discovery and could somehow affect the viability of the case.

So that is something that I documented moving forward. And each time we were, like, Wow, they didn't let us do the search warrant. Like she said -- to overcome probable cause with a search warrant is, like, that is it, right? That is really, like, okay, well, you are going to go do it, because we want evidence that is unfiltered, right? But the whole point is we were like, well, there is no way they are not going to charge us. The evidence is there. They say the evidence is there. And we just really couldn't believe that they would be doing something wrong. It was a very heavy burden to overcome from my experience and training to be, like, wow, there is something going on here.

So it got to the point where we are like, well, they are just going to charge and all the things that they didn't do were just going to go away, right, and it is not going to matter. But it just didn't happen. And then the October 7th meeting, you know, changed everything for me and I could no longer stay silent. And the case agent is also willing to come forward as well.

Q Do you know if the chief reports to anyone on, like your SCRs? Does that go anywhere up the chain at IRS, or does it just go to chief, so Mr. Fort at the time, and that is kind of the end of it. Did he ever give you an acknowledgement that he read the SCR?

A No, no. Well, the first question is I don't know if goes above the chief. The second question is, you know, there is -- they never told me they read the document. It is for the chiefs, but I don't know if they read it.

Q So no one gives you any feedback like, we need more information on this particular bullet point or something like that?

A You know, that was a common theme along the investigation as well is that we would be raising these issues, right and my senior leadership was never, like, okay explain that to me. Oh, okay, we disagree with you. So we are not going to do anything. In fact, there is multiple correspondence that basically show that they are, like, wow, yeah. And then we understand and we support you and whatever. And then even the prosecution recommendation, right? So finally, when we heard that '14 -- they were kind of leaning toward -- we thought they were still deciding on '14 and '15 in August, and that they were leaning toward a no to charge those. My DFO responds that he is going to go and talk to the deputy chief and tell him to call over to Stuart Goldberg and tell him that IRS CI supports 2014 and 2015. It was kind of, like, I hate to be too colloquial but it was like literally burying their heads in the sand. But

when it popped up, they even agreed, they even were able to say that they agreed with some of these charges that eventually were not charged.

Q Okay.

Mr. Leavitt. Could I just clear something up?

MINORITY COUNSEL 1. Yes.

Mr. Leavitt. When you asked about Treasury, are you just talking about Main Treasury or the inspector general there as well?

MINORITY COUNSEL 1. I was really talking about Main Treasury.

Mr. Leavitt. Okay. Thank you.

MINORITY COUNSEL 1. But if you'd like to answer about the inspector general that is fine, too, but I was asking about Main Treasury.

Mr. Lytle. Just to clarify, his attorneys have made some disclosures to all of these entities so --

MINORITY COUNSEL 1. That is fine. But I am not asking about those. I was asking more at the time --

Mr. Lytle. Got it.

MINORITY COUNSEL 1. -- whether there were any other channels or avenues for reporting up through the IRS beyond the chief, or someone else that he might have emailed. I don't know [maybe] the chief counsel, or if there is someone else that is in that chain of command that we did not ask about. My question was really just what he answered, which is did he or anyone else in that chain do anything within main Treasury.

Mr. Shapley. I was a little confused by it, but -- okay, good.

MINORITY COUNSEL 1. Okay, that is correct.

You guys have any other questions? We're done.

Thank you very much.

MAJORITY COUNSEL 1. Off the record.

[Discussion off the record.]

BY MAJORITY COUNSEL 3:

Q We were surprised to learn that prosecutors walked away from a tax assessment of hundreds of thousands of dollars. In a typical IRS audit there will be an examination of taxpayers records, either in person or via mail. If the IRS determines that additional tax is owed, IRS exam will make a formal adjustment to tax liability. Interest and penalties may apply being an underpayment of tax. And if there is no agreement between the taxpayer and the revenue agents on the amount of tax owed, there is an assessment, and the taxpayer has 30 days to consider their next course of action. Again, this is in a civil case. The taxpayer may choose to appeal the assessment administratively within the IRS, or to the Federal courts. But the taxpayer owes that tax plus any interest and penalties. If left unpaid, that can lead to criminal prosecution. It is our sense that it would be rare for the IRS to simply walk away from a six-figure tax assessment on the civil side. But based on your testimony, this case started within IRS CI. Can you confirm?

A Yeah, that is correct.

Q So your team went through the course of this investigation. You mentioned that there was \$400,000 in underreported income for 2014 or 2015 or both. Can you confirm?

A 2014 was the \$400,000.

Q Thank you. And that amount was reflected on an SAR?

A Yes.

Q Thank you. Then as we discussed in 2022 the U.S. Attorney allowed the statute of limitations to expire with respect to that amount. Can you confirm?

A With respect to that tax year, which included --

Q The 2014 tax year.

A Yes. That is correct.

Q Is it typical for IRS CI to make an assessment of additional taxes owed, and then see the IRS and prosecutors simply allow the statute of limitations to run out?

A So assessment is a civil term and assessment means that like that dollar amount goes on that taxpayer's account and then they owe that, right? So assessment is kind of used a little bit outside of what I am used to. So --

Q I understand. On an SAR, there will be a number, an assessed amount, or a deficiency in tax. Is that correct?

A Tax due and owing for criminal purposes, yes.

Q Criminal purposes. And is it typical for IRS and prosecutors to simply allow the statute of limitations to run out from the amounts shown on an SAR? Is that a typical practice with cases that you have dealt with?

A Letting a statute of limitations expire in an active criminal investigation is not normal.

Q Thank you.

I would also add it seems that if Hunter Biden had been audited like any normal American, he definitely would not have received a free pass on a six-figure tax bill for 2014. That would have been an assessment, that would have gone potentially through the courts. It is not something that IRS on the civil side would have just walked away from.

A I mean, based on my understanding of civil, yeah. That is correct.

Q Thank you.

Mr. Leavitt. 2015 is also when the statute of limitations --

Mr. Shapley. Yeah, 2015 the statute of limitations also expired. I mean, I just -- that particular year and that particular charge, I could see some issues with that that would preclude it being charged.

BY MAJORITY COUNSEL 1:

Q When you say that particular year?

A 2015.

Q 2015.

A Yeah, so, 2014 is -- the elements are met, absolutely should have been charged, any other case I ever worked with similar fact patterns, similar acts of evasion and similar tax due and owing. 2015 was a lower -- was a much lower amount. And, you know, I don't -- I am not -- I wouldn't argue that 2015 should have been -- that if they didn't charge it that was a huge problem.

BY MAJORITY COUNSEL 2:

Q And why was that? What was the number in 2015?

A It was lower it was like \$23,000, \$25,000. It was really low. And there were like, diamonds given, and it was like gifts and stuff -- so it was a little bit less straightforward. 2014 was just solid straightforward.

Q And what was the number in 2014, if you know?

A The tax -- again --

Q So of unassessed -- per the report was, what was that? I want to say it was \$220,000 but I don't remember off the top of my head, 2014. I do know that there is still that \$125,000 of unreported that cannot be collected through civil or criminal means.

BY MAJORITY COUNSEL 1:

Q And just to clarify that point, because of the way this played out on the criminal side, civil actions were suspended during the course of your investigation. Is

that correct?

A Yes, that is correct.

Q And now that the statute was allowed to run for 2014, there is no mechanism by which the IRS can force the taxpayer to pay the amounts you believe are due?

A That is correct.

Q Okay, we just talked about tax year 2015. We have talked a lot about tax year 2014. I would like to just run through the other relevant years here. For tax year 2016, what was the amount at issue, if you recall?

A You know, I don't want to say individual tax years and the tax charges, just because I am just not -- I had that chart in my head and I am not confident enough to say -- I mean, it is 2.2 over those years so --

Q Understood, understood.

BY MAJORITY COUNSEL 2:

Q Just going back to 2014 and 2015, do you know if he was paying taxes on his Burisma? He was paid \$1 million or so basically for nothing. Do you know if he was paying taxes on that, the \$80,000 a month coming in through the Rosemont Seneca Bohai, I believe?

A So for 2014, the \$400,000 of unreported income today is the Burisma income.

Q Correct.

A It was not reported, and no taxes were paid on that.

Q Okay. And you believe it's \$400,000, not \$1 million?

A Well, the number was \$666,000, because it was in April, right?

Q Okay.

A So it was \$1 million per year.

Q Okay.

A So the beginning was \$666,000. And then we gave -- in criminal investigation we are very conservative with those numbers. So in theory, it really should be -- that number should be \$666,000 of tax due and owing. And then the tax loss associated with that. But we gave him the benefit of the doubt on anything -- on the amount between 666 and 400.

Q And then in 2015 is he paying his tax on the Burisma money?

A Not at the time, but he -- it does wind up because Eric Schwerin --

MAJORITY COUNSEL 1. Let's go off record for one second.

I'm sorry, go ahead. Back on the record.

Mr. Shapley. Because Eric Schwerin is now involved in that whole process so he made sure that things are --

BY MAJORITY COUNSEL 2:

Q And is there anything about 2016 that you remember, or stands out -- because you mentioned in 2014 it was Burisma, and 2015 you said it was complicated, there were some diamonds and some other hard-to-value assets that were provided to him as income. Do you remember anything about 2016?

A 2016 was a failure to file [and] pay year so it wasn't -- it wasn't a position of unreported income and acts of evasion, it was just that he didn't file and/or pay what he was supposed to.

Mr. Lytle. Can I just confer briefly to refresh his recollection?

MAJORITY COUNSEL 2. Sure. Of course.

MAJORITY COUNSEL 2. We can go off the record while they are conferring.

[Discussion off the record.]

BY MAJORITY COUNSEL 2:

Q So I was asking if anything about 2016 stuck out to you. And you said it was a failure to file, failure to pay case. And I think that is when we went off the record.

A Yeah, yeah. I mean, in terms of the actual conduct, I don't think I can get into it right now -- I don't want to mix up tax years. And ultimately, the case agent on those things getting into each -- I mean, it will be very dissected and very --

Q Okay. How about 2017, anything that stands out to you?

A It was a bigger dollar amount, right? It was around \$500,000 taxed and owing.

Mr. Lytle. Are you asking the conduct that resulted in that income?

MAJORITY COUNSEL 2. I am asking him about both. I am asking if he's aware of roughly the dollar figure and what the dollar figure is for. Like he mentioned in 2015, it related to some diamonds. 2014 it related to Burisma. So I am just asking if he has any recollection about -- each year, now we are at 2017.

Mr. Shapley. Yeah, no. That was a failure to file pay year as well. And the tax loss was around \$500,000.

BY MAJORITY COUNSEL 2:

Q And 2018?

A Yeah, 2018 was -- yeah, there is a lot of -- 2018 was like said to be -- that was at green light year from even CT, like, from a low level. There was -- even DOJ tax and U.S. Attorney's Office in Delaware was, like, this is a slam dunk case. So what occurred in 2018 was -- it wasn't a tax return that was prepared until 2020 mind you so it was, like, late and stuff. But he was expensing personal expenses, his business expenses. So, I mean, everything, there was a payment that -- there was a \$25,000 to one of his girlfriends and it said, "golf membership." And then we went out and followed that

money it was for a sex club membership in LA.

And there were off-the-book employees. So Lunden Roberts was -- she is the mother of one of his children in Arkansas. And she was an off-the-book employee that he was giving her healthcare benefits, she wasn't working, you know. All that was expensed. There were multiple examples of prostitutes that were ordered basically, and we have all the communications between that where he would pay for these prostitutes, would book them a flight where even the flight ticket showed their name. And then he expensed those.

Mr. Lytle. First class?

Mr. Shapley. I don't recall if it was first -- I think it was first class on some of them, but some of them was, like, Frontier, I don't think they were a first class.

So the worst part about 2018 is that Hunter Biden's accountants are sitting there with him at a table, and they have all the numbers in front of them, right? The bank accounts in front of them and they are saying that, you know, you need to circle what are business expenses so that we know what to deduct. So it becomes apparent to the accountants during this interaction that he's putting things on here that aren't expenses, that aren't true business expenses. So the accountants create a representation letter that basically they said they have never done before. And they had him sign this document, and it was basically because they didn't believe what he was saying, but they didn't -- if they were going to prepare his return, they had to listen to what he was saying. I mean, I guess they could have just chosen not to prepare his tax return would have been their only out. But that was the type of conduct in 2018.

[12:49 p.m.]

BY MAJORITY COUNSEL 2:

Q What do you think happened between 2014 and 2018? You told us that he had utilized this Eric Schwerin fellow to try to get his taxes in order so he pays his taxes, but we get to 2018, and he's trying to expense prostitutes and whatnot.

A Yeah, and --

Q And for purposes of his tax returns, he's expensing them to what business?

A To Owasco P.C., I believe.

Q Okay.

A Yeah, I believe it was Owasco. So I don't have the date in front of me, but Eric Schwerin and Hunter Biden have a falling-out.

Q Okay.

A Yeah. And so Eric Schwerin leaves and stops working with and for Hunter Biden. And I think that's where -- it was in that timeframe where Schwerin was no longer participating.

Q Okay. Was the Owasco concern conducting any legitimate business that would need to expense anything?

A I mean, they're a company that brought in his consulting fees. So, if they were truly consulting fees and he was traveling to get his consulting fees, or some legitimate expenses can happen, like the office, and things like that.

Q Do you know if they had an office?

A Yeah. Oh, yeah, at one point it did because --

Q So Owasco had a separate office from Rosemont Seneca?

A I don't know if it was separate because -- I don't know the answer to that.

Q And then now we're at 2019. Is there anything that stands out about that tax year, either an amount or procedurally?

A No. It's a -- no, not a whole lot for me.

Q And as I understand it, at some point, the 2014, '15 and '16, was that --
Mr. Leavitt. Sorry, if I could confer for a second.

MAJORITY COUNSEL 2. Of course. Off the record.

[Discussion held off the record.]

MAJORITY COUNSEL 2. Back on the record.

Mr. Shapley. So, you know, these tax debts were outstanding, and there was only 1 year there was a payment plan where he paid \$10,000.

BY MAJORITY COUNSEL 2:

Q Do you remember what year that was?

A I think it was 2016, I believe. But he paid it a few times, and then he stopped paying it. And, then ultimately, in late 2019-2020, a Kevin Patrick Morris comes into the picture. And he was described as meeting Hunter Biden at a campaign finance event. And he paid off several different tranches of tax due and owing, to include Federal and D.C. tax due and owing.

And when they prepared some of these returns, they wrote that Kevin Patrick Morris gave him a loan for these. So that's also not taxable. So that was one of the points of -- that was a compilation of all the tax due and owing, so --

Q Some of these years, they tried to file in D.C., and then in the Central District of California? Do you know where the breakdown was?

Where the U.S. Attorney's Office for Delaware tried to bring a case in D.C., and then they also tried to bring it in the Central District of California, do you know the breakdown in years?

A Yeah. So, the venue for 2014 and 2015 was D.C., and the venue for 2016 through 2019 was Central District of California.

Q So D.C. was only 2014 and 2015?

A That is correct.

Q And when was the statute supposed to run for 2014 to 2015 after the extensions? And we probably covered that before. I apologize for asking again.

A After all the extensions, it was November of 2022.

Q So when they learned in March of 2022 that the D.C. U.S. Attorney is not bringing that case, they had April, May through November of that year to do something about that tax liability, correct?

A Yes.

Q And they did not do anything?

A They did not, no.

Q They could have tolled the statute of limitations? They could have shifted it over to the Civil Division to pursue it civilly, correct?

A Yes to the first question. To the civil statute, I don't know if it would have still been open.

Q Okay.

A So I don't know that. But, I mean, one thing that they did do is he did request special counsel authority in that time, right? He was denied so -- and that's a big point that I want to make.

So it's not just -- I've worked cases for a long time and very big cases. And yes, there -- investigators sometimes have disagreements with prosecutors.

But if you look at this, you can see -- they brought the case to D.C. Like, they're not bringing the case to D.C. because they don't support it and they don't think it should

be charged. And then I don't know -- it just wouldn't make any sense to me that David Weiss requested special counsel authority if he didn't also think that those years should be charged.

So that's just kind of, some of the things that were happening in that time period.

Q And you said that the Central District of California, that case was brought out there in January of 2023, you said?

A No, September of 2022.

Q September of 2022 is when they brought the case in California?

A They brought the case to California.

Q To California.

A It was the same week that Martin Estrada was confirmed.

Q Okay.

A So, after 6 months, we're kind of in limbo, and we don't know why it took 6 months to then take the next step. And, maybe it's coincidence, but it went there at the same time that --

Q Okay.

Mr. Lytle. Can we go off the record for a moment?

MAJORITY COUNSEL 2. Off the record.

[Discussion held off the record.]

MAJORITY COUNSEL 2. Back on the record.

BY MAJORITY COUNSEL 2:

Q I know you're not sure of when the U.S. Attorney for Delaware asked for special counsel status, but do you have a timeframe? Sometime between March of 2022 and January of 2023? Is that fair?

A My understanding was that it was right in March after he was told by

Matthew Graves that they didn't support it.

Q And do you know if he asked for special counsel status at any time before he brought the case to the Central District of California?

A For California?

Q Yes.

A I don't know that. But in the October 7th meeting, he did say that if California tells him no, he has no authority to charge in California, and that he would have to request special counsel authority in order to charge it.

Q And you don't know if he did ask for special counsel authority a second time?

A I do not know.

Mr. Lytle COUNSEL 1_ Can we go off the record a moment?

MAJORITY COUNSEL 2_ Sure.

[Discussion held off the record.]

[Recess.]

[1:32 p.m.]

MAJORITY COUNSEL 2. Back on the record. It's 1:32.

[Shapley Exhibit No. 6

Was marked for identification.]



Laptop and Hard Drive Timeline
10/22/2020 – 1000am

1. 3 laptops to the shop
2. Financial records show Sportsman was around Wilmington DE shop at a cigar shop on the same day
3. Other intelligence shows Sportsman was in the area
4. computer shop calls Sportsman to tell him to bring in an external hard drive to put recovered data on to. Sportsman returned to the shop with the external hard drive
 - a. Phone records show shop called Sportsman and sportsman called the shop around this time
5. During data recovery effort (could not fix the computer so was just recovering any data he could recover)
6. At this point there was the laptop, external hard drive, and a hard drive at the computer shop (3 devices)-computer shop always kept a copy of the customers data for a period of time before purging the data off his system
7. October 16, 2019 – Richard Steven McKissack reported to the FBI office in Albuquerque "his son is in possession of a sportsman computer that had not been retrieved and was not paid for...said it contains evidence of white collar crime...he did not view this data personally"
8. FBI Albuquerque generated a lead that went to Baltimore FBI.
9. FBI Baltimore received the lead on 10/17/2019.
10. Discussions began on what to do with the computer.
11. Reached out to Richard on 11/3/2019 and got John Paul's contact information
12. 11/6/2019 – Josh Wilson called John Paul
 - a. Provided device number and FBI determined that device was registered to Sportsman via apple ID account/iCloud account
 - b. Verification of device -
13. 11/7/2019 – FBI interviewed John Paul at his residence near Trolley Square right around the corner from the shop on Delaware Ave.
14. FBI produced a 302 and Dillon looked at the 302 to determine if there was any privileged information – produced because John Paul was providing statements about what he saw on the laptop
 - a. Determined no taint items in 302 – but not being shared with prosecution team
15. 11/21/2019 – telephonic interview to clarify the steps taken to notify sportsman of completion of service request, request of payment and pick up of the item.
16. 12/9/2019
 - a. Took property of laptop, external hard drive and copy of receipt signed by sportsmans
 - b. [REDACTED] provided copy of [REDACTED] and fbi receipt of property
17. SA [REDACTED] began drafting search warrant affidavit for the computer on 12/3/2019

18. 12/13/2019 – obtained T26 SW signed by SA [REDACTED] for laptop and external hard drive – presented a filter protocol to the magistrate with the SW
19. 12/12/2019 – OEO approval came concerning the search warrant for the laptop and hard drive
20. FBI determined in order to do a full forensic review a replacement laptop had to be purchased so the hard drive could be installed, booted and imaged.
21. Eric Overly, CART agent, imaged the external hard drive in Delaware.
22. 12/19/2019 – Image of hard drive is provided to RCFL. Went to Philadelphia so it stayed in Delaware district.
23. 1/6/2020 – forensic computer people at FBI started analysis
24. After forensics there were some initial emails about what computer analyst was seeing – many pictures with many body parts, file names, and things similar to this
25. SA [REDACTED] never saw a forensic report of actual hard drive or laptop – they had to actually go to the device – no cellabright report of hard drive showing the analysis in pdf format.
26. 1/15/2020 – Josh sent an email that some information was put on a shared drive with various file extensions
27. LTFC – various emails around 1/23/2020 talking about data imaging, etc.
28. 1/27/2020 - DE1 and DE2 -exported file extensions - were first pieces of evidence that were provided by computer forensics that included some files sorted by extension – was provided on a USB drive
29. SA [REDACTED] asked if all information on the hard drive had been reviewed...the answer is that they did not look at all of that...SA [REDACTED] questions if Dillon reviewed all iMessage's that were relevant and not privileged. They would find the answer.
30. 2/27/2020 – DE3 with all messages from the hard drive were provided by computer forensics – via USB Drive
31. 2/10/2020 – Filter review completed – relevancy review began for the hard drive
32. 227 Productions
 - a. DE3 – USB containing exported messages (ipad and macbook messages) No iphone messages
33. 3/31/2020 – email about quality and completeness of imaged/recovered information from the hard drive. (SA [REDACTED] said he had no seen it. USAO said that he would not have seen it because for a variety of reasons they thought they needed to keep it from the agents – they were going to give a redacted version at some point in time to the agents – Stephanie takes what comes from Dillon ...)

Laptop – iphone messages were on the hard drive but encrypted they didn't get those messages until they looked at laptop and found a business card with the password on it so they were able to get into the iphone messages

- 34. [REDACTED] and [REDACTED] – is related to the ipad backup
- 35. 3/6/2020 – FBI received the image of the laptop
- 36. 3/10/2020 – went to RCFL in philly to facilitate the forensic exam
- 37. 4/7/2020 – First evidence produced DE4 from laptop – less than what was provide in DE1,2,3
 - a. Because de-duped
 - b. Josh Wilson accepted this personally
- 38. 4/10/2020 – thumb drive to LTFC
- 39. 4/17/2020 – Uploaded documents to USAFx but got an error – talked about all the various types of files that were provided; voicemials, messages, videos, etc.
- 40. 4/20/2020 – Dillon sent to AUSA's only
 - a. Zip files with Pdf and html version of cell phone reports via usafx\
 - b. Redacted cellabright file but 5gb so can upload separately if you want—contain wise it is identical to other productions
 - c. SA [REDACTED] does not believe he ever received that cellabright file – Lesley said, "OK."
- 41. 5/11/2020 - The cellabright file was sent on thumb drive and uploaded at some point—timing is not exact
- 42. SA [REDACTED] – For items not seen by agents shouldn't they see everything because if they have to testify to it they need to see it
 - a. Lesley response is that this is a historical review and we can discuss that later
- 43. Someone asked if we could tell if files had been added by the computer shop
 - a. The computer guy said they could do a csv list that shows when everything was created
 - b. He said that the laptop was "returned to original"
 - c. Lesley said (while laughing) that because a lot of people are going to be asking for the laptop
 - d. Josh Wilson stated that (while laughing) so whoever they are they are going to have to buy a laptop to put the hard drive in so they can read it.
 - e. Lesley stated that this team trying to determine if anything was added to the computer by a third party which are allegations being made by people who are not the defendant in this case is not a priority. We have no reason to believe there is anything fabricated nefariously on the computer and or hard drive. There are emails and other items that corroborate the items on the laptop and hard drive.

Ended around 1258

BY MAJORITY COUNSEL 2:

Q We just marked exhibit 6, and this is a document titled "Laptop and Hard Drive Timeline" dated October 22, 2020, 10 a.m.

Can you tell us about this document, who prepared it, and why?

A Yes, I prepared this document. It was to memorialize a meeting that we had with the prosecution team, plus the FBI CART team, which were the computer analysis team.

One of the things that prompted this was an email that I had sent a couple days earlier that basically asked AUSA Wolf to have a discussion about the laptop, because IRS CI was the affiant that actually allowed to get the contents of that laptop and devices. When I say laptops, there's a couple devices.

So then this occurred, and it was almost 4 hours, I think. It was a long -- no. Yeah. Three hours. It was long and it was very detailed, and I just documented it here.

Q Do you know what warrant the FBI used to obtain these devices?

A It wasn't a warrant for the FBI to physically take custody of it. They determined, because it was abandoned property, that it could be turned over via a document request.

[Witness confers with counsel.]

[Discussion held off the record.]

MAJORITY COUNSEL 2. Back on the record.

BY MAJORITY COUNSEL 2:

Q Who obtained the devices?

A FBI did.

Q Okay. And could you tell us, you know, anything else about this document

that is worth knowing about?

A So would you like me to go through the document for high points or --

Q Just the significant parts.

A Yes. So there are a couple significant parts of this. One was that, at this time, the laptop was a very big story, so we were just making sure that everything was being handled appropriately.

So we wanted to go through the timeline of what happened with the laptop and devices. I thought one of the most important first parts was that on November 6 of 2019, the FBI case agent, Josh Wilson, called up the computer shop owner, John Paul, and basically got the device numbers from him.

And then we bounced those device numbers off third-party records, and it showed that it was, in fact, Hunter Biden's device. So it was a very first important step.

And then it's a lot of minutia with what they did with the information -- or with the analysis of the computers. But what was important here was that [REDACTED], the IRS case agent, pointed out a couple different times how he had not seen -- he was not given a cellabright report, which is just what they call the output of the FBI CART team analysis, and was questioning whether or not the investigators were provided everything.

And when it came down to item number 33 on page 2, Special Agent [REDACTED] is saying like, well, I haven't seen this information. And AUSA Lesley Wolf says, well, you haven't seen it because, for a variety of reasons, they kept it from the agents. And she said that at some point they were going to give a redacted version, but we don't even think we got a full -- even a redacted version. We only got piecemeal items.

So it was an example of pertinent, relevant evidence that a prosecutor kept from an agent, and I --

Q You're supposed to be on the same team, correct?

A Yes. And it had already gone through a filter review, right? So there was no attorney-client privilege. So that couldn't be an excuse.

A prosecutor, in my experience, would never want that, right? Because they want the agents to go through the evidence and the agents to spend that time. So, you know, we don't really know what the full contents of that laptop ever had on it.

Q And was it the U.S. Attorney's Office that was withholding the documents from the investigative agents?

A AUSA Wolf was the one who communicated it. I don't know if they confer with DOJ Tax or not, but AUSA Wolf's the one that made the statement.

Q And flipping over to the last page, number 42, Special Agent [REDACTED], you have listed here: "For items not seen by agents, shouldn't they see everything because if they have to testify, they need to see it."

And what was the response from the U.S. Attorney's Office, Assistant U.S. Attorney Wolf?

A It was a nonsensical response. It was just something about historical review. But, you know, this 42 is an example of like -- this should have been such a mundane task, right? Like, after the analysis was complete, here you go, agents. You know, there was no attorney-client privileged information. Agents, do your analysis.

This is such a -- this is an example of Special Agent [REDACTED] saying like, Look, like shouldn't -- we got to see this. I don't know how, as an IRS agent, if someone is getting 10 percent of the income, when I do a tax comp for criminal purposes for Hunter Biden, I can't include the 10 percent if he's not getting that. So we need to know where all the 10 percent is going, right?

Q So if the 10 percent was going to the proverbial big guy?

A Yeah. So, I mean, this is just a very small example. This is every -- like this

happened all the time. Number 42 happened all the time where even on the smallest items, for example, like the subpoenas that I alluded to in my opening statement it was a time period in late summer 2021 where we had prioritized these interviews.

And we were to the point where we needed to go out to all these prostitutes, because these were expensed. So we had, it was probably four or five different weeks where, [REDACTED] would give the -- or I can't say that -- attachment for the document request and have it, you know, ready to go the next week.

So I had to call Jason Poole multiple times, because they wouldn't give those document requests without Stuart Goldberg personally approving them. And, you know, there were a couple different times he was on vacation 1 week. So he just didn't approve them. So we had to move these trips.

But that's the side story. But 42 is kind of like a microcosm of like many other events that occurred similar to that.

Q Okay. And turning to 43, item C, Ms. Wolf said, while laughing, "that because a lot of people are going to be asking for the laptop."

What did you take that to mean? Was that just a nervous laughter that she was suppressing something that needed to be addressed?

A I think -- it was in the media a lot, a lot of talk about the laptop. So I guess I didn't take from it that it was nefarious. It was really just that they were like joking about how everyone wanted the laptop.

Q Okay.

A And then it was right after that that FBI --

Q Including the IRS criminal investigators, correct?

A Yes. We would have also liked to have seen that, unfiltered and unmanipulated by the prosecutors.

Q Item E, Ms. Wolf stated: "This team trying to determine if anything was added to the computer by a third party which are allegations being made by people who are not the defendant in this case, is not a priority. We have no reason to believe there is anything fabricated nefariously on the computer and/or the hard drive."

So this is Ms. Wolf, the Assistant United States Attorney, stating, according to your contemporaneous notes, that we, meaning DOJ, and the prosecution team have no reason to believe there is anything fabricated nefariously on the computer and/or hard drive. Is that correct?

A That is correct.

Q There are emails and other items that corroborate the items on the laptop and the hard drive. Is that further evidence from Ms. Wolf that the items on the laptop are authentic?

A That is correct.

Q And are you aware of any point in time ever that Hunter Biden or his lawyers have asserted that anything on the laptop is not accurate or not legitimate or not authentic?

A Like news reports? Like, you know --

Q Has it just come to your attention? Has anyone made an allegation that knows anything about the laptop that it's not authentic, that they would have a reason to know?

A Anyone in --

Q Hunter Biden, his lawyers, anyone from the Biden camp?

A Oh, I don't know. I don't recall who was making what statements. I mean, I --

Mr. Lytle. You're not aware of them?

Mr. Shapley. Yeah, I'm not aware of it.

BY MAJORITY COUNSEL 2:

Q If you're not aware -- I'm not either -- of anyone, Hunter Biden or his lawyers saying that anything on the laptop is fraudulent, doctored.

A Yeah. I don't know of that, no.

Q Okay. And that never came up in the prosecution team discussions?

A No, no.

Q And if there was a question that there was doctored material or inauthentic material on the laptop, that would be something that the prosecution team would discuss, correct?

A They were -- we were discussing it.

Q Okay.

A I think that there's even another bullet point here where they're talking about looking back to see if documents have been -- or if files have been manipulated. Yeah. So A is: The computer guy said that they could do a CSV list that shows when everything was created, and that the laptop was returned to original when they -- yes.

So, I mean, the whole discussion was about can we rely on this information on the laptop, is it Hunter Biden's? And their opinion was, it was, and it was not manipulated in any way.

Q It was reliable evidence?

A That is correct.

Q Okay.

I want to mark another document that you produced. It will be number 7.

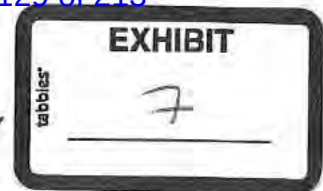
[Shapley Exhibit No. 7

Was marked for identification.]

Ex. 7



DEPARTMENT OF THE TREASURY
Internal Revenue Service
Criminal Investigation



Memorandum of Conversation

Investigation #: [REDACTED] **Location:**
Investigation Name: Doe, Robert
Date: September 3, 2020
Time: Approx 1300-1415
Participant(s): See Below,

1. The following individuals participated on this call or were invited to this call:
 - a. [REDACTED] – IRS-CI Special Agent
 - b. Anthony Lopicolo – IRS-CI Special Agent
 - c. Christine Puglisi – IRS-CI Special Agent
 - d. Gary Shapley – IRS-CI Supervisory Special Agent (Author)
 - e. Lesley Wolf – AUSA Delaware
 - f. Carley Hudson – USAO Delaware
 - g. Stefania Roca – USAO Delaware
 - h. Jack Morgan – DOJ Tax
 - i. Mark Daly – DOJ Tax
 - j. FBI Agents with the following email addresses: [REDACTED] [REDACTED]
 [REDACTED] [REDACTED] [REDACTED]
2. AUSA Wolf stated that probable cause was not a question in determining if a physical search warrant was legally viable. She stated that there is more than enough probable cause. She stated that the decision was whether the “juice was worth the squeeze...” concerning whether the prosecution team thought that OEO and/or public integrity would approve these types of action.
3. AUSA Wolf stated that it is likely that a lot of the evidence sought in the T26 investigation would be found in the guest house of Joe Biden's residence and she stated, “...there is no way we will get that approved...” SA [REDACTED] interjected that there were several emails talking about the records stored at the guest house and that those communications stated that key evidence the prosecution team would seek would be sent to the subjects' California residence.
4. There was a discussion with prosecutors about removing the subjects name from several electronic search warrants, 2703-D orders and [REDACTED] attachments. The theme was that with the subjects name in the document it would not be approved by “...people way above them...” SA [REDACTED] stated that he did not agree with removing the subjects name and instead said that we should not be changing the document to fit in

with what may or may not be approved. SA [REDACTED] said he was not comfortable with that as it would appear that the change was made for unethical purposes. AUSA Wolf basically disregarded SA [REDACTED] concerns and DOJ Tax Jack Morgan interjected stating that the removal of the subjects name would still ensure we received "most" of the data the team sought. AUSA Wolf moved to the next topic.

5. AUSA Wolf discussed the Blue Star Google email search warrant they authored and sent forward for approvals. She said that public integrity had approved it but that OEO was sitting on it. It appeared that behind the scenes she received communications that indicated that warrant would not be approved.

*****Follow on call requested by AUSA Wolf on 9/4/2020 at 0945.*****

6. United States Attorney Weiss talked to Deputy Attorney General Donahue. They determined that the prosecution team can no longer issue any external requests (outside of government) whether search warrants, [REDACTED] 2703-D orders, preservation letters etc. Everything needs to be vetted with USA Weiss and DAG Donahue. This is because it is 60 days out of the election even though it is not technically inside any parameters. AUSA Wolf said that DOJ has zero tolerance for risk that any of these requests somehow tip off someone who would leak this to the media.
7. SA [REDACTED] asked if the team would still be planning to go overt in November. AUSA Wolf said that the possibility of ballots still being counted and concerning the hand over of power that she cannot determine if that would happen.
8. AUSA Wolf said that DOJ is under fire and that it was self-inflicted. She said that DOJ needs to repair their reputation. AUSA Wolf said we should assume we would continue after the election.
9. AUSA Wolf said that the DAG's office is the one who made the decision.

I prepared this memorandum on September 3, 2020 and September 4, 2020, immediately after the conversation with see list above.

[REDACTED]

Gary Shapley
Supervisory Special Agent



Double click here to sign
Witness

BY MAJORITY COUNSEL 2:

Q It's a memorandum of conversation regarding the Robert Doe investigation. This is a two-page document, two pages of content -- the document is three pages, the third page doesn't have anything on it -- prepared by yourself dated September 3, 2020.

A Yes.

Q And you wrote this document?

A I did.

Q Can you describe the significance of this document?

A Yes. So this was a pros team meeting September 3rd, 2020. And we were having a discussion about being able to do the physical search warrants on Hunter Biden's residence and/or the guest house of President Biden's residence in Delaware.

And we had already established -- well, herein too this is when AUSA Wolf is stating that the probable cause had been achieved and that there was more than enough evidence and that there was likely evidence to be seized relevant to the investigation that could be found at these locations.

So she stated, "The decision was whether the juice was worth the squeeze." And also a statement made here was that she said that, well, we had to consider the optics of doing a search warrant on, you know, Hunter Biden's residence and/or the guest house of President Biden.

She further states about the guest house of Joe Biden that there was no way we'd get that approved. And here's another example of Case Agent [REDACTED] interjecting, talking about that there were other documents that said that there was information that would be in the guest house and in the subject's California residence in Venice Beach at the time.

And further, there was another discussion about moving forward on these external document requests. So we did multiple electronic search warrants, D orders, you know, document requests.

And prosecutors were pushing to remove the subject's name from those. And the reasoning behind that was that they were worried that it would -- someone would -- out there that received these documents, these document requests, would leak the information, and that if it just had the entity that it would be less -- it would be more difficult to link it to Hunter Biden. So, I mean, of course, the issue is that she said that it would not be approved way above them, right, which -- and I could talk about that in a moment.

And then we're having a long conversation about it and every one of the investigators are like, look, like this is not normal. There is no way we'd ever send out -- how do you do a thorough investigation of a subject without the subject's name on it? It's just -- it was absolutely absurd.

And then even Jack Morgan from DOJ Tax said, well, we'll receive most of the information. And in my experience with working with prosecutors who might be going toward a trial, most is never going to -- never going to be good enough for them.

Q Was there any overt discussion at these meetings that we're dealing with the son of a Presidential candidate? Was that ever discussed explicitly?

A I mean, they were careful. They tried to be careful. You know, that's why, you know, there's not a lot of emails, there's not a lot of documents they produced, right? There were discussions that were obvious that they were talking about the issues with investigating a Presidential nominee at that time.

Q When AUSA stated that the juice was -- whether the juice was worth the squeeze, what do you think she was referring to? Whether the effort expended to get a

physical search warrant would be worth it? It takes a lot of hard work and effort on the side of the investigative team to obtain a T-3 warrant, correct?

A Well, it wasn't a T-3.

Q Not a T-3.

A A physical search warrant.

Q A physical search warrant.

A I think that she wasn't worried about that part. She was worried about blow-back from doing a search warrant that was related to Hunter Biden. I think all of these things that they didn't allow us to do, even back in June of 2020, was because their primary goal was to keep this investigation secret, right?

And even on December 3rd of 2020, when we're in Delaware U.S. Attorney's Office prepping for the day of action on December 8, Weiss came in and was like -- congratulations for keeping it secret. And I was like, well, I thought that we were conducting an investigation here. I didn't think that what we were doing was trying to keep a secret.

But there were multiple things like this that occurred -- and this wasn't specific to the upcoming election, right? Like, we hadn't got the cease -- this was on September 3rd, 2020 -- we hadn't got a cease and desist from DOJ Public Integrity to stop.

So this was generally just that they wanted to remove the subject's name because they were so worried that some company got a document request and that they would give it to the media and that it would somehow out the investigation.

BY MAJORITY COUNSEL 1:

Q When you said that AUSA Wolf was worried about blow-back, from who do you think she was worried about blow-back?

A I think it was worried about, that there's going to be, suggestions of election

meddling, or that you're targeting targeting -- Hunter Biden.

I think -- all of her -- all of the reluctance to do all this I believe was related to that. Like, when she says, there's no way we'll get that approved, so at the time, right, like this is September 3rd of 2020. So Bill Barr is the Attorney General, right? So I would assume this would -- I don't know, but would this go to his level? I don't know who's not approving it, right?

But I think that this was an excuse to not even send it up. So I would -- I don't know 100 percent, but I'm almost positive that they just said, Well, we're not going to get that approved so we're not even going to send it up. And that was always kind of an excuse, to use the process to slow it down and to kind of hide behind.

BY MAJORITY COUNSEL 2:

Q And your belief, based on your experience, was they were afraid that maybe it would be approved?

A Yes, yes.

Q And so they wanted to stop it right there in Delaware, in the U.S. Attorney's Office in Delaware?

A That is correct. And even the storage unit search warrant. I mean, that was after the election. And there was no -- it was a storage unit in northern Virginia. No one would have known that was connected to Hunter Biden.

But we had information that there was -- the clean-out of the Owasco office was located in this storage unit in northern Virginia. And after the day of action, we got a little bit more information about it, so we wanted to do it.

And the night of the day of action, [REDACTED] sends a search warrant affidavit to Lesley Wolf saying, let's do it, right? Now, there's not even an election issue, right? And it's in a storage unit. It's not on someone's residence.

And still, AUSA Wolf and the prosecutors wouldn't allow us to do it, so much so that I set up a call with Weiss and my Special Agent in Charge at the time, and we said, Look, we got to do this. We can't just rely on a document request for them to give us whatever. We need unfettered access to this evidence. We don't know what they're going to give us eventually.

And he agreed that -- look, if it's not -- Weiss agreed on that call that if it is not accessed, that storage unit, within 30 days that he would allow us to do a search warrant on that.

I'm feeling great, right? So hang up the phone, an hour later I find out that AUSA Wolf and the other prosecutors told defense counsel about the storage unit. So it was off the table. And that was even after the election.

So there's many things. Any other case I ever worked, if they were like there's a storage unit with documents from the business and personal documents in relation to the years under investigation -- the risk was zero, because it's on a storage unit, it's not on a residence -- there's no prosecutor I've ever worked with that wouldn't say, go get those documents.

Q Do you think these decisions were made by Ms. Wolf, the AUSA, or do you think these decisions were made by the U.S. Attorney?

A I don't know the answer to that. Based on what I was led to believe that Weiss was in charge, right? And that the prosecutors often use that as an excuse. Well, that's a great idea, we're going to go talk to Weiss about it.

Q From some of your testimony, though, in the last few minutes, it seems that the AUSA Wolf may have been curtailing parts of the investigation, but the U.S. Attorney had expressed, at least overtly, that he was interested in moving forward, at least with the search warrant for the storage unit.

A Yes. That particular item, yeah. I mean, Weiss -- I mean, I think Weiss didn't have an opportunity to talk to Wolf, right? And maybe they didn't communicate that Weiss had agreed to that.

But the whole point is, is that December 8th, there's emails where Weiss and -- or, I'm sorry, Wolf is asking for a search warrant affidavit. Like, let's go do a search warrant, right?

And then [REDACTED] gets the search warrant affidavit forward. And then all of a sudden they're like, we don't want to do that. And they knew we were talking to Weiss about the physical search warrant. So I don't know why they would call the defense counsel at the same time without speaking to Weiss about what came out of that meeting about the physical storage unit.

BY MAJORITY COUNSEL 1:

Q From an investigation process perspective, is it typical for prosecutors to notify defense counsel before executing a search warrant?

A No. No, that wouldn't happen.

BY MAJORITY COUNSEL 2:

Q Is that inappropriate?

A Absolutely. I mean, officer safety. I mean, it's just incredible. You know, there's destruction of evidence. I mean, you go into a door and they know you're coming. It's terrifying.

Q So it's not just for the integrity of the investigation, there are safety issues?

A Absolutely, yes.

Q Let's talk about the day of action, which occurred a couple months later.

This memorandum of conversation we were discussing was September 3, 2020. And the day of action was going to be -- it turned out it wasn't very action-packed. Is that

correct?

A Yeah. There was only one successful interview that day, but there were lots of document requests.

Q What other agencies were you coordinating with for the day of action?

A FBI.

Q Is that the only one?

A Yes.

Q And what was the original plan for the day of action? I know you mentioned 12 interviews, some in Arkansas, some in California. But maybe you can just walk us through, again, at a high level, what was planned for the day of action.

A So the plan on how to execute that day?

Q Yes.

A All right. So the plan that we discussed and agreed upon on that December 3rd meeting, and it might have morphed in a couple days after just to finalize some things, was that for Hunter Biden, who now had a Secret Service detail, that we were going to have the FBI Special Agent in Charge call the Secret Service Special Agent in Charge the night before to just say, hey, I'm calling you at 8 a.m. It's important.

And then 8 a.m. call. FBI SSA Joe Gordon and I were the ones tasked with interviewing Hunter Biden.

Q So you're in California?

A In California, yes. So the night before -- so that was the plan. I went to FBI L.A. Field Office with the FBI SSA. We talked to their management. That's the plan. We're going home, right?

Now it's December 7th, the night before the day of action. And I'm prepping for interviews, because I'm interviewing Hunter Biden and Kevin Patrick Morris, right? So

I'm prepping. I'm prepping.

I get a phone call from my Assistant Special Agent in Charge, George Murphy, who tells me that FBI headquarters notified Secret Service headquarters and the transition team that the day of action was occurring the next day. And that the new plan became --

Q Can I just stop you there? Why did they tell the political officials?

A I have no -- I have no idea, no idea.

Q That certainly sounds strange to you, correct?

A All of it is strange.

Q It's one thing to tell the subject, but to tell the political officials introduces a whole range of topics of concern. Isn't that correct?

A Yeah. All of it -- yes. Yes to your answer, but all of it was incredible. There's also another officer safety issue, because these people close to him are going to know that we have agents out there out and about trying to do interviews and try to get information.

And then just, tampering with witnesses, right? Now you're telling the witnesses that agents might be knocking on your door tomorrow, don't say anything. And ultimately, we got one guy that talked.

Q Right. So of the 12 witnesses, do you remember who was on that list other than Hunter Biden and --

A I generally know it was Joan Mayer, Eric Schwerin, Rob Walker. It was Kathleen Buhle, Kevin Morris.

Q These people are located in the United States?

A Yes.

Q Eric Schwerin, where is he located?

A D.C., I think.

Q And Rob Walker is in Arkansas?

A That is correct, yes. There were a few more, but I don't recall.

Q And for the day of action, were you given any instructions -- and I think you mentioned this in your opening statement -- about what the agents could and could not ask?

A Yes, we did.

Q And could you tell us a little bit more about that, again?

A Yes. So on December 3rd, 2020, in the Delaware U.S. Attorney's Office, we were going over -- it was a very, very long day, because we had -- there were a group of like 12 or 15 people in the room. Weiss was coming in and out. And we were prepping for each individual witness.

So the agents that were going to conduct those interviews were Zooming into this meeting. So we're going over each outline. There were multiple times where Lesley Wolf said that she didn't want to ask questions about dad. And dad was kind of how we referred to him. We referred to Hunter Biden's father, you know, as dad.

Q That's Joe Biden?

A Yes. James Biden as uncle.

Q You were not allowed to refer to James Biden either?

A We called him uncle. I think it was so that we could speak more openly without, yelling, President Biden or James Biden. I don't think that was nefarious, but -- she said, I don't want questions about dad.

So now we're in the Rob Walker, and the interview outline is eight, nine, 10 pages, and we're on page 4. So we're not on priority items, but we're kind of gaining that rapport, getting him used to the interview, just like we do a lot of things. Now we're

going to ask him substantive things that we really want to know.

So in there, it said: "10 held by H for the big guy." And it just said how -- what we were going to ask on that topic. And Lesley Wolf stops and says, we're not asking -- I don't want to ask about the big guy. And everyone -- basically, everyone in the room except for the prosecutors had a big problem with that. There was a large debate about it. And, she said, I don't want to talk about big guy. I don't want to -- I don't want to ask about dad. So you see in the --

Q Do you know why?

A I think that she was trying to limit where the investigation could go.

Q And do you know what her motivation was?

A I don't know what her motivation is, no.

Q And did anyone on the team give her any feedback about what are you doing, this is crazy?

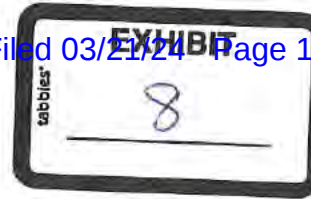
A Everyone there -- the prosecutors are generally pretty silent. So Lesley Wolf was the main voice, and the other ones were very subordinate and kind of only talked when they were asked to talk.

So FBI raised concerns. [REDACTED] raised concerns. I raised concerns about it. She's like I don't want to talk about the big guy. Don't ask about the big guy. So you see in the Rob Walker interview --

MAJORITY COUNSEL 2. And we can mark that. It's No. 8.

[Shapley Exhibit No. 8

Was marked for identification.]



272D-BA-3065729

JJW:glwm

H Drive

Date of Conversation: December 8, 2020

(Transcribed from WAV file copy)

Participants:

1. SA Joshua J. Wilson,		
Federal Bureau of Investigation (FBI)	=	Wilson
2. SA Adam Soline,		
Internal Revenue Service (IRS),		
Criminal Investigations	=	Soline
3. John Robinson Walker, aka: Rob	=	Walker

Betsy (Walker?), wife of John Robinson Walker, aka: Rob = Betsy

A male voice in background (Unknown Male?) = Male

Unknown Female = Female (Wait Staff)

Unknown Male = Male (Wait Staff)

Type of Conversation: Taped Interview

A transcription of the above-described conversation is as follows:

Preamble by

Wilson: Okay, this is Special Agent Joshua Wilson with the FBI accompanied by...

Soline: Special Agent Adam Soline, IRS, CI.

Wilson: Okay, today's date is December 8th of 2020. The local time in Little Rock, Arkansas is 10:03 a.m. Ah, the following will be an attempted interview with John Robinson Walker at his residence, [REDACTED] also in Little Rock.

(Background Noise. Exit vehicle and slams car door. Walking noise).

(Pause).

(Counter #: 04:08:43/00:00:58):

Wilson: I wonder if this..., anybody saw us coming through?

Soline: Hmph, hmph, hmph.

(Background Noise).

Soline: I'm gonna (Unintelligible).

(Background Noise).

Wilson: Um., as far as the., the failed joint venture that was gonna be Sinohawk which involved Tony and James and you...

Walker: Hmph hmph.

Wilson: ...and., and Hunter...,

Walker: Hmph hmph.

Wilson: ...um., you know, it was kind of the, um, the famous email that Tony was pointing out like the., the equity split.

Soline: (Whispers). Uh huh.

Wilson: Um...

Walker: Sure.

Wilson: Who... Like can you tell me your opinion of that? Like ah... Ah, did you... I mean are you familiar with what I'm talking about., that email., when it's going through like, you know, ten b., held by "H," you know, like...

Walker: Yeah.

Wilson: ...so you...

Walker: Yeah, I saw that on Twitter or somethin'...

Wilson: Okay. (Laughs). Right.

Walker: ...or maybe., maybe when Tucker Carlson...

Wilson: Yeah.

Walker: ...talks about it on his show.

Wilson: So what., w... Like can you tell me about that?

Walker: It was an email. I think that maybe James was ah., wishful thinking that ah., or maybe he was ah, projecting that, you know, if this was a good relationship and if this was something that was gonna happen, that ah., ah., and if the., the V. P. was never gonna run...,

Soline: Hmph hmph.

Walker: ...just projecting that, you know, maybe at some point, he would be a piece of it but he was more just, you know, ah, you know, it., it., it looks terrible but it's not.

Wilson: Right. It was more of a "unicorns and rainbows" type email?

Walker: Yeah..., and..., and..., and fuck Tony for..., for trying to..., I mean for taking little pieces of...,

Soline: Uh huh.

Walker: ...of emails or..., or, you know, and not showing it the..., the structure of a..., of an LLC or taking pieces of conversation that he recorded of me that ah..., to try to do that. I don't know what's in it for Tony but..., but that email looks...

Soline: Hmph hmph.

Walker: ...bad and it's ah..., probably hard to explain for ah..., James. Do I remember it? No. Does it look real? Yeah. And ah..., ah..., you know, I certainly never was thinking at any time that ah..., the V. P. was a part of anything we were doin'.

Wilson: Okay. Have you met the V. P.?

Walker: Yes.

Wilson: How many times roughly?

Walker: Oh, I...my wife used to...(Unintelligible)...

Wilson: Yeah, that's right.

Walker: ...so...,

Wilson: That's right.

Walker: ...so...

Wilson: Yeah.

Walker: ...I mean I would get called and I'd..., I'd play golf with him probably eight to twelve times and...

Wilson: Okay.

Walker: ...ah..., um...

Wilson: In Delaware or...

Walker: Ah, I played with him at um..., ah..., Bully Rock in Havre de Grace with ah..., Beau and Hunter one time.

Wilson: Okay.

Walker: That's probably the first time and then um.,

Soline: Hmph hmph.

Walker: ...played with 'em in D. C. probably ten times or so...

Wilson: Okay.

Walker: ...and it was really um., more of ah., hey, my dad's gonna go play golf..., you're..., you've gotta come with me., and I'm like at work.

Wilson: Yeah.

Walker: Too bad.

Wilson: (Laughs). Gotcha.

Walker: Yeah.

Wilson: Okay.

Walker: So....

Wilson: Um...

Walker: And, you know, I guess and in that., ah., you know, if., if Mazie was havin' a birthday party, I may be there...

Soline: Hmph hmph.

Walker: ...and he would stop by the Vietnam restaurant somewhere, somethin', or...

Soline: (Sighs).

Walker: ...if ah., um., you know, they're., they're., you know, Christmas things but even... I mean I'm sure he knows who I am. He knows I'm....

Wilson: Okay.

Walker: But he doesn't know me

Wilson: Okay. Did um., did the V. P. ever show up at any CEFC meeting or anything like that., even once he was out of office?

Walker: Yes.

Wilson: Okay.

Walker: It was out-of-office. Ah, we were in ah., D. C. at the Four Seasons...

Soline: Hmph hmph.

Walker: ...and ah., we were having lunch and he., he stopped in...

Soline: Hmph hmph.

Walker: ...then he'd ah, leave.

Wilson: Okay.

Walker: That was it.

Wilson: Just said hello to everybody and then...

Walker: Yes.

Wilson: ...took off?

Walker: He literally sat down. I don't even think he drank water. I think Hunter said um., I may be tryin' to start a company, ah, or tried to do something with these guys and could you., and think he was like "if I'm around"and he'd show up.

Wilson: Okay. So I mean you definitely got the feeling that, that was orchestrated by Hunter to., to have like a., an appearance by his Dad at that meeting just to kind of.,

Walker: Hmph hmph.

Wilson: ...bolster your chances at...

Walker: Hmph hmph.

Wilson: ...makin' a deal work out.

Walker: Sure.

Wilson: Okay. Um., any other... So that was the..., ah., Four Seasons in D. C. after he was out of office?

Walker: Yeah.

Wilson: Um, where... Any times when he was in office or did you hear Hunter say that he was settin' up a meeting with his dad with them while dad was still in office?

Walker: Yeah.

Wilson: Okay. All right. Um..., when you started to learn about like you were going your separate ways as far as um..., splittin' off., you and James were not gonna., but you know that Hunter was continuing on and was...,

Walker: Hmph hmph.

Wilson: ...you know, involved with Hudson West...,

Walker: Hmph hmph.

Wilson: They... I mean first of all, did you even know that or did you read that Senate report., the Hudson West stuff?

Walker: Um, I had ah., I think .., specific things no. Did I think that ah..., they...

Wilson: He was still working with them?

Walker: Did I think he was still working with them and then ah., did I think that he had ah.....received the money, sure, I was questioning that.

Wilson: Uh huh.

Walker: Um., ah., did I... I never questioned him about it. I was ah., happy to be out. If ah..., ah., I read in the Senate Report where he received five or ten million dollars...

Wilson: Okay.

Walker: ...and ah..., ah..., I had ah., always suspected it and I think ah., Tony had suspected it also but ah., I., just at that point, I wasn't, you know, I didn't know anything for a fact. I wasn't gonna divulge anything to Tony who would probably try to do something about it.

Wilson: Right.

Walker: Yeah.

Wilson: And you probably heard it from Eric too 'cause Eric was still working with...

Soline: Hmph hmph.

Wilson: ...Hunter during that time.

Walker: I'll say Eric didn't say anything directly but he alluded to it...,

Wilson: Okay.

Walker: ...to me at one point.

BY MAJORITY COUNSEL 2:

Q This is a document of a December 8, 2020, interview by Special Agent Wilson of the FBI and Rob Walker.

And just as I understand this document, this is a transcript of a recording?

A Yeah. This is an excerpt of a transcript of a recording. That is correct.

Q And so was Special Agent Wilson wearing a -- or recording it on his phone, or how did it get recorded, to your knowledge?

A Yes. Mr. Walker was consensually monitored.

Q Okay. So he agreed to have the interview recorded?

A No. The agents were the consenting people to monitor.

Q Okay. So it's like a one-party State or --

A Yeah, yeah. Well, law enforcement, we have the consensual monitoring rules.

Q Okay.

A And we got approvals to do consensual monitoring for these things. So the agents are the consensual.

Q All right. Now, are they wearing a wire or are they just using an iPhone, or how does that happen?

A It's different. We have different tech. Key fobs, coffee mugs, iPhones. There's lots of different things. I haven't seen a physical like what you think of as like taped to your chest.

Q Well, I used the term "wire," but what I mean is a specific device for purposes of recording, not just an iPhone.

A That is correct. And this was to be able to be inserted into evidence at trial

transcript of that recording, excerpt of a transcript.

Q Maybe you could draw our attention to the significant parts of this document.

A Sure. So, right up to the time when Special Agent Josh Wilson or Special Agent Adam Soline, who is an IRS agent, one of my agents, was going up to this door, they were deliberating. They were basically debating about Lesley Wolf's directives.

And they were like, how can we not ask? Like, that was wrong. We got to ask. We got to ask. And so they basically decided that they would ask the question without saying the words "big guy," and that then they would somehow be doing what they were asked to do.

So, as you can see in here, page 79, it's about right in the middle of the page where it says "Wilson" and it begins "who." So this -- Wilson's question and -- do you want me to read it or --

Q I can read it.

A Okay.

Q It says: "Who...Like can you tell me your opinion of that? Like" -- I won't read the ahs and the -- "I mean are you familiar with what I'm talking about..., that email., when it's going through like, you know, ten b., held by "H"? And Walker responds in the affirmative.

A Yeah.

Q And then Walker further says: "Yeah, I saw that on Twitter."

A Yes.

Q And so what else is significant about this back-and-forth between Special Agent Wilson --

A Sure. So this just shows the lengths at which we had to do to -- and how it

affected actually our jobs and conducting these interviews. But then you go --

Q Because Walker was a business partner of Hunter Biden, correct?

A That is correct, yeah.

Q And so he was especially positioned to know what 10 for the big guy meant, right?

A Yes, yes.

Q And so by not asking directly about that, you're giving away a legitimate investigative lead, correct?

A Definitely could be, yes. So, as I kind of stated about -- I'll say it a little more directly. They were debating about this, right? But they were struggling to come to grips.

Even, you know, what is it, 5 days later when they're headed to do that interview and they know that it's wrong but they were agents and they did the best that they could.

So if you move down into this -- this couple pages, you can see that they're saying VP, VP, page 80.

Q Okay.

A They're calling him VP, and that was because they weren't supposed to call him dad.

Q Okay.

A Not call him dad. So that's the --

Q So VP wasn't on the list. It was don't mention the big guy, don't mention dad?

A Yeah.

Q But VP wasn't on the list of barred terms?

A It was a little bit of a protest, I guess, to say that we're asking it, but, we'll ask

it in a way that maybe she's not mad.

Q Do you think she would have been mad, though, because clearly she was trying to steer the investigation away from Joe Biden, correct?

A I mean -- yeah, of course. She would have been -- she was the type of person that did not like dissenting opinions, and what she said went.

Q Do you think at this point in this -- maybe you don't know, but I'm going to ask it anyway -- whether she was angling for some sort of position in the administration in the Justice Department?

A I have no idea.

Q Was there ever any chatter among your colleagues about that, if that was her motivation?

A No, I've never heard that.

Q Did you or any of her colleagues have any speculation about her motives, or was it just that she was trying to keep this case from moving forward?

A Her motives are just difficult to assess, right? We're just thinking about the investigation and how we have prosecutors on the case that are obstructing our efforts to get all the evidence. That's really, eventually, the reason why we went a couple years of this type of conduct was because we just -- we have to do it. We have to suck it up. We got to work this case.

I got a prosecutor that's not great to work with. That happens sometimes. We just got to move forward, right? So that's what we did for a year, 2 years, 3 years. So she was not pleasant to work with. She was -- I don't want to belabor that point, but it was her way, right?

And if there was big guy in the transcript, she was either going to directly berate you, or she was probably going to give you the silent treatment, which was one of her

tactics, for a couple weeks and talk behind your back.

MAJORITY COUNSEL 2. Okay. Our hour is up, so pivot to our colleagues.

Mr. Shapley. We can come back to that, right? There's more on that.

MAJORITY COUNSEL 2. Correct.

MAJORITY COUNSEL 1. Go off the record.

[Recess.]

MAJORITY COUNSEL 2. We are back on the record. It's 2:20.

BY MINORITY COUNSEL 2:

Q Thanks again. I think on our side, we have sort of a smattering of clarifying questions and the like.

First, I'd like to go back to a discussion we were having before regarding the relationship between civil tax investigations and civil tax liability and criminal tax liability.

And I think I'd like to start with questions about something that you alluded to that I have not heard before. I just wanted to get clarity on it.

You said in the discussions of the various tax years, when we got to, I believe it was 2016, or maybe my notes are a little bit fuzzy, there was a point where you said that Hunter Biden was paying off tax debts in installments.

Could you describe a little more about what that was, what those payments were for exactly?

A Yes. So he was assessed a civil tax assessment at some point, and he entered into a payment agreement with IRS civil side to pay \$10,000 a month, I believe.

Q Do you know for what year that liability was assessed?

A I don't.

Q But not for any of the years in question?

A No. They would have been prior.

Q Prior, okay. And then who is responsible or what is the process at IRS CI for, let's say, hypothetically, there's a case that comes before CI, and they review it and they decide that it doesn't necessarily meet the standard for criminal prosecution, but there's, nonetheless, tax liability.

Is there a process for referral to the civil?

A Yes. It's called just that, civil referral.

Q Civil referral. And did that occur in this case at all after -- after prosecution was declined, or the statute ran, the criminal statute ran?

A No, it didn't, because the civil statutes had run. The statute of limitations had run. I'm sorry.

Q The civil statute of limitations on fraud are infinite under IRS 6501(c). And, similarly, the statute for failure to file also does not run if you don't file a return.

Was that thought of and acknowledged by Criminal Investigation when deciding whether to refer the case?

A Are you asking about the civil fraud penalty?

Q No, not the civil -- if there's fraud under 6501(c) -- if the IRS can demonstrate fraud, then the statute of 6 years does not apply, correct?

A The civil fraud penalty which you are referring to -- it can only be assessed with a criminal conviction. That's the standard for civil to be able to make that fraud assessment. And there are some jurisdictions where it has to even be 7201, an evasion case, in order for the civil fraud penalty to be able to be assessed.

Q 6501 is the civil fraud penalty or -- maybe I'm mixed up, because I was under the impression that that was the limitation on assessment. So put it aside. I don't have my Code with me.

But I was pretty sure that the limitation on assessment -- in the case of fraud,

simply did not run. But --

A I think you are partly correct, but the way that the precedence for proving fraud, for the civil fraud penalty, is a criminal conviction or guilty plea.

Q That could -- we'll have to look.

A That's my understanding, and that's the way that I've seen it done in the past.

Q Okay. Fair enough.

Skipping around, can we go back to AUSA Wolf for a moment? If I recall, AUSA Wolf was among the individuals who, at the end of the day, were in favor of charging Hunter Biden in their recommendations to, for instance, the D.C. office of the DOJ?

A They were supportive of the charges in the SAR --

Q Yes.

A -- and moving forward to the D.C. U.S. Attorney's Office, and presumably to the California U.S. Attorney's Office, yes.

Q Right. So, when all was said and done, AUSA Wolf and Mr. Weiss as well -- they didn't appear to be impartial -- to be biased in their conclusion as to whether or not to charge Hunter Biden?

A I don't think that's an accurate statement. There were -- during the investigation, we have no way to know if we have all the evidence. We were obstructed from approaching certain witnesses. We were obstructed from asking certain questions. We limited the names that were on document requests.

So we have no idea what's out there that could have linked us to one bank account that opened up a whole other slew of evidence for us. Just the search warrants not being allowed after they've agreed that probable cause has been achieved.

I look at it as is that there was all these obstructions, and at the end of the day,

the evidence was still strong enough to support them charging. That's how I look at it.

Was that your question? I'm sorry.

Q It is my question. But there's still a point where nonetheless they have discretion to agree or disagree with your recommendations, and they chose to agree with them.

A Officially, and -- there's two different things you're talking about, right? There's the SAR that we give to them and they review. And we've been working with them every single day. They know every single piece of evidence. They know more evidence than we do, because they withheld some from us.

So when that SAR went forward, we talked with them constantly about these are the charges that we're looking to recommend. Is everyone on the same page, right? So we don't want to recommend something and then have some huge argument over it, right? So everyone was on board then with the SAR.

Afterwards, with what happened at D.C., or happened at California, or if any charges have been approved officially yet or -- I don't know the answer to that.

Q But nonetheless, they still supported your conclusion in the SAR at the end of the day?

A That's accurate, yes.

Q And that was despite what you perceived as obstructing various steps of evidentiary gathering along the way?

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

MINORITY COUNSEL 2. Of course.

[Discussion off the record.]

MAJORITY COUNSEL 1. Back on the record.

MINORITY COUNSEL 2. Back on the record.

BY MINORITY COUNSEL 2:

Q I was just clarifying that they agreed with your conclusions in the SAR, and I said that was despite what were your perceptions of those obstructing the obtaining of evidentiary material along the way and reaching those conclusions.

A That is correct. But I just want to go back to the fact that it could have been much more. It could have been much bigger. There could have been income streams, more income streams, to other people associated with it, to include the President.

So, that's my answer.

Q And is it your opinion, not necessarily your professional opinion, but your opinion as a citizen that the FBI in 2016 and after the 2016 election took something of a reputational hit?

A I don't really have a lot of opinion about that. I don't --

Q You're familiar with the Jim Comey memo and the like, presumably?

A Yeah. I'm not a big guy that reads a lot of news and stuff. Obviously, you hear things. And my NBC News app, I see once in a while stuff on that. But, working with the FBI, it didn't seem like there was -- I don't -- is some factions of the media saying that there's a problem, but I didn't sense it. I still -- I didn't sense it doing the work.

[2:28 p.m.]

BY MINORITY COUNSEL 2:

Q That's fair, you're in the trenches and you're working closely with the things, but, obviously, the FBI was very much in the public eye as a result of the 2016 election and the Comey memo and the potential for interference there.

And, do you think, in general, in organizations that have sort of tiers of authority and tiers of responsibility, where, you have workers at a lower level and reporting up the chain to higher up, that those up the higher chain might have a different prudential outlook on the reputational concerns of an organization?

Mr. Shapley. Yeah.

MINORITY COUNSEL 2. Okay. That's all I have.

MINORITY COUNSEL 1. Thanks.

BY MINORITY COUNSEL 1:

Q Okay. I have a couple questions, and a lot of these are like my former questions. I just want to go back and make sure that I have the record right and correct.

So earlier you had mentioned that, in 2015, there were some issues that were different. You mentioned the diamonds, you mentioned the low amount for 2015, that maybe the case was less straightforward, I guess in the case of the loan.

Was there anything else in 2015 that made it, you think, different than 2014, other than the amount? Were there any other issues that you can think of that maybe we haven't listed or talked about yet?

A The conduct in 2015 and 2014 was entirely different. So, there was a scheme to evade in 2014 by using Rosemont Seneca Bohai to divert income from Burisma under Devon Archer's entity. In 2015, that was kind of sifted out through Eric Schwerin.

He became aware of that in 2015. You got to think, 2015, the tax return's due in 2016, and if an extension is filed April 15th of 2016, then the return is not due until October 15, 2016.

So Eric Schwerin had become aware of the income, and that's kind of how that whole thing changed --

Q And so maybe that's why the amount was lower in 2015, maybe he actually helped. Okay.

A Can I --

Q Yeah, sure.

A So, initially when the SAR was written, the amount of taxes owing was around \$160,000 for that year.

Q For 2015?

A For 2015.

Q Okay.

A But, we were battling to get information from accountants and so on and so forth, right? And we're trying to be as conservative as possible to give every benefit to the subject in terms of the actual tax due and owing. So ultimately, 2015 just became something where it was -- to be conservative, it was not an issue. I had no issue with that.

Mr. Leavitt. And you're saying that was after the SAR had already gone forth. Is that right?

Mr. Shapley. Yeah. So more information was received after that SAR went forward.

[Shapley Exhibit No. 6

Was marked for identification.]

BY MINORITY COUNSEL 1:

Q Great, thanks.

Okay. Now I want to talk about exhibit 6, which is your memo about the laptop and the hard drive. Was this memo provided to anyone?

A This memo was discussed in length with the case agent and co-case agent, but to protect the record, these I couldn't send to them.

Q Okay.

A So after each time we had calls like this, I would have conversations with them. There was even a document that I produced where they were like, well, there was this problem, this problem, this problem. So I was like, I'll record it, because we don't want this to potentially be discoverable and have any issues in the future.

So this is an example of that, where if there are at least two people that will say that we talked about this right after, and most of the conversation is to discuss what happened during that, to make sure that it was accurate.

Q But you don't provide a copy to your supervisor or Mr. Fort or anyone else in your chain of command?

A No.

Q It just stays with you?

A That's correct.

Q Okay. That's my question.

A Yeah.

Q And then in this exhibit 6, there's two items that are redacted -- it says December 9, 2019, and there's two redactions. Why are those redactions there?

A It was just a potential 6E type situation.

[Shapley Exhibit No. 7

Was marked for identification.]

Q Okay.

Thank you.

Now I'm going to look at exhibit 7. And the question is the same as the one before it. Was this memorandum provided to anyone or copied to anybody?

A It was not. Just to reiterate again, that this was discussed right after -- I can't even think of a time when we didn't have a discussion immediately after these meetings with just me, case agent, co-case agent, and sometimes with FBI agents on the phone to discuss this.

Mr. Leavitt. Let me just clarify, to discuss your documentation of the meeting, which did include other parties?

Mr. Shapley. That's correct.

MINORITY COUNSEL 1. I thought that's what he was saying, but thank you.

BY MINORITY COUNSEL 1:

Q Okay. When we were talking about this exhibit 7, you mentioned that, at the time, Bill Barr was the AG. Why did you not take your concerns up the chain in 2020 at that time?

A Well, as I said before, there is a healthy tension between investigators and prosecutors, right? And there are sometimes when I don't agree with a prosecutor, but every time I don't agree with a prosecutor, I'm not going to run to Bill Barr or to senior leadership to -- to blow the whistle or make a protected disclosure. The whole focus was to do what we had to do, even if it meant dealing with obstructions from prosecutors to get this case across the finish line, if it was worthy of it.

And, that's what we did. Every single time something happened wrong in this investigation, I couldn't bring it to Bill Barr or anyone else, so --

Q And did you think about, in 2020 at all, coming to the committee at that point in time? Because I know that you mentioned that there were irregularities that you saw in the summer of 2020. Did you think about coming to the committee or coming forward at that time or making a report to TIGTA in 2020?

A Like I said, we are trained and we work with these prosecutors hours and hours, trips, and spend all this time. We are just trained to trust them, and it was an incredibly high burden. If I wasn't in the October 7th meeting, my red line might not have been crossed.

But the things in that meeting -- it solidified a lot of things that had happened previously and explained a lot of things that happened previously. And it just got to the point where, okay, now all of these things that happened that might be investigator versus prosecutor-type thing, I just, I thought it got to the point where -- this is not a small thing. I'm not coming to the House Ways and Means Committee when a prosecutor says we can't do one search warrant. That's just not -- I'm not going to do -- I'm never going to do that, right? This is a series of events over 3 years where every single thing was to obstruct the investigation. Every single thing limited evidence that we were able to obtain. And, so -- if I was in the wrong for not coming to House Ways and Means Committee, I don't know.

Q I wasn't saying -- I wasn't implying that.

A Okay.

Q I was just asking, was that something that you considered in 2020, because it seems like a lot of things happened in 2020, especially at the end, and so hence my question.

A Well, I had the exact opposite feeling right then, right, because we were going over -- we thought that the evidence we had so far -- we were going to get a bunch

of new evidence. We thought the evidence we had so far would maybe lead to an early resolution of the case.

So there was a lot of excitement because we, for a year or so -- or a year for me, because I came on in January 2020, but longer than that from others, we couldn't do a drive-by of his residence without Stuart Goldberg approving it.

So, no -- we just wanted to move the investigation forward, and now we were finally doing that. And so we were hoping that we'd get what we need and keep moving forward.

Q And then, you just mentioned when you were talking, that you don't normally make it a routine to come to House Ways and Means Committee. How many times, just generally so we get a sense, do you disagree maybe with something that a prosecutor says in a case? Is it regularly? Is it most cases? Some cases? Sometimes? This is the first time? Can you give us some sense as to that interaction and how often they don't agree in your cases?

A How many times have I disagreed with a prosecutor on a case?

Q Yeah. Just generally.

A I mean --

Q Is it every case there's always something or what's a general sense?

A It's always a professional relationship where everyone is moving forward toward the common goal. The mission of the agency, and their agency, right? So if every -- I challenge prosecutors all the time. They challenge me. It's fantastic. And then we go and everything's great, and we come in the next day and talk about our families. It happens but, in this particular instance, it wasn't jovial. It was just, this is the way it is. And then even when we try to get support to go -- for example, to get my SAC involved, to bring her to Weiss, to try to get this search warrant and this physical

stores [storage] location, we still got the end around, so -- I don't know. Did I answer your question? I'm sorry.

Q No, that answers my question. That's what I wanted to know. I just wanted to get some context. Like, if you were to tell me that most of the time we all agree a hundred percent and this is the first time that we didn't agree, that would obviously be different than, well, there's normally give and take in a case, and so this is what we're seeing here.

Okay. Moving to exhibit 8.

A Well, I don't think that's what we're seeing here. I don't think that -- that's not what I saw here. Maybe you're just speaking generally.

Q I am.

A Okay.

Q Yeah, I am.

Mr. Lytle. Well, what did you want to say?

Mr. Shapley. No. I think I've said it, that this is not the norm. This is -- I've worked with some great guys, some great prosecutors that went on to be U.S. attorneys and went on to be the deputy attorney general and, I think I have experience enough to where it means something.

And I can't even count a time -- I don't even think I can come up with a time where a prosecutor made a decision that I didn't agree with, that they didn't take the time to explain to me and I didn't walk away being like, I disagree, but that makes sense. And that just did not -- countless things did not -- that did not happen here.

BY MINORITY COUNSEL 1:

Q So do you think it was this prosecutor, is that what you're saying essentially, that's who your dealings were with?

A I don't know what the ultimate motive was, right? I only know what I know. I know what the evidence said, I know what precedent is, I know what my experience is. I know all of the things that happened in the investigation.

It just appears to me that based on taking all those factors into account, that there was some type of nefarious motive here, and I don't know what it is. I don't know.

Q At the beginning when you were giving your opening statement, you had mentioned that the committee was your last hope, last sort of chance. And so, obviously, we're not a law enforcement body. What are you hoping to get from the committee? What is your outcome that you're looking for? Is it a process change at IRS? Is there something that you're hoping to get with your last hope, which was the way you described it?

A So I'm just here to give the documents and give my testimony, and I can steer you to others that have documents and who can give testimony. And the whole thing was that I have faith in the committee and this country, in general, to do the right thing. And, ultimately, if you guys at the end of the day don't agree, that's not for me to say. But, in terms of corrective actions or recommendations -- that's for you all to decide.

Q Okay. I was just making sure that there wasn't something that you wanted in this particular case. That's what I was asking.

[Shapley Exhibit No. 8

Was marked for identification.]

BY MINORITY COUNSEL 1:

Q Okay. Looking at exhibit 8, which is the interview.

A Yeah.

Q As I'm reading this interview, it was held in a restaurant or some place,

because I notice here that it says "unknown female," and then it says "female, wait staff."

Where did the interview take place?

A It was at his residence.

And I also noticed what you said, but at one point they were outside, and I couldn't tell by the transcript if they were mowing the lawn or if there was lawn maintenance -- I don't know what it was.

Q Okay.

A But they were in his residence. They went to his residence.

Q Okay.

A And his wife was there as well.

Q I did see the wife, and so that's why I wasn't sure. It seemed like maybe they were in a restaurant or something. That's why I asked the question.

A No, no. I don't think so, no.

Q Okay. And you said that the consent was given by the IRS agents for the recording of the interview.

Did he know that he was being recorded? Do you tell the interviewee that they're being recorded?

A We do not have to tell the interviewee that they're being recorded, and I don't know the answer as to whether we did tell him, because people can ask, right, if they're being recorded, and I don't have the answer to that side. But we don't need to inform them that they're being recorded.

Q Okay. And then I was looking at the top of the transcript. And I know that you gave us some excerpts, and we're on a couple pages, and then the total looks like 214 pages. What else was discussed? Was there anything else discussed in the other pages that we don't have that go to the tax, I guess, liabilities from 2014 to 2018?

I'm trying to get context on the other things that were discussed during this 214 pages that we only have a couple of these pages.

A Sure, yeah. So, I can't make a representation to all 214 pages, but the reason why I thought this was pertinent was because this was basically showing the outcome of the obstruction from the direction to not ask witnesses certain things. And that's what brought this in. So, that's why this section's included -- and I can't really remember -- if you're asking if there's dollars and cents in there for tax liabilities, I would say I don't think that there is. But is there a different thing that you wanted me --

Q No. I was just wondering, in these types of interviews, and this one in particular, do you talk to him about some of the questions that you had? I know, like 2015, you mentioned diamonds or other items. When you're doing an interview with this person, Mr. Walker, would you talk to him about all the tax years and any issues that you might have in any of the years, or is it just limited to a single scope? I'm trying to understand how the interview would work with him.

A It's by witness. So say Eric Schwerin would have been, and Joan Mayer, those are like every single year: income, work, what's going on, expenses, in-depth type of things. The accountant, CPA, return preparer, same thing.

This is a witness that was a business partner that was involved in a deal with CEFC, so most of the questions were kind of geared toward that and SinoHawk and some of these other things. So this one in particular likely wouldn't even have broached the topic of how would Rob Walker know what Hunter Biden's tax situation is. He wasn't involved in the preparation of stuff --

Q Okay.

A -- of it, so --

Q Okay, that's fair.

And then the entire transcript, the whole 214 pages -- who does that go to? Would it go to AUSA Wolf? You mentioned that she didn't want you to use the words "big guy" and other things. So would she have seen that "VP" was used, and would she have commented on this transcript -- what happens to the transcript once you receive it?

A So the evidence in a case should be available to everybody in the case -- prosecutors and investigators -- unless there's some type of confidential, classified type thing that could be partitioned into some SCIF or so and so forth, but everyone should have this. And I would have to say that she read it. I don't know directly that she read it, but it was 214 pages, so, maybe she had someone else read it. I don't know, but --

Q But it's available --

A Absolutely.

Q -- to the entire team?

A Absolutely.

Q Okay. Okay. And then I just noticed -- this is just a basic question. I noticed through here there's a lot of these words like the "hmp," like h-m-p-h. You see, that's kind of all throughout this interview. What was that? Was it like, hmp, like I'm agreeing with you, or, like, hmp, like, maybe that's a fact, or, hmp, that's not a fact, it's a question? I don't know how to read the "hmp." Do you recall anything from that interview that would help us with this phrase?

A So, I wasn't in the interview, but I did chastise my agent from stop saying hmp hmp in the middle of it. I did argue -- so I think you're absolutely right, and I think that if you listen to segments of the actual recording, you would almost have to -- when you read it in context, it makes sense, he's like, uh-huh, hmp, hmp, like, and then you can tell by the line of questioning that he responded in the affirmative. But I

think it might require you to listen to that little section in the recording.

Q Yeah. Okay.

BY MINORITY COUNSEL 1: I think that's all that I have. Do you have anything else?

That's all that we have for now. Thank you.

MAJORITY COUNSEL 1. You're welcome.

[Discussion off the record.]

MAJORITY COUNSEL 2. Back on the record. It's 2:50.

Do you want to go first, [REDACTED], or do you want me to?

MAJORITY COUNSEL 1. I have just a couple quick follow-ups.

MAJORITY COUNSEL 2. Okay.

BY MAJORITY COUNSEL 1:

Q I'd like to bring your attention back to exhibit 2, what we've been referring to as the SAR, which is the special agent report. Is that correct?

A This is the excerpt from that, yes.

Q And you were discussing earlier the idea about whether U.S. Attorney Weiss and AUSA Wolf appeared impartial because they approved your recommendation in the SAR.

Only AUSA Wolf is mentioned in this document. Is that correct?

A That is correct, yes.

Q Okay. And the reference in this document that AUSA Wolf agrees with the prosecution recommendation, did you take that to include the endorsement of the U.S. Attorney Weiss or just AUSA Wolf?

A Well, I did take it to include him, but there are also other events that led me to believe that he also concurred with it. There were -- I can think of one specific time,

on that 6-15-2022 meeting at Main DOJ, Stuart Goldberg, Weiss, and everyone underneath is there, every level of everyone underneath is there.

And this was when DOJ Tax was kind of giving a presentation about potential problems with '14, '15. Now they've already tried to bring it to D.C. They already requested special counsel and got denied. So now they're kind of trying to make this evidential issue for those years.

So on the side of that, in a break, Weiss comes up and he's talking to me on the side, and [REDACTED] comes up, the case agent. And Weiss was like, you guys always convince me, I agree with this, and then DOJ Tax tells me something else.

So I know that Weiss agreed with these charges, and -- I don't know. At the end of the day, they should've been charged. I offered to give prosecution recommendation reports from previous cases to show precedent, to show specific examples of this loan issue and how this would follow a precedent in other cases being charged, and it just kind of fell on deaf ears.

Q Based on your knowledge, do you have an opinion of whether U.S. Attorney Weiss did everything -- took all appropriate steps to pursue charges that you just testified that you believe he concurred with?

A Like with D.C., with Main Justice, with all that stuff?

Q Yes.

A As he described it, his process was go to D.C. and try to charge there, but he needed permission from the U.S. attorney there. When that got denied, he requested special counsel authority. Then in the October 7th meeting, he's basically explaining what happens in California, right, if he -- if he recom -- he's going to recommend to California -- well, it had already gone to California, right, but there was no answer yet.

He's like, well, if they say no, then I'm going to have to request special counsel

authority from the DAG or the AG. All I know is what he told me he did, and that's all I can say, I think, to that.

Q Just a clarifying point on the earlier discussion about sort of your decision to make protected disclosures, right? You testified that the October 7th, 2022, meeting was the breaking point. Is that correct?

A Yes, it was.

Q Okay. And would it be correct to say that you sought to state your opinion and impact decision making short of protected disclosures before the October 7th meeting?

A Well, I think I reached a level of protected disclosure internally to IRS senior leadership before that.

Q And at what point was that first protected disclosure?

A I believe it was June of 2020. You got to understand, at the time, I wasn't making a protected disclosure. I was just working a case raising issues, right? It's not until we're down the road a hundred miles that that was a protect[ed disclosure] -- you know?

Q Yeah. Understood.

A But it seems like the October 7th meeting, after that, after I raised issues directly to them, I explained to them the risk of not charging '14, '15. I explained to them how we had no mechanism to ever recoup that money, and I went like kind of like point by point how the elements were met.

And, it was that meeting where I think DOJ started to look into the discovery that I had provided back to March, because I was like, this is not right, there's a big, huge problem here. And it switched from me raising just concerns, hoping that they'd be remedied, to now I'm like, no, this is a problem. And I think because of that, they went

and looked at all my documents that I contemporaneously documented over the years. And then I think they started attacking me. And I think I read a part in my opening statement, the email that I sent to my director of field operations exactly on that topic.

Q And who was the director of field operations that you sent that email to?

A Mike Batdorf.

[Shapley Exhibit No. 9

Was marked for identification.]

Ex 9

From: Batdorf Michael T
To: Shapley Gary A Jr; Waldon Darrell J
Subject: RE: Shapley - Manager - Discovery Update
Date: Tuesday, December 13, 2022 7:47:36 AM
Attachments: image004.png
image001.png

Gary. Good Morning.

I have not reviewed the emails that were provided to the U.S. Attorney's Office nor had conversation with the prosecuting team regarding them. I plan to do both in the coming weeks. I understand through your emails that you believe the prosecuting team may have not conducted themselves in an ethical or proper manner to include prosecutorial misconduct. I am not the reviewing official, deciding official or expert on such matters. However, there are routes that you could take if you truly believe there are violations of ethical conduct or prosecutorial misconduct. Either way you choose, Darrell, Kareem, and I (along with the Chief and Deputy Chief) will continue to work through any potential issues on this investigation.

Enjoy your use of lose annual leave and the holidays with your family and friends.



From: Shapley Gary A Jr <[REDACTED]>
Sent: Monday, December 12, 2022 1:32 PM
To: Waldon Darrell J <[REDACTED]>
Cc: Batdorf Michael T <[REDACTED]>
Subject: RE: Shapley - Manager - Discovery Update

Darrell/Mike,

I am on use or lose beginning Wednesday, 12/14, returning 1/3/2023. I am off line most of tomorrow traveling to Alexandria, VA to do my annual medical exam.

If you have questions about any emails I would ask you share it in advance so I can look at them and be prepared to put them into context. The USAO was so eager to get my emails (which they already had 95% of)...then surprise...they "might" have a problem with a few of them that memorialized their conduct. If the content of what I documented, in report or email, is the cause of their consternation I would direct them to consider their actions instead of who documented them.



I have done nothing wrong. Instead of constant battles with the USAO/DOJ Tax, I chose to be politically savvy. I documented issues, that I would have normally addressed as they occurred, because of the USAO and DOJ Tax's continued visceral reactions to any dissenting opinions or ideas. Every single day was a battle to do our job. I continually reported these issues up to IRS-CI leadership beginning in the summer of 2020. Now, because they realized I documented their conduct they separate me out, cease all communication and are now attempting to salvage their own conduct by attacking mine. This is an attempt by the USAO to tarnish my good standing and position within IRS-CI...and I expect IRS-CI leadership to understand that. As recent as the October 7 meeting, the Delaware USAO had nothing but good things to say about me/us. Then they finally read "discovery" items (provided 6 months previous - that are not discoverable) and they are beginning to defend their own unethical actions.

Consider the below:

1. I am not a witness – therefore Jencks/Impeachment is not an issue.
2. I am not the receiver of original evidence nor engaged in any negative exculpatory language against the subject (Brady material is evidence the prosecution is required to disclose that involves any evidence favorable to the accused – evidence that goes towards negating a defendant's guilt, that would reduce a defendant's potential sentence, or evidence going to the credibility of a witness) – therefore no Brady/Exculpatory information exists. My documentation only shows the USAO/DOJ Tax's preferential treatment of this subject.
3. I have called into question the conduct of the USAO and DOJ Tax on this investigation on a recurring basis and am prepared to present these issues.

For over a year I have had trouble sleeping; awake all hours of the night thinking about this. After some time, I realized it was because I subconsciously knew they were not doing the right thing. But I could not fathom concluding that the USAO/DOJ Tax were in the wrong. After I wrapped my mind around the fact that they are not infallible, I started to sleep better. My choice was to turn a blind eye to their malfeasance, and not sleep, or to put myself in the crosshairs by doing the right thing. My conscience chose the latter.

I hope IRS-CI applauds the incredibly difficult position I have been put into instead of entertaining the USAO's attacks. If they bring up something legitimate; I am sure we can address it because it was not intentional. Everything I do is with the goal of furthering IRS-CI's mission, protecting the fairness of our tax system and representing IRS-CI with honor.

I look forward to presenting these issues to you. I do have some obligations during my UoRL, but will forfeit some leave if it is to protect my reputation and the agency's interests.

Thanks.

BY MAJORITY COUNSEL 1:

Q Okay. I've just marked as exhibit 9 the email you just referred to. Just to confirm, can you describe this document?

A Sure, yeah. This is the email that I sent to Mike Batdorf, the director of field operations, and cc'd -- oh, I'm sorry -- I sent to Darrell Waldon, the SAC, and cc'd Mike Batdorf, the DFO. And this was the culmination of an October 24th communication from Delaware U.S. Attorney's Office and -- well, it was really Lesley Wolf and Mark Daly who called the case agent, [REDACTED], on the telephone and said, hey, we need -- we need Shapley's emails and his -- these sensitive case reports that he's authored back to May.

And they didn't ask for discovery for anybody else. They didn't ask for, from the -- mind you, the agents had provided discovery March-April timeframe, so there was 6 months or so of additional discovery, and they're not asking for that, right? They're only asking for mine.

So [REDACTED] sends me an email with Wolf and Daly on it that says, hey, you know, they asked for this, you got to talk to Shapley. I respond, hey, yeah, I'm available 9:15, let's chat. And she sends that, she forwards my email to Shawn Weede, number [two] -- a senior level at Delaware U.S. Attorney's Office.

And then he contacts me about this discovery, and he's kind of putting a lot of pressure on me. So even Weiss called up, the deputy chief, to complain about timing of the emails that got turned over from me at that request. But, basically, I think that they understood that it was a serious issue, what they had told me on October 7th, and that I had a huge problem with it, so I think that they started looking into what I had done for 2 or 3 years. And then they specifically targeted me, because there was an SCR in my

original discovery that went to the chief that said that these people are doing the wrong thing, and this is specific, not general, specific things that they're doing that are wrong.

So they wanted to get the universe of everything that I produced -- and then they eventually started attacking me on it. And so October 17th was the last time we had an actual call together. And then they cancel -- then there was -- and the next call was scheduled, and then there's an awkward cancellation right before. And then they didn't -- they wouldn't talk to us anymore, and it was because they knew that I had documented their malfeasance contemporaneously over the years.

Q Do you know whether those prosecution team's meetings continued after October 17th?

A If they did, we were not invited. IRS was not invited. This is an email that kind of toward the end where I had turned over the documents. The documents were easy, but I'm not going to get into why the emails, we had to create PST files, and, [I] don't want to get into it. But it was like a 25-, 30-day process.

Q Complicated?

A I had to get computer people on my computer to remote in to get it. I was actually in San Diego assisting with execution of search warrants on other cases, and I have computer people chiming in to try to get my emails, because Weiss is calling my deputy chief, who knows what they're saying. So --

Q And at what time was that all taking place?

A It was right around Thanksgiving time.

Q 2022?

A Yes, thank you, 2022. And when the request came in -- it was like the next week I was in Australia for search warrants, and then I was traveling somewhere else for a week, Los Angeles, and then it was Thanksgiving. And then I was in San Diego for search

warrants. I had zero time to do this. So that's why I was like, I can't get this done right now. And so, they were bothered by that, so they called my deputy chief and God knows what they said. I don't know.

Q Okay.

A But this email was basically, I sent to these guys to say, this is just completely unacceptable. And I laid out to them Jencks and Brady, and why a manager's information would never be discoverable.

Now, if I had had a successful interview of Hunter Biden, that changes things, right? I might be a witness, I could be impeached, et cetera, et cetera. But other than that, because that didn't occur, they never ask for -- they never ask for discovery from my level or above. Never.

Q Okay. And I was a little inartful before about protected disclosures. I was trying to get at the point that the October 7th, 2022, meeting, is it accurate that that would've been -- after that that is when you started to, or sometime after that, started to consider the possibility of making a protected disclosure to Congress?

A Yes.

Q Okay.

A That's when I became -- looked into the process and read 6103, you guys and Senate Finance, right, that's when that occurred, and that's when I sought counsel.

Q Okay.

A Did you want to finish document 8?

MAJORITY COUNSEL 2. Sorry, sir.

Mr. Shapley. Just a reminder, document 8, there are still things that we --

MAJORITY COUNSEL 2. We are going to come back to that, right.

We're marking exhibit 10.

[Shapley Exhibit No. 10

Was marked for identification.]

Ex 10

From: [Waldon Darrell J](#)
To: [Shapley Gary A Jr](#); [Batdorf Michael T](#)
Subject: RE: Sportsman Meeting Update
Date: Tuesday, October 11, 2022 7:27:14 AM
Attachments: [image001.png](#)

Good morning, all –

Thanks, Gary. You covered it all. I am taking care of referral to TIGTA.

Mike – let me know if you have any questions.

Darrell

Darrell J. Waldon
Special Agent in Charge
Washington, D.C. Field Office
 (C) [REDACTED]

From: Shapley Gary A Jr <[REDACTED]>
Sent: Friday, October 07, 2022 6:09 PM
To: Batdorf Michael T <[REDACTED]>
Cc: Waldon Darrell J <[REDACTED]>
Subject: Sportsman Meeting Update

Mike,

Darrell asked me to shoot an update from today's 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 your preference
- 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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BY MAJORITY COUNSEL 2:

Q This is an email chain that starts on October 7th, 2022. Presumably this is after the meeting, correct?

A That's correct.

Q And you send this to Mr. Batdorf and Mr. Waldon. And what is the upshot of this document? Are you just giving a readout of the October 7th meeting?

A Yeah. I realized the gravity of what I just witnessed, so I didn't want it to be a memo to file that didn't go anywhere else. So I did this to ensure that my information was corroborated right then, right there.

Q Right.

A So that people couldn't --

Q Right. So this is essentially your contemporaneous notes from that business meeting, correct?

A Yeah.

Q And at the top, Mr. Waldon indicates that this is an accurate reflection of what happened in the meeting?

A That's correct.

Q And he was in the meeting?

A He was.

Q Did you have any discussions with him outside of this doc -- did you tell him you were preparing the document?

A Yes, I did. I told him that I would be the one that would summarize it for Mike, the DFO, Batdorf, and I said that I'd cc you so that you can confirm.

Q Okay. So your email says: "Mike, Darrell asked me to shoot an update from

today's meeting.”

Did Mr. Waldon ask you to prepare this?

A I put it in front of him and he said sure, that sounds great.

Q Okay.

A So --

Q And you're just trying to explain why you're sending the email, correct?

A I'm trying to play nice because I was -- I'm trying to play nice.

Q In No. 1 on this email you prepared, says: “Discussion about the agent leak -- requested the sphere stay as small as possible...DOJ IG will be notified. FBI -- HQ is notified.”

What was the specific leak?

A So there was a leak, I'm not sure what outlet, on October 6th of 2022 -- it appeared to come from the agent's level, who was critical of the prosecutors for not charging the case.

Q Okay. Talking about the Hunter Biden case?

A Yes, not charging the Hunter Biden case.

So, obviously that was part of the discussion at the beginning. And there have been multiple leaks in this case going back, and this one was handled a lot differently because I guess it was purportedly from the agent's level.

So this drastic -- you know, they used that as an excuse to kind of -- to do what they were doing to us after this meeting on the 7th, they kind of used that leak as an excuse to exclude us.

Q And then the second item in the memo -- or the document you prepared, this summary of the meeting, AUSA “Weiss stated that he is not the deciding person on whether charges are filed...I believe this to be a huge problem -- inconsistent with DOJ

public position and Merrick Garland testimony.”

It's pretty remarkable that the U.S. attorney on October 7th said he is not the deciding official. Did he say it in those words?

A Yeah. He said, I am not the deciding person on whether charges are filed.

Q So there's no ambiguity, he was crystal clear in what he was saying?

A It was how I understood it, and it was also how the special agent in charge understood it.

Q Okay. Is there anything else in this document that is worth bringing to our attention?

A Yeah. So if you go down to 2 b ii, that's kind of the acknowledgement that it's been kept in Delaware since June, even though the venue is known or was in Delaware since 2021, which not -- it is what it is. But that describes the reason why we run into these conflicts now in the political interference here.

So he says that when he went to D.C. U.S. Attorney's Office in early summer to request charge there, Biden-appointed U.S. attorney said they could not charge in his district. So it said they could not charge. So up to that point, I thought that he had just said we don't support this.

Q Right.

A And we thought that Weiss was still deciding. And when he said this that said he could not charge, okay. So that's a big difference -- that's a material difference in what was occurring.

And then he further says that he requested special counsel authority when it was sent to D.C. and the Main DOJ denied his request, told him to follow the process.

Now, following the process, as they would've only have known, was to go through another -- a non-Weiss-appointed U.S. attorney -- or not Weiss. They were going to go

through somebody else. And when AG Garland's first defense of why everything's okay here, he immediately goes to because is Weiss a Trump appointee. So the materiality of this being a decision outside of Weiss is pretty significant, in my opinion.

So then it goes on to page 2. So at the bottom of page 1, that's when Weiss requested special counsel authority. That's the first time we'd heard that, and that he was denied.

And then he said that they went to Central District of California mid-September, and it was the same week that the Biden-appointed U.S. attorney was confirmed. And then he says, if California does not support charging, Weiss has no authority to charge in California, which is obviously contrary to what Merrick Garland said. Then he said that he would have to request permission to bring charges in California from the DAG or AG.

Q Right. And earlier this morning when we were talking about Senator Grassley and the Attorney General, and maybe my notes are wrong, but I thought we had discussed that the effort to bring the case to the Central District of California was in January of 2023, and this here seems that it was -- or a little bit earlier?

A No, it was September.

Q It was September.

A September 2023?

Q Okay. I probably have it wrong.

A Yeah.

Mr. Shapley. September 2022.

Oh, in January 2023, we learned from SAC Waldon that California had declined to --

MAJORITY COUNSEL 2. Okay.

Mr. Shapley. -- declined the case.

BY MAJORITY COUNSEL 2:

Q Oh, okay. I understand. So in September of 2022, the materials are presented to the Central District of California?

A That's correct.

Q And it wasn't until January of 2023 that a resolution on that was determined?

A It's when we learned of it. I don't know if it had already been decided.

Q Okay. And along similar lines, is it fair to say that in March of 2022, the case was brought to the U.S. attorney for D.C.?

A That's correct.

Q And then in the early summer of 2022 is when you learned that the U.S. attorney in D.C. had declined to move that forward?

A No. It was right in March, because that was when Mark Daly was calling my case agent.

Q Okay.

A The one call was, hey, things kind of look good here. Call a couple days later was, they said no.

Q Okay. So that was in March?

A That was in March.

Q And that was right away. There was no delay or there was no --

A There was very little delay. We weren't involved in the presentation in D.C., so I don't know the exact date that it went over. But it was right there at the end of March that it was declined.

Q So in your notes on page 1, 2 b iii, went to D.C. U.S. attorney in early summer, is that Weiss sort of getting the dates --

A Yeah, I think he was just --

Q -- incorrect?

A -- kind of being --

Q Okay.

A Yeah.

Q But it should read March of 2022, correct?

A He would've been more accurate to say spring than early summer.

Q Okay. And then flipping back to the second page, No. 3, this is what you stated for the record, that if they're not going to charge 2014 and 2015, they're just letting this Burisma income go untaxed, correct?

A Yeah.

Q And this is just a gift to the taxpayer, right?

A It significantly reduced the egregiousness of his conduct if that wasn't included.

Q Right. And I think we had established that he was getting paid about a million bucks per year in 2014, and it started in April, so it was two-thirds of the million.

A Yeah.

Q So that was just going completely tax-free to the taxpayer Hunter Biden, correct?

A That's correct.

Q Did you get any feedback when you stated that for the record?

A There was just some general discussion.

Q Okay.

A It wasn't anything reportable, I guess.

Q So nobody said, Gary, whoa, whoa, whoa, there's a mix-up here, the reason

we can't do this is because of X reason?

A No. No. There's an August email that maybe I alluded to before from DFO Batdorf that says that we support 2014 and '15, and we're going to have the deputy chief call over to Stuart Goldberg at DOJ Tax to tell him we support it. And then SAC Waldon is in this meeting, right, FBI SAC Sobocinski and FBI ASAC Holley are there as well. It was just that was their decision.

Q Okay.

A But the funny thing is that now that he said he requested special counsel authority in D.C. and was denied back then, him saying that he decided not to charge '14 and '15 at that point in time was moot, because he had no ability to charge it. So maybe that's a nuance that only I think is important.

Q Right.

A But, he's saying that he made the decision not to charge it, but he didn't make the decision not to charge it. The D.C. U.S. Attorney's Office made the decision not to charge it. And then when he was denied special counsel authority, he had no ability to charge it.

Q Okay.

A And that's my understanding.

MAJORITY COUNSEL 2. Off the record a second.

[Discussion off the record.]

MAJORITY COUNSEL 2. Back on the record.

BY MAJORITY COUNSEL 2:

Q We'll go back to exhibit 8. There's a discussion at the bottom of page 81, where the Special Agent Wilson asked whether the VP, meaning now President Biden, ever showed up at any CEFC meeting.

Is it fair to say that the question is whether the President, the now President, ever showed up at his son's meetings to support his son, to give it some legitimacy? Is that a fair reading of the question?

A Yes.

Q And the answer was "yes" from Rob Walker, correct?

A Yes. And this question was specific to out of office, and his request was yes.

Q Right. And did they also ask whether the President, when he was the VP, appeared at any meetings on behalf of his son, when he was in office?

A Yes. So the bottom of 82, FBI Agent Wilson, "Any times when he was in office or did you hear Hunter say that he was settin' up a meeting with his dad with them while dad was still in office," and Walker's response was "Yeah."

Q And then flipping to the next page, Special Agent Wilson said: "Okay. All right. Um., when you started to learn about like you were going your separate ways as far as um.,splittin' off., you and James were not gonna., but you know that Hunter was continuing on and was...,"

Is James a reference to James Biden?

A Yes.

Q And do you know what's going on in that exchange right there about James going his separate ways with Rob Walker?

A I don't know anything too specific about that.

Q Okay. And there's also a reference to Tony in this document.

A Yes.

Q A little bit further down on page 83. And Tony I think appears on page 80 as well. I was just wondering, for the record, who Tony is, if you know.

A That's Tony Bobulinski.

Q Okay. Tony Bobulinski.

A So if I could add -- it was page 81 or 82, right in the middle. And Walker basically describes that the VP "literally sat down. I don't even think he drank water. I think" -- and then he's basically saying Hunter told him about the company he's trying to start --

Q Right.

A -- with these guys. And basically saying, well, if you're going to be around, Dad, can you like, stop by? And, he'd show up, it said. So then Wilson asks him, "so...you definitely got the feeling that, that was orchestrated by Hunter...to have...an appearance by his Dad at that meeting, just to kind of...bolster your chances at...makin' a deal work out." And Walker said "sure."

Q Walker agrees, but of course he agrees. Why else would Hunter bring his dad into these meetings, correct? He's trying to trade on the family name, and if he brings his dad to the meetings, it gives him a lot more credibility, correct?

A It would make sense, yes.

Q Is there anything else on this exhibit that we have not discussed that we ought to?

A Yeah. That was 82. Yeah. So he asked a question about when he was out of office, did he ever meet with him, but then he also said, well, when he was in office, did he --

Q Right.

A -- he responded that, yes.

Q Right. Okay.

A Yeah.

Q Next exhibit we're going to mark is the WhatsApp document. This is number 11.

[Shapley Exhibit No. 11

Was marked for identification.]

7/30/2017	<p>WA message with SM and Zhao, SM says, "Z- Please have the director call me- not James or Tony or Jim- have him call me tonight. I am sitting here with my father and we would like to understand why the commitment made has not been fulfilled. I am very concerned that the Chairman has either changed his mind and broken our deal without telling me or that he is unaware of the promises and assurances that have been made have not been kept. Tell the director that I would like to resolve this now before it gets out of hand. And now means tonight. And Z if I get a call or text from anyone involved in this other than you, Zhang or the Chairman I will make certain that between the man sitting next to me and every person he knows and my ability to forever hold a grudge that you will regret not following my direction. All too often people mistake kindness for weakness --- and all too often I am standing over top of them saying I warned you. From this moment until whenever he reaches me. It 9:45 AM here and i assume 9:45 PM there so his night is running out."</p> <p>Zhao responds, "Copy. I will call you on Whatsapp."</p> <p>SM says, "Ok my friend - I am sitting here waiting for the call with my father. I sure hope whatever it is you are doing is very very very important."</p> <p>Zhao says, "Hi Hunter, is it good time to call now? Hi Hunter, director did not answer my call. But he got the message you just mentioned."</p>
7/31/2017	WA message with SM and Dong, SM says, "Kevin I was told by the Director through Zhao that we were to speak tonight. If there is some extraordinary reason you can not do so please let me know. I assume that you know that this is highly confidential and time sensitive."
7/31/2017	WA message with SM and Vuk Jeremie, SM says, "Call u in a minute I'm on w/ director"
7/31/2017	WA message with SM and Zhao, Zhao sends Kevin Dong's foreign phone number.
7/31/2017	<p>WA message with SM and Zhao, SM says, "Z - i reached out to K and he declined my call and has not returned my text. I assume he knows that our plan to speak is highly confidential. I just hope he isn't talking to Tony or J -- if he is we have a real problem. If I can reshape this partnership to what the chairman intended then James and Rob will be well taken care of but I will not have Tony dictating to me nor the director what we can and cannot do."</p> <p>Zhao responds, "I don't think he is talking to Tony or the other guys. mostly with the director. I just sent an email to you and cc to Kevin. He has your phone number now. Hi Hunter, did you see the email from Kevin? The director would like to suggest you and Kevin have a meeting. CEFC is willing to cooperate with the family. He thinks now the priority is to solve the problem mentioned last night."</p>
7/31/2017	WA message with SM and Zhao, Zhao sends SM an image of a message which reads, "Raymond (believed to be Zhao), many thanks for the introduction. Hunter I am based in New York and my US phone is [REDACTED] Let's talk tomorrow? Kevin"
8/1/2017	WA message with SM and Fran Persons, SM says, "Ok- want to talk Hong Kong and whether Bo intends to do 100 or understandable -- done his part"
8/2/2017	<p>WA message with SM and Zhao, Zhao says, "Hi Hunter, director asked me to extend to you that Kevin has reported to him about your discussion. He supports your proposition and will act correspondingly "</p> <p>SM responds, "That is a great relief and very welcome news my friend - let My friend know that I'm looking forward to his arrival here with great anticipation- we will do extraordinary things together and I am happy to have him as a brother in this endeavor- and my family sends their best wishes and looks forward to playing some golf when the director has time."</p>
8/3/2017	<p>WA message with SM and Dong, Dong says, "I received the following and thought we were finished Hi Hunter, sorry to ping you at late hours. I am texting to convey some info from director Zang:</p> <ol style="list-style-type: none"> 1) His best regards to you, Jim and VP, 2) He fully supports cooperatino with you and the proposition provided by you. Chairman also agrees upon you idea; 3) Kevin is designated by director Zang to discuss with you on technical matters. The fund will be wired to the jointly administrated account in a timely manner. <p>Thanks!"</p> <p>Dong asks, "From Zhao" and SM responds "Yes"</p>
8/3/2017	<p>WA Message with SM and Dong, SM says, "K- Very simple:</p> <ol style="list-style-type: none"> 1. 10 M per annum budget to use to further the interst of the JV. This move to 5M is completely new to me and is not acceptable obviously. 2. All expenditures/ expenses salaries will be agreed to by board. My (Biden's) expenses and determination of how BIDEN (loan 5M) capital will be determined by Owasco in consultation with Hudson. The Hudson capital will be utilized for expenses beyond those Biden/Owasco has committed to Monochromes business. (K we won't break 5 and the additional 5 can roll to next year if the Chairman and CEFC review is favorable. It all has to agreed to by Board - but if the Chairman doesn't value this relationship is being worth at least 5M then I'm just baffled. 3. You saw minor clarification of exclusivity. 4. We are all saying the same thing I hope . Please let's put this to bed tonight sign officially tomorrow (or anytime as late tonight as you want) and get to work. I am tired of this Kevin. I can make 55M in salary at any law firm in America. If you think this is about money it's not. The Biden's are the best I know at doing exactly what the Chairman wants from this partnership . Please let's not quibble over peanuts." <p>and Dong responds, "Do you want me to talk to Zang or you want to have a call together?"</p>



BY MAJORITY COUNSEL 2:

Q Could you tell us about this document, what is it, and how was it obtained --

A Sure. So there was an electronic search warrant for iCloud backup, and these messages were in that backup and provided --

Q Okay.

A -- from a third party, from iCloud.

Q Okay. Who was it provided to?

A The -- the investigative team from --

Q Okay.

A It would go through all the same processes of -- since it's electronic, it would go to one of the computer analysis folks, and then they would put it in a readable format, and then it would go through filter review.

Q Okay. And these aren't WhatsApp messages, these are summaries of WhatsApp messages, correct?

A Yeah, that's correct. Because it was something about the readability of the actual piece, right? It was easier to summarize in a spreadsheet.

Q Okay. And who did the summary? Who prepared this document?

A It was either the computer analysis guy or [REDACTED], one or the other.

Q And you referenced some of this document in your opening statement. And if you can draw our attention to the parts that you referenced in your opener.

A Oh. Do -- would you like me to --

Q Well, you can just flag it --

A Yeah. So --

Q -- by date -- or some of the dates are multiple dates, so --

A The first one, July -- the top one, July 30 of 2017, and this is Hunter Biden emailing Zhao, who is one of the executives at CEFC. He's basically saying have the director call him, and he's demanding that he doesn't call James Biden or Tony or Jim Bulger (ph). Have him call me. And it says, I'm sitting here with my father, and he would like to understand why the commitment made has not been fulfilled.

Mr. Leavitt. Sorry. You said "he." "We" would like to understand.

Mr. Shapley. Oh, sorry.

And we would like to understand why the commitment made was not fulfilled.

So I mean, I'm just looking down.

So it says, "And Z, if I get a call or text from anyone involved in this other than you, Zhang or the Chairman I will make certain that between the man sitting next to me and every person he knows and my ability to forever hold a grudge that you will regret not following my direction."

So then there's, a little bit going on. And then Hunter Biden responds, "Okay, my friend -- I am sitting here waiting for the call with my father. I sure hope whatever it is you are doing is very very very important."

BY MAJORITY COUNSEL 2:

Q That seems pretty threatening, doesn't it?

A Yeah, yeah. And there are other excerpts, some that are pretty pertinent where --

Q And just for the record, SM stands for Sportsman?

A That's correct.

Q Which is Hunter Biden?

A That's correct.

Q Is it unusual to use a code name like that or code initials? If you were just

investigating somebody who didn't have national prominence, would you make up a name like Sportsman?

A We do use code names now and again. FBI is really heavy in them.

Q Okay.

A So this code name did come from FBI --

Q Okay.

A -- on this particular one. We probably would've went with Robert Doe.

Q Okay.

A But it does happen occasionally.

Q Okay.

A So some of the other pertinent things in here are just talking about, CEFC is willing to cooperate with the family.

Q And what date was that?

A That is 7-31-20- -- well, it's one, two, three, four, the fifth message --

Q Okay.

A -- second line from the bottom, go all the way over.

Q Got it.

"The director would like to suggest you and Kevin have a meeting. CEFC is willing to cooperate with the family."

And the family is the Biden family, correct?

A Yeah. And he even alludes to that later on, all the way in the very bottom of No. 4, of the last part of that message where --

Q Who is Kevin Dong?

A So he's like the CEFC spokesperson kind of in -- he's Gon Win Dong (ph), and he goes by Kevin.

Q Okay.

A So he's just connected with CEFC. He's kind of the runner.

So that No. 4, fourth line up from the very bottom, "put this to bed tonight...I can make \$5 [million] in salary at any law firm in America. If you think this is about money it's not. The Bidens are the best I know at doing exactly what the Chairman wants from this partnership...let's not quibble over peanuts."

But, you know, he alludes to "the Bidens are the best I know at" again here.

Q And who is saying "the Bidens are the best I know"?

A Hunter Biden is saying that.

Q Okay. So Hunter Biden is referring to sort of his family here, "the Bidens are the best I know"?

A Yep.

Q So he's self-identifying that his family is good at doing this?

A At doing what the chairman wants from this partnership. Chairman Ye is who he's speaking about.

Q Okay.

A And --

[Discussion off the record.]

Mr. Shapley. Yeah. I just flagged the third message to Vuk Jeremic.

MAJORITY COUNSEL 2. Okay.

Mr. Shapley. And that's from Hunter Biden to Vuk Jeremic. And it says, "Call u in a minute I'm on w/ director."

So Vuk Jeremic is that former Serbian politician and former -- I don't know what his title was but of the U.N. Assembly. And so because of something like that in this, let alone the rest of it, we wanted to look into this.

And the reason why this was included in here was because that when agents saw this in late August, September of 2020, we went to the prosecutors. We said, we got to ask questions about this, we got to figure this out, we got to -- like, what's going on with this? And the response was, No. No, we're not going to do it.

You want to know why? And it makes a little bit of sense, right? Well, we don't know if he was lying that his father was sitting next to him, right?

So then we said, well, let's get the location data for the messages, and if they're co-located, then we're on better ground here, right?

MAJORITY COUNSEL 2. Right.

Mr. Shapley. And they, no, we're not going to do that. And we even brought that up in a pros-team meeting because [REDACTED] created an agenda for every single meeting, and the agenda item number, like, 2 or 3, or whatever it was, location data, and that was specific to this, and they didn't allow us to do it.

[3:29 p.m.]

BY MAJORITY COUNSEL 2:

Q And the reason you wanted to look into this is because there could have been a lot of money coming in from CEFC that was untaxed, correct?

A Yeah. We're talking about a lot of things there. There's FARA in play. And the FBI is considering a lot of national security type issues here. And we were precluded from doing anything.

Q Is there anything else from this exhibit 11 that we haven't covered that we should?

Mr. Lytle. Can we confer for a second?

MAJORITY COUNSEL 2. Excuse me?

Mr. Lytle. Can we confer for a second?

MAJORITY COUNSEL 2. Of course.

MAJORITY COUNSEL 1. Off the record.

MAJORITY COUNSEL 2. Go off the record, please.

[Discussion off the record.]

Mr. Shapley. I had alluded to FARA and some other things there. But, some of these people in here, Chairman Ye, Gon Win Dong (ph), Zhao, are believed to be connected to the Chinese Communist Party.

BY MAJORITY COUNSEL 2:

Q Okay. So there could be national security implications with communications with those officials, correct?

A That is correct.

Q And was that sentiment also shared by the FBI?

A Yes.

Q And despite those concerns that the FBI had and that the rest of the team had, that was not looked into. Is that correct?

A The prosecutors said don't do it. And then we asked for location, they said, no, we're not going to do that. And if FBI did something at some level, I'm not privy to it.

Q So you don't know if FBI CT went off and --

A You would almost hope that they did, but I don't know if they did.

Q Okay. We're going to turn our attention to some of the retaliation you have faced.

BY MAJORITY COUNSEL 1:

Q We talked about the email you sent up to Mr. Waldon, talking to Michael Batdorf. And you read a portion of that in your opening statement as well.

Subsequent to that and in other material that you have shared with the committee, you referenced a failure to select situation. Can you explain what happened with that situation?

A Sure, yeah. So I was selected in 2018 to help stand up the Joint Chiefs of

Global Tax Enforcement called the J5. It's an assembly of Australia, U.K., Canada, Netherlands, and United States. And because of my reputation working on international cases and working with other countries, and my experience, Chief Don Fort at the time selected me. It wasn't something where it was even a job announcement. It was all of a sudden you are a member of the J5, and I had to ask what the J5 was.

So I helped stand up the group. My agents worked a vast majority of the operational cases that are considered J5 cases. And ultimately there was a J5 lead. It was an IR-1 position, like a deputy director level position at headquarters. She was retiring. And, everyone thought that that was the job that I was going to get, right, and I wanted that job. And I was already an IR-1 because I was the assistant special agent in charge at the Chicago field office during that time. And I received an outstanding rating during that rating period and everything. So I applied for that job.

There were two people that were original members of the J5. I was one of them. And ultimately, I didn't get that job. The interview was one day after this email, and --

Q That interview was on December 14th?

A That's correct. And this email was December 13th. Well -- I'm sorry. The bottom one is December 12, 2022, top one is December 13, 2022.

So, being that J5 lead, they work directly with the chief, because they're basically a spokesman for the chief in J5 matters. So -- ultimately I interviewed. And then on January 3rd, 2023, in senior staff meeting they announced the other person, Oleg, had gotten the position.

I'm friends with a lot of people on senior staff, and they called me and said, what's going on here. And it wasn't till the next day that Scott Goodlin, the director of IO, called me and told me that I wasn't selected for the job. And I'm the one that had to brief Scott Goodlin when he got that job about what the J5 was.

So -- the person selected -- he hadn't been an ASAC. I'd been an ASAC for 16 months at two different SES field offices, New York and Chicago. I wasn't --

Q So you believe you were qualified for the position?

A Yes, I do.

Q And you believe you had qualifications superior to the individual selected?

A Yes.

Q And why do you believe you were not selected?

A Because I'm raising these issues. And I think that -- Weiss calling my deputy chief, and right before this, right around this time, and who knows what he said, but I think it tainted me. I think that they retaliated against me because of that. There's really no other explanation for it. Even what was explained to me by Scott Goodlin as to why Oleg got it, it almost -- it made no -- I don't even know if Scott Goodlin understands it made no sense, but it made no sense, right? So yeah.

Q Did you hear from colleagues after that decision was made about the fact that you hadn't gotten the position?

A Yeah. Several of our foreign partners, one of them is like the deputy chief of the Australian taxation office, basically was dejected and was like how -- I don't even know -- it was twofold; one, because I told them I was going to resign from my J5 duties, which I did do. And they were like, well, number one, what are they going to do without you? But I was in charge of a vast majority of operational stuff. And I had the institutional knowledge since it stood up, many of the things I helped stand up. So -- I'm sorry.

So after I resigned to the director of global ops Kareem Carter, who is actually now the SAC of Washington, D.C. field office. It was Lola Watson ASAC, Kareem Carter SAC. He was the director of global ops. And I sent him an email, and said, I'm resigning my J5

duties. And they had no idea what to do. And then I'm talking to some of the analysts there. Are there any discussions? They are like, no, we don't know what's going on -- obviously they had one chief brief -- monthly I briefed the chief and the top executives on the J5 stuff.

So I wasn't on the first call after I resigned. And they were like, there were no questions answered because I wasn't there. And -- sorry, I just lost my train of thought.

Q It's okay. Is it fair to say that there are others inside the agency that would share your opinion that you were more qualified than the person selected?

A Oh, absolutely, yes. There were even times when the person who got selected, he couldn't do what he needed to do, so he had to call me in to do it. One was a trip to Australia in February timeframe to go and represent in the intelligence group there and the J5. And he just simply would have added no value, so I had to go. And then there was a briefing to, it's called a JSEIT, it's joint strategic -- JSEIT, it's J-S-E-I-T, it's a joint strategic emerging issues task -- I don't know what T is for. I apologize.

So I presented on three of the J5 cases within my group at this JSEIT meeting, which is basically a bunch of executives from all over the different business operating divisions within IRS. And I presented three cases that we are working on J5. And when they asked for someone to speak to that group, it came through Kareem Carter to Scott Goodlin, director of IO, to Oleg. And Oleg responds with, well, the only person that can give this presentation is Shapley.

So then I give the briefing, and now I'm the lead of one of the working groups out of there. And I was just asked to be the lead of a second working group, which I asked them, please, I don't have the time.

Q Understood. Okay. Moving forward to May 15th, 2023, the committee received the letter from your counsel noting that you and your entire investigative team

were removed from an ongoing investigation of a high-profile controversial subject, who we've been discussing is Hunter Biden. Is that correct?

A That is correct.

Q How long had you been working on this investigation when you were removed?

A Since January 2020.

Q Who informed you that you and your team were being removed from the investigation?

A SAC Kareem Carter.

Q How were you informed?

A The ASAC Lola Watson put a meeting on my calendar, and it was a telephone call, conference call. And the subject was Sportsman update. [REDACTED] wasn't invited, but I had him on the line anyway, and he witnessed the telephone call. We produced a memo which both of us signed, because [REDACTED] was taken off the investigation as well, so he can see and sign all documents.

Q Okay. And remind me -- I know you covered this earlier, but just for the record, when you say the whole team was removed, how many people was that?

A Sure. Yeah. So it was me, Case Agent [REDACTED], Co-Case Agent Christine Puglisi, and the rest of my team, which is 12 in total, were not allowed to take the investigation. So they basically ensured that it was not under my supervision anymore.

Q Were you given a reason on that phone call as to why the team was removed?

A I specifically asked and he said, no, didn't give a reason. To which I said, how could you possibly make a decision like that in a case like this without being given a reason? So then I said, well, if you were given a reason and you can't tell me, okay, just

don't tell me, but don't tell me they didn't give you a reason -- so I challenged him on it.

Q And was the case closed at this point?

A It was not closed, no.

Q Were other IRS employees assigned to the case? Was your team replaced?

A After, yes.

Q So to the best of your knowledge, the investigation remains open and the team has been replaced by other IRS personnel?

A Yes.

MAJORITY COUNSEL 2. And did we indicate who made that decision? Was it at DOJ or --

Mr. Shapley. I don't know if it was asked, but yes, Kareem Carter told me that DOJ had requested that change.

MAJORITY COUNSEL 2. And do we know who at DOJ? Was it the Tax Division? Was it the U.S. Attorney's Office in Delaware?

Mr. Shapley. He said DOJ, is my recollection.

MAJORITY COUNSEL 2. Okay.

BY MAJORITY COUNSEL 1:

Q In your career at the IRS, have you ever been removed from an active investigation like this?

A No, no. And we even saw testimony from Don Fort, the former chief of IRS CI. And I don't remember the context or who was asking the question, but he was asked about this issue and said, in your 30 years, had you ever seen a team removed like that? And his response was, no, I've never seen that.

Q And this was recent testimony before Congress?

A It was May 16th.

Q What is your understanding about who has decision making authority about what IRS personnel work on any given investigation?

A IRS personnel should be managed by IRS, not by DOJ.

Q In this context of IRS working on cases with a different department, different agency, Department of Justice, are you aware of any formal documentation about how that relationship is managed, a memorandum of understanding, any kind of agreement about who has decision making authority on an issue like this?

A I don't think I know of a memorandum, no. No.

Q And why do you believe you and your team were removed from the case?

A I think the DOJ, because we were raising protected disclosures, that they wanted to get rid of us. And it was twofold because we were making disclosures, but also because they knew that our disclosures were valid.

Q Moving forward, only a week, May 22nd, the committee received another communication from your counsel. It included an attachment that was a letter to the IRS commissioner, Daniel Werfel, regarding additional retaliation.

Can you talk about what happened in that instance?

A Yeah. So after being removed from -- my red line was October 7, 2022.

██████████ case agent's red line was being removed from the case without cause. And he decided to make that disclosure to the IRS commissioner because he thought that the people who were retaliating were at the highest levels of IRS CI, so he went to the next two levels, which is the deputy commissioner and commissioner of IRS.

Q And how did IRS respond to that communication?

A So ASAC Lola Watson sent him an email basically threatening him that he could have violated 6(e) with the communication with someone who's not on the 6(e) list. I only could assume that that's the commissioner, because our 6(e) lists are incredibly

robust. I mean, the commissioner is on it now. So, I would imagine Lola Watson is not on the 6(e) list and she's an ASAC, right? Because ASACs come in, ASACs come out, and it's really the position.

So they threatened a 6(e) violation, which there was no 6(e) in there. And also told him that there is no -- no information should be shared at any time outside of his chain. It was like 2 minutes later, Kareem Carter, the SAC, sends an email to all the managers in the D.C. field office saying that you are to follow the chain of command, in no instances are you to provide information outside of that chain of command without their permission.

Q Why is that problematic?

A It was a direct threat. Other people, like the co-case agent that is going to make her decision on what she wants to do, that is a shot across her bow, and anyone else that ever wants to comes forward, and it's just plain and simple.

Q And did that communication about discussions not leaving the chain of command, did that include any language acknowledging exceptions for whistleblowers?

A It did not. There was a follow-up email from Deputy Commissioner O'Donnell yesterday where he sent out to everyone in the IRS basically -- it seemed as though they realized that they had done something wrong and they were trying to cleanse their error. And they sent an email that had language about how to blow the whistle of 6103 and 6(e). I believe that -- 6103 issues or 6(e) issues. And my understanding is that's also deficient, because it did not have language in there that you can go to Congress and that there are ways that you can go to --

Q So it did not include any reference or any language about individuals being able to contact Congress or communicate with Congress about allegations of wrongdoing?

A That's correct. Even in their attempt to cleanse, they still fell short. It was an email from deputy commissioner of services enforcement is what it says, but that's Douglas O'Donnell. And it was yesterday, May 25th, at 4:53 p.m. And yes, there's no language of being able to make those disclosures to Congress.

Q Okay. Other than the items that we've just been discussing, have there been any other issues of potential retaliation that you would like us to know about?

A I think that there is. Can I have a second?

MAJORITY COUNSEL 1. Go off the record.

[Discussion off the record.]

MAJORITY COUNSEL 1. Back on the record.

Mr. Shapley. So this is emerging now. We have a really large case, and it's actually [REDACTED]'s case, just the best agent. And this huge case, nationwide, with around 30 to 40 spinoff investigations. And we required the director of field operations to buy on to the strategy. And it was in January where I presented the strategy to them, and all three DFOs agreed to the strategy. And then it was in February, I don't have the dates in front of me, DFO Mike Batdorf sends an email to all people across the country who were working this case saying that we're going to pause on it. So that was in February.

And now we're still trying to work it. We're still trying to push it forward. We have all these meetings, and they keep giving us -- they keep telling us ways that they would approve it moving forward, but we can't move forward that way because there's already grand jury material in it and because I'm not speaking about the Hunter Biden case, I can say that.

BY MAJORITY COUNSEL 1:

Q This case is different --

A Different --

Q Totally unrelated case?

A Totally unrelated case.

Q I'm sorry. You're describing a totally unrelated case. Is that right?

A That is correct. Yeah.

So even today I don't know -- what's the date? The 26th of May, we're still on a pause. And I think that it's directly related to coming forward and making these disclosures, because Mike Batdorf was the one that I initially called and said, with advice of counsel, to say, hey, I've retained counsel and I'm going down the road to blow the whistle, and then all this stuff starts happening.

Q So you believe he may be retaliating by slowing down or impacting your duties and responsibilities on totally unrelated matters?

A Absolutely. And all three DFOs agreed to this strategy and then he paused it. And the effect is now they can say, oh, well, you screwed this up or you didn't do something right or something happened, and it can ultimately affect me.

Q And for the record, what does DFO stand for?

A Director of field operations.

Q Okay.

MAJORITY COUNSEL 1. Our hour is up.

[Recess.]

BY MINORITY COUNSEL 2:

Q Just really these are clarifying questions. The letter you wrote to the committee regarding your being removed from the Hunter Biden audit was on May 15th. On what date did the Sportsman update meeting occur?

A Sure. So, my lawyer sent that letter. And also, it wasn't an audit. It's a

criminal investigation, just to clarify. But that meeting was 1:30 on May 15th.

Q Okay.

A And the letter went the same day. Yes.

Q Okay. And could you clarify or explain what the IRS' response was with the [REDACTED] disclosure up the chain? Who exactly is Lola Watson and what is her role, and how does she fit into that disclosure?

A Sure. Yeah. So [REDACTED], one of my agents; me, SSA supervisor; ASAC, assistant special agent in charge Lola Watson; then SAC Kareem Carter.

Q Okay.

A So he sent the email to ASAC and above. So ASAC, SAC, DFO, deputy chief, chief, deputy commissioner, commissioner. And she, the ASAC Lola Watson was the one who responded directly to him about following the chain of command which just a small nuance is that she didn't send it to me, which would have been the chain of command, so --

Q I see. So she was someone who was on the original email, along with the commissioner, the deputy commissioner, all the way down. In her response, did she also cc the commissioner, cc the deputy commissioner, or was that just sent directly to him?

A The only address we could see was his, so we don't know if there was bcc.

Q And presumably, since the meeting was on May 15th, that email to the commissioner was also May 15th or May 16th or sometime close thereafter?

A I think it was the 12th, May 12th. I think -- was it a Friday?

Q Well, if the meeting didn't occur until the 15th, I'm trying to figure out --

A Oh, no, no. Oh, no. Okay. I'm sorry. I wasn't following your question.

Q So when was [REDACTED]'s email to the commissioner, et cetera?

A Okay. Okay. I'm sorry. I totally missed your question.

Q Yeah.

A So it was -- is the 15th a Monday or a Tuesday? It was Monday or Tuesday was when that happened. And then he sent the email either Thursday or Friday of the same week.

MINORITY COUNSEL 1. 15th is Monday.

Mr. Shapley. Monday, yes. So that's when I got the call that the team was removed, and he sent that email Thursday or Friday.

Mr. Leavitt. Just to clarify, you received our letter, right, that had it as an attachment?

MINORITY COUNSEL 1. Yes, we have the May 15 letter.

MINORITY COUNSEL 2. Do we have the email with the [REDACTED] attachment? I can't remember.

Mr. Leavitt. May 22nd, I think, is the date we sent our letter.

MINORITY COUNSEL 1. Yeah, we have that.

MINORITY COUNSEL 2. We have it in our files.

And then I guess my only other question is, as far as personnel decisions go in terms of who assigns who to a case or who would remove someone from a case, is there any reason in the normal course of business that the commissioner of the IRS would be asked or have to approve any kind of movements at that level?

Mr. Shapley. I don't know of that occurring before, so I don't know who would approve it.

MINORITY COUNSEL 2. Okay. I'm good.

MINORITY COUNSEL 1. Thanks. And I'm going to make mine brief, so I think we're almost done here. That gives everybody hope.

BY MINORITY COUNSEL 1:

Q I want to go back to exhibit 11. That's [where] the WhatsApp messages were summarized. I had a couple of clarifying questions on that.

Who is WA? There's a WA --

A That means WhatsApp.

Q Oh, WhatsApp. Okay. That's not a person.

A No.

Q I was wondering how you guys knew it was WhatsApp.

Okay. And then you mentioned when you were providing some explanation about these WhatsApp messages that Chairman Ye was talking about a partnership. What is that partnership? And that was in connection with the July 31, 2017, message or so. I know you were talking about that.

A Sure. Yeah, yeah. I'm just --

Mr. Lytle. Which message is it? Can you direct him to it?

MINORITY COUNSEL 1. I have written down here in my notes that it's the fifth message, July 31, 2017. It talks about, "Will work with family." That one.

MINORITY COUNSEL 2. "If I can reshape this partnership to what the chairman intended."

Mr. Shapley. Oh, oh. Okay. Yes. Oh, I'm sorry.

BY MINORITY COUNSEL 1:

Q What is the partnership? Do you know what it does or what it's supposed to do?

A In all of my review of the evidence in this case, I'm not exactly sure what Hunter Biden is doing for this money. So the partnership, I'm not really sure what services he's providing as part of that partnership.

Was that your question?

Q Yeah. I was trying to see, if this is some sort of a real estate partnership or a -- I have no idea. We don't know.

A This particular CEFC deal is not a real estate deal. No, it's not. There are some dollar amounts in the last message, but I didn't really go into that too much.

Q Okay.

MINORITY COUNSEL 1. Okay. We don't have anything else.

MAJORITY COUNSEL 1. Okay. Well, we want to thank you for --

Mr. Lytle. Can we just have a follow-up?

MAJORITY COUNSEL 1. Oh, sure.

Mr. Lytle. I just have a couple of follow-up questions, if that's okay.

MAJORITY COUNSEL 2. This is on the record?

Mr. Lytle. Yes.

MAJORITY COUNSEL 2. Okay.

BY MR. LYTLE:

Q So, October 7, 2022, the meeting with Weiss where Weiss proclaimed he didn't have the authority to make charges. You know that meeting, right?

A Yep.

Q Could you just name the people that were in attendance at that meeting, to the best of your recollection?

A Sure. Yeah. So from the FBI it was SAC Tom Sobocinski, ASAC Ryeshia Holley. IRS SAC Darryl Waldon. I was ASAC at the time, and I was there. And it was U.S. Attorney David Weiss and then Shawn Weede. And Shannon Hanson.

So I don't know what Shawn Weede and Shannon Hanson's titles are, but they were like David Weiss' one and two type person. Probably crim chief, first assistant, that

area.

Q And so if someone wanted to just check with those folks, they could tell what they heard Weiss say at the same meeting that you were at.

A Yep.

Q Fair to say?

A Yep.

Mr. Lytle. Okay. I don't have anything else.

MAJORITY COUNSEL 2. I'm sure they're going to be eager to come in and speak with us.

MAJORITY COUNSEL 1. Is there anything else that you would like to mention before we conclude today that we haven't already covered?

Mr. Shapley. No. Just thanks for listening. My life's on the line here, so do what you can.

MAJORITY COUNSEL 1. Thank you very much for your time and for a long day on a Friday before a holiday weekend. We greatly appreciate it. Have a good afternoon.

Mr. Shapley. Thank you.

Mr. Lytle. Off the record.

[Whereupon, at 4:11 p.m., the interview was adjourned.]

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit D

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

INTERVIEW OF: [REDACTED]

Thursday, June 1, 2023

Washington, D.C.

The interview in the above matter was held in room 5480, O'Neill House Office Building, commencing at 9:41 a.m.

Present: Representative Jason Smith.

Appearances:

For the COMMITTEE ON WAYS AND MEANS:

[REDACTED], MAJORITY COUNSEL

[REDACTED], MAJORITY COUNSEL

[REDACTED], MAJORITY COUNSEL

[REDACTED], MAJORITY STAFF

[REDACTED], MAJORITY STAFF

[REDACTED], MAJORITY COUNSEL

[REDACTED], MINORITY COUNSEL

[REDACTED], MINORITY COUNSEL

[REDACTED], MINORITY COUNSEL

For [REDACTED]:

DEAN ZERBE

PARTNER

ZERBE, MILLER, FINGERET, FRANK AND JADAV, LLP

[REDACTED]

[REDACTED]

MAJORITY COUNSEL 1. Let's go on the record.

Good morning.

This is a transcribed interview of an Internal Revenue Service criminal investigator.

Chairman Jason Smith has requested this interview following a letter sent to the committee through counsel on May 24th, 2023, indicating your desire to make protected whistleblower disclosures to Congress.

This interview is being conducted as part of the committee's oversight of the Internal Revenue Code and the Internal Revenue Service.

Could the witness please state your name for the record?

Mr. [REDACTED]. It's [REDACTED].

MAJORITY COUNSEL 1. And counsel for the witness, please state your names for the record.

Mr. Zerbe. Dean Zerbe.

MAJORITY COUNSEL 1. On behalf of the committee, I want to thank you for appearing here today to answer our questions and for coming forward to make these disclosures to Congress.

My name is [REDACTED]. I'm an attorney on Chairman Smith's Ways and Means Committee staff.

I'll now have everyone else here from the committee introduce themselves, starting with the chairman.

Chairman Smith. Jason Smith, chairman of the Ways and Means Committee.

MAJORITY COUNSEL 2. [REDACTED], also with the Ways and Means Committee staff.

MAJORITY COUNSEL 3. [REDACTED], Ways and Means majority staff.

Ms. [REDACTED]. [REDACTED], Ways and Means majority staff.

Ms. [REDACTED]. [REDACTED], Ways and Means majority staff.

MINORITY COUNSEL 1. [REDACTED], Ways and Means minority staff.

Ms. [REDACTED]. [REDACTED], Ways and Means minority staff.

MAJORITY COUNSEL 1. I'd like to now go over the ground rules and guidelines that we will follow during today's interview.

Because you have come forward as a whistleblower and seek to make disclosures to Congress, we will first give you an opportunity make an opening statement.

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

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

As you can see, there's an official court reporter taking down everything we say to make a written record. So we ask that you give verbal responses to all questions.

Do you understand?

Mr. [REDACTED]. Yes, I do.

MAJORITY COUNSEL 1. So the court reporter can take down a clear record, we will do our best to limit the number of people directing questions at you during any given hour to just those people on the staff whose turn it is.

Please try and speak clearly so the court reporter can understand and so everyone down at the end of the table can hear you. It is important that we do not talk over one another or interrupt each other if we can help it, and that goes for everyone present at today's interview.

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

possible, so we will take our time. If you have any questions or if you do not understand one of our questions, please let us know. Our questions will cover a wide range of topics, so if you need clarification at any point, just let us know.

If you honestly don't know the answer to a question or do not remember it, it's best not to guess. Please give us your best recollection. It is okay to tell us if you learned information from someone else. Just indicate how you came to know the information.

If there are things you do not know or cannot remember, just say so, and please inform us who, to the best of your knowledge, might be able to provide a more complete answer to the question.

If you need to confer with your counsel, we can go off the record and stop the clock until you are prepared to respond.

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

Do you understand?

Mr. [REDACTED]: Yes, I do.

MAJORITY COUNSEL 1. That also applies to questions posed by congressional staff in an interview.

Do you understand?

Mr. [REDACTED]: Yes, I do.

MAJORITY COUNSEL 1. Witnesses that knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statements under 18 U.S.C. Section 1001.

Do you understand that?

Mr. [REDACTED]: Yes, I do.

MAJORITY COUNSEL 1. Is there any reason you are unable to provide truthful answers to today's questions?

Mr. [REDACTED]. No, there is not.

MAJORITY COUNSEL 1. I would like to note that the information discussed here today is confidential. As an IRS investigator, I know you understand the significance of our tax privacy laws. Chairman Smith takes those tax privacy laws extremely seriously, and we have worked diligently to make sure that you can provide your disclosures to Congress in a legal manner and with the assistance of counsel.

I'm sure you know 26 U.S.C. Section 6103 makes tax returns and returns information confidential, subject to specific authorizations or exceptions in the statute.

The statute anticipates and provides for whistleblowers like yourself to come forward and share information with Congress under Section 6103(f)(5).

Specifically, the statute permits a person with access to returns or return information to disclose it to a committee referred to in subsection (f)(1) or any individual authorized to receive or inspect information under paragraph (4)(A) if the whistleblower believes such return or return information may relate to possible misconduct, maladministration, or taxpayer abuse.

In your position at the IRS, do you or did you have access to return or return information covered by Section 6103 of the Internal Revenue Code?

Mr. [REDACTED]. I did.

MAJORITY COUNSEL 1. Have you had access to return information that you believe may relate to possible misconduct, maladministration, or taxpayer abuse?

Mr. [REDACTED]. I have.

MAJORITY COUNSEL 1. And do you wish to disclose that information to the committee today?

Mr. [REDACTED]. I do.

MAJORITY COUNSEL 1. In addition to Section 6103(f)(5), the chairman of the Committee on Ways and Means has the authority under Section 6103(f)(4)(A) to designate agents to receive and inspect returns or return information.

To facilitate the disclosures you wish to make here today, Chairman Smith has designated the individuals in this room for the purposes of receiving the information you wish to share.

The chairman considers this entire interview and the resulting transcript as protected confidential information under Section 6103. That means that this interview can only proceed so long as everyone in the room is properly designated to receive the information.

The chairman has designated the court reporters and the related individuals that provide transcription services to the House of Representatives.

I would like to remind the witness and everyone in the room that 26 U.S.C. Section 7213 makes it unlawful to make any disclosure of returns or return information not authorized by Section 6103. Unauthorized disclosures of such information can be a felony punishable by fine or imprisonment.

Given the statutory protections for this type of information, we ask that you do not speak about what we discuss in this interview to individuals not designated to receive such information.

For the same reason, any marked exhibits that we use here today will remain with the court reporters so that they can go in the official transcript and any copies of those exhibits will be returned to us when we wrap up.

Your letter to the committee references the fact that you have been removed from a high-profile case and that you are concerned about possible retaliation.

Chairman Smith values whistleblowers and knows that whistleblowers take significant risks when disclosing wrongdoing. That is why there are legal protections in place for whistleblowers making disclosures to Congress.

At a hearing before the Ways and Means Committee on April 27th, 2023, Chairman Smith asked IRS Commissioner Werfel to commit that there will be no retaliation against whistleblowers. The IRS Commissioner replied, quote: "I can say without any hesitation there will be no retaliation for anyone making an allegation," end quote.

We understand your removal from the case team came subsequent to that testimony from the Commissioner. This is very troubling, and we will certainly discuss that in more detail today.

That's the end of my remarks. Is there anything that my colleagues from the minority would like to add?

MINORITY COUNSEL 1. No. We'd just like to thank you for coming to talk to us today, and we look forward to hearing your testimony.

MAJORITY COUNSEL 1. And with that, I'll give you the opportunity to make an opening statement.

Mr. Zerbe. I don't have as nearly extensive [remarks], but just a couple of points, particularly with the chairman here.

We just want note that if the committee -- we made this point but just to have it -- that if the committee were to elect or choose to release the transcripts, we would ask for strong consideration for his anonymity in terms of that. You can identify him in terms of his role and position and release the transcript. But in terms of his identity, his specific name, we would ask that consideration, strong consideration, be given for keeping that anonymous.

And the second is, just a blanket point, is he'll be covering an enormous amount of topics ranging over a number of years today and to the best of his ability, but, obviously, to understand he is doing his best in terms of recall and remembering what is going on and making his best efforts in that. But, obviously, folks are not infallible on that. But we'll strive to be as accurate and complete as possible.

So, [REDACTED], go ahead.

Mr. [REDACTED]: So as was stated, I am a special agent with the Internal Revenue Service Criminal Investigation.

I wanted to start out by saying I'm coming here to you today after someone from your committee reached out to my counsel to come in and testify. I paid for my own flight to be here in front of you, as I do not live in the D.C. area. I have not accepted any payments from anyone in coming here, and I have legal representation through my attorney, Dean Zerbe.

I felt that it was my duty as a government employee to abide by your request, and I think that it's important that all you should know from my recollection of what happened during the Hunter Biden investigation so that we can learn from it, fix some things so justice is served, and create policy so that it doesn't happen again to us in the future.

One thing that I know, people would say about me, is that I'm passionate about my job and my career at the IRS. I always strive to be the most efficient and best agent I can possibly be, always fighting for justice, and I always try make sure that we are doing the right thing for the right reason.

But in doing the right thing, I've found that people will fight me tooth and nail and do everything in their own power to protect their own self-interests.

So if I get emotional during some of this, I apologize, but this has been 5 years of

my life. So what's happened has been [difficult] -- yeah. So I apologize for that.

I'm an American, and my allegiances are to my country and my government. I'm also a gay man. I have a husband, two dogs, a home, and a life full of family and friends. But above all else, I'm a human being. My sexuality doesn't define me as a person. It's just who I love.

I'd like to say one more thing regarding this topic of sexuality, especially since it's the start of Pride Month. But people have said that I'm gay and people have said, because I'm gay and that I am working as the case agent on this investigation, that I must be a far-left liberal, perfectly placed to fit some agenda. This was stuff that was on social media regarding me.

I can tell you that I am none of those things. I'm a career government employee, and I have always strived to not let politics enter my frame of mind when working cases.

I've tried to stay so nonpolitical that in the last Presidential election I voted but had decided to not vote for the Presidential candidate because I didn't want to be asked that question in a court proceeding in the future and I didn't want to show any potential bias.

My political beliefs are simple. I'm as middle of the road as they come but would consider myself to be a Democrat. When I was younger, I grew up in a conservative household. I also held conservative beliefs. But over time those beliefs have changed.

At the end of the day, I will always vote for love, kindness, justice, and fairness, because that's what I believe God would want for all of us.

I heard something recently that I think is overly relevant: The eyes are useless when the mind is blind. Basically showing us that you can have the best investigators in the world, but if you don't have prosecutors, people willing to pursue justice, and are constantly putting up roadblocks, you'll never achieve a resolution.

I've been an agent with the IRS since 2010. In 2007, I received my undergraduate degree in accounting from [REDACTED] and my MBA from [REDACTED], so my master's in business administration. Prior to starting my career at the IRS, I worked as an external auditor for [REDACTED].

Throughout my career with the IRS, I have held multiple collateral positions, as well as worked a variety of criminal tax and money-laundering investigations. Over the years, I have received "outstanding" on my performance evaluations in receiving multiple performance awards and have also received a quality step increase, which is one of highest-valued performance awards.

I was [a] healthcare fraud coordinator, worked criminal tax and money-laundering investigations of physicians, pharmacists, and medical billing companies. I have authored and have been the affiant of multiple physical and electronic search warrants. I have authored and been the affiant on multiple seizure warrants, having seized millions of dollars' worth of criminal proceeds laundered through the purchase of homes, vehicles, jewelry, and the use of bank accounts.

I was a public information officer previously in which I worked as a liaison with the IRS and the U.S. Attorney's Office, our law enforcement partners, and the media partners in helping get publicity for our tax cases.

This collateral duty allowed me to get a whole different perspective of the why we do our job. If you have a successful criminal tax case and no one hears about it, was it really successful?

The mission of the IRS is clear. We are to investigate potential criminal violations of the Internal Revenue Code and related financial crimes in a manner that fosters confidence in the tax system and compliance with the law.

My agency has continually worked to show the American public this mission, it's

against the law to commit these tax offenses, and what would happen if they chose to do so.

[In] November of 2018, I transitioned out of being the public information officer and I transitioned to the International Tax and Financial Crimes group out of Washington, D.C., where we specialized in international tax crime tax cases. We're a specialty group. We sit all over the U.S., and we primarily work international tax cases.

This was around the same time that I had initiated the criminal tax investigation into Robert Hunter Biden. I will come back to that topic here in a few minutes.

But I wanted to give you guys an example of what I was working prior to this, something very similar that happened in that case, and kind of my perspective on that and the differences between that case and the Hunter Biden case.

While I was working as the public information officer, I took over as the case agent of an extremely complex captive insurance tax investigation.

This investigation was the first of its kind. It had a lot of issues, to include age of the case, and I was coming in as the second assigned agent, as the previous agent was promoted. So there's an example of why an agent might drop off [of a case]. They got promoted.

So I came in as the second agent, and I worked the case for approximately 3 years with attorneys from the Tax Division and the U.S. Attorney's Office.

One of the Tax Division attorneys assigned to that case is the same attorney that was assigned in the beginning of the Hunter Biden investigation. His name is Jason Poole. He was eventually promoted at DOJ Tax and oversaw the Hunter Biden investigation as [the] chief of [the] Northern [Area]. So chief of DOJ Tax Northern.

I know that Mr. Poole would say how good of an agent I was, how good my work was, and I think he would speak highly of me.

Now, why does this captive investigation matter?

Prior to joining the case, DOJ Tax had approved tax charges for the case and the case was in the process of progressing towards indictment. Our assigned Assistant United States Attorney was promoted to judge, and DOJ Tax had made the decision to reinvestigate the case.

After working thousands of hours on that captive case, poring over evidence, interviewing witnesses all over the U.S., the decision was made by DOJ Tax to change the approval to a declination and not charge the case.

I was devastated when I found that out, but at the end of the day I understood.

We did everything we could to try to work through the issues and get the captive case ready for indictment. I fought hard, having meetings with the leaders of my agency and DOJ Tax to try and get it charged. But at the end of the day it was a difference in opinion, and DOJ Tax didn't want to set precedence.

I'm bringing this up to show you an example of difference in opinion between the investigators and prosecutors when it came to charging. The captive case and the steps taken were significantly different than what happened with the Hunter Biden investigation, and hopefully I can show you that with my testimony here today.

So I have ultimately made the decision to come forward and agree to your request because I believe I made multiple attempts at blowing the whistle internally at the IRS. One of those was an email that I sent internally to the Commissioner of the IRS and was essentially intimidated and retaliated against after I sent that.

And I will bring that if you guys want. I can bring that up later on.

Mr. Zerbe. We can provide that email, right.

Chairman Smith. Is it the current IRS Commissioner or the acting?

Mr. Zerbe. Mr. Chairman, yes, it's the current. This is the one that was in the

newspapers that was attached to the longer letter by Mr. Shapley. You've essentially got most of the context of that letter. But, yes, Mr. Chairman, it's within the last 2, 3 weeks. So yes.

Mr. [REDACTED]: So I'm sitting here in front of you right now terrified. In coming forward, I'm risking my career, my reputation,

and the casework that I'm working outside this investigation. I believe that the Delaware U.S. Attorney's Office and DOJ Tax have a clear target on me and my supervisor's back, and I believe that they are waiting for an opportunity pounce on us.

My own agency retaliated against me, as I just stated, even after years of essentially being left on an island from them when it came to this investigation.

I did not ask to be in this position, nor do I want to be. My supervisor, who I wholeheartedly respect, decided to blow the whistle on how this investigation was handled because his red line was crossed.

The timing of when he did that was something that we did not agree on but he felt he had to, and I wasn't going to stop him from doing what he thought was right.

I'd like to note that I wasn't present at the leadership meeting on October 7th, 2022, that Mr. Shapley and leaders from the IRS were a part of with U.S. Attorney David Weiss, the meeting where he made the statements about not being in charge.

I also wanted to continue to protect the record and my ability to testify as the case agent in the future, which is also a part of the reason I didn't come forward to you.

At the end of the day, I worked on a complex criminal tax investigation over the last 5 years, and the investigative process is 99.9 percent done, and we were in the process of bringing the case to indictment. And I have emails and stuff that I can reference that show that.

Since October of 2022, the Delaware U.S. Attorney's Office and DOJ Tax have

pretty much stopped communicating with me and my team, and we have ultimately been removed and replaced from the investigative team. I want to make that clear. We were removed, and they replaced us with a new agent and a new supervisor.

I'm pleased to respond to the committee's request to assist them in oversight work and to provide information through statutorily authorized provisions of 6103(f)(5). I have reason to believe that there was gross mismanagement present throughout this investigation, that there was gross waste of funds relating to the tax dollars spent on investigating this case, and that there was an abuse of authority by DOJ Tax and the Delaware U.S. Attorney's Office.

I will present some evidence now and later, if needed. I will present evidence now and at a later date, if needed. And I will leave it to you to make your own determinations, based on my testimony and the documents, what they say about the handling of this investigation. Obviously, we have not provided any documents to you guys so far.

In providing this testimony, I will protect sensitive and secret material, first off. And I will also strive to protect current and ongoing investigations that are spin-offs from the Hunter Biden investigation.

I would also like to mention something else that's very important. Sometimes I think the excellent work that the investigators did regarding this investigation is being overlooked.

I have worked with some of the best investigators on this team, some of the best investigators, by far the best forensic accountant with the FBI [I have] ever worked with. Amazing, intelligent people from the IRS, an amazing co-case agent who was there for me every step of the way, who took my calls when I felt like I couldn't go on with the investigation anymore because of what was being done and the roadblocks that were

being put in front of me.

My supervisor, Gary Shapley, best supervisor I've ever worked with in my life. He was someone I could come to whenever I needed to vent, was someone who always fought with his heart and soul to do what was right, even if we didn't agree on the path, and would try to make sure that we always were heard. He is someone I look up to as a leader in our organization.

Now, as for the prosecutors on the case, which included AUSAs from Delaware and line attorneys from DOJ Tax. I considered a lot of these people my friends and we spent a lot of time together over the last 5 years.

Their conduct since October of 2022 has honestly been appalling, and I do not think that they are considering the human impact of the decisions they're making.

I have respected their work but think they got lost in the type of investigation they were overseeing. Looking back on everything, they had the best investigators in the Nation and the prosecutors were the JV squad and weren't up to the task of handling such a big case. They would often slow-walk investigative steps, often not follow the appropriate investigative procedure, and would say that we couldn't do or had to wait on certain steps because there were too many approvals in front of us.

I recently heard from another case agent on the investigation that the Delaware U.S. Attorney's Office loves to slow-walk cases and overthink everything. They felt that this was exaggerated tenfold because of this case.

That agent also said that they had to work with this U.S. Attorney's Office. So they had to keep the status quo and not raise any questions or issues that could potentially hurt that relationship.

I was different. I was coming in from the outside. I was able to bring up real issues, challenge their arguments, and it was apparent that they didn't like it. It was

often met with rolling eyes, dismissing my ideas, and telling me that they would, quote, "think about it."

I started this investigation in November of 2018 after -- so this is going to go through kind of a timeline chronology of the case, just so you guys are aware.

I started this investigation in November of 2018 after reviewing bank reports related to another case I was working on a social media company. Those bank reports identified Hunter Biden as paying prostitutes related to a potential prostitution ring.

Also included in those bank reports was evidence that Hunter Biden was living lavishly through his corporate bank account. This is a typical thing that we look for in tax cases -- criminal tax cases, I should say.

In addition, there was media reporting related to Hunter Biden's wife, ex-wife, divorce proceedings basically talking about his tax issues. And I wanted to quote some of the things that were said in her divorce filing which was public record.

"Throughout the parties' separation, Mr. Biden" -- referring to Hunter Biden -- "has created financial concerns for the family by spending extravagantly on his own interests, including drugs, alcohol, prostitutes, strip clubs, gifts for women with whom he had sexual relationships with, while leaving the family with no funds to pay legitimate bills.

"The parties' outstanding debts are shocking and overwhelming. The parties have maxed-out credit card debt, double mortgages on both real properties they own, and a tax debt of at least \$300,000."

This is all the information that I had in my hand in November when I wanted to open this investigation.

So I began talking with colleagues in my group, and they were asking me why would I want to open up a case like this. Big cases, big problems was the thing I was

constantly hearing.

I responded to say it shouldn't matter the name of the person on whether we work a tax case or not. It should be the merit of the evidence, the allegation, and the clear understanding of why we are opening that investigation. So doing the right thing for the right reason.

After discussing the case with my previous supervisor at the time, Matt Kutz, he made a decision to look into the case further before sending it -- sending the case up for referral.

So I wanted to note something here. When we get a bank report, a lot of times we are able to take the information in that and bring it over to the U.S. Attorney's Office to say, "Hey, look at this bank report. We need -- are you guys interested in potentially opening up an investigation?"

So that's typical. And because we're in D.C., he lived in D.C., we would have taken it to the D.C. U.S. Attorney's Office.

My manager at the time told me, "No, you cannot do that. That's a tax disclosure issue." I didn't agree with him because there's been multiple instances where we do that. That's a normal part of our job. But he was my manager, and I wasn't going to fight him on it, and he told me that I had to open this up the normal tax administrative way that we would do [for] these cases.

At this point in 2018, I believe that I was the only agent in the U.S. looking into Hunter Biden. So I immediately drafted a criminal tax initiation package and sent it to my manager for his review.

I wanted to provide an example of something that my SSA [at that time] told me which caused me pause and concern. This is from what I recall. But he said a political family like this, you have to have more than just an allegation and evidence related to

that allegation. In order for this case to move forward, you basically have to show a significant amount of evidence and similar wrongdoing that would basically illustrate a prosecution report.

So he's basically telling me that I have to show more than just non-[filed] tax returns and the information from the ex-wife in the divorce proceedings.

I did not agree with him at this time -- and I told him that we have to treat each taxpayer the same, it shouldn't matter on their name. But he was my manager and I had to do what he said.

So after three of these initiation packages, he finally allowed me to push this forward to DOJ Tax for their review.

So the way that our grand jury cases -- or the way -- I'm sorry. The way that our cases work is when the case is referred from IRS to DOJ Tax, the case has to go through our ASAC and SAC, and then it goes to DOJ Tax where they review and approve it and send it to the appropriate venue or jurisdiction.

So in [or] around March or April of 2019, the case went up to DOJ Tax. And at that time we were told that William Barr made the decision to join two investigations together. So at that point in time I had found out that Delaware had opened up an investigation related to the bank reports and that that occurred in January of 2019, so 2 months after I started mine.

So when I found out about their case and was told that we had to merge the two, I did a venue analysis. I showed them that, "Hey, the venue's in D.C. It's not in Delaware. We need to work this in D.C." But, ultimately, I was overruled, and it was determined to send the case, join the two case together, and work everything under Delaware.

So it was at that time that we had learned that the FBI in Delaware were referring

to the Hunter Biden -- were referring to Hunter Biden and the case by the name "Sportsman."

So what were the potential issues I saw with working the case in Delaware? We were working with a small U.S. Attorney's Office who might not have ever worked a case of this caliber. Delaware was in the State in which the subject's father lived, and the family was extremely well-known throughout the State, including people on the team. And when I say team, the investigators and prosecutors on the team.

This was later evident by President Joe Biden -- well, he was formerly Vice President at that time -- having to come into the FBI office on an unrelated matter and it being joked with the team.

There's another issue where a magistrate judge in Delaware made an inappropriate comment at the signing of the first electronic search warrant that caused her to remove herself -- that caused her to recuse herself from the investigation. This set us back an additional 4 months as we had to draft new warrants and redo investigative steps.

I want to correct the record on that and say that that's themselves, so just so that we're clear on that.

This is a few of the many issues that we encountered with working the case out of Delaware. But at the end of the day, I constantly remember telling myself and my co-case agent and my supervisor that these are issues, we have to deal with it -- that we have to deal with -- and there's nothing we can change.

Around the same time in 2019, I had emails being sent to me and the Hunter -- and the prosecutors on the case, the Hunter Biden prosecutors, from my IRS supervisor. So this was Matt Kutz still.

From what I was told by various people in my agency, my IRS supervisor, Matt

Kutz, created memos which he put in the investigative files regarding the investigation potentially violating the subject's Sixth Amendment rights. He also referred to Donald Trump's tweets at the time.

I recall that at one point I had to go around my supervisor and ask his boss, ASAC George Murphy, to tell him to stop sending me and the Hunter Biden prosecution team these emails and that I was searching media articles on a weekly basis and was aware of everything being written in the media regarding the case.

So one of the first disagreements I recall between the IRS investigators and the prosecutors was the idea of going overt. When we work criminal tax investigations, there's an IRS policy in place that we need to interview the subject within 30 days of elevating the investigation.

I would like to note that there are reasons why we might wait to interview the subject of an investigation, to include potential undercover work, active crimes continuing to occur, and other covert investigative steps. But with tax cases, the evidence is typically historical, which allows us to go overt sooner, which is why this is stated in the IRM.

I thought this to be even more true about wanting to go overt, because at the time of starting the investigation Hunter Biden had unfiled returns for 2016 and '17 and had unpaid taxes for '15. And I wanted to put Hunter Biden on notice in the event that he filed tax returns and potentially paid his taxes.

In a normal investigation, we would typically advise the subject of the criminal investigation, try to get a statement from them, try to get an understanding of why there were unfiled returns. And it sort of puts us on notice -- or puts them on notice that the IRS is looking into them currently and then it kind of preserves the record in an essence.

I was overruled during multiple meetings almost to the point that I couldn't bring

it up anymore to the attorneys, and they would get visually upset with me. And I was continually being told that we had to stay covert to preserve potential evidence from the FBI side of the investigation. I even offered just IRS agents going forward in interviewing the subject, just, "Hey, we have a criminal tax investigation. We want to talk to you." But it was ultimately overruled.

So I can recall being assured by the AUSAs and DOJ Tax attorneys that we would still be fine with potential Spies evasion charges because other activities would be similar to us interviewing the subject, which included the Senate investigation at the time, as well as the Arkansas case related to Lunden Roberts.

So Spies evasion. Spies evasion is essentially when you have unfiled returns. So normally unfiled returns is a misdemeanor. Spies evasion is a felony. So it's essentially stating that they willfully evaded the requirement to file and/or pay their taxes, and there were overt acts present, that essentially that's the reason why they unfiled or didn't file the tax returns.

Mr. Zerbe. Spies is spelled S-p-i-e-s.

Mr. [REDACTED]. Thank you.

So we did not end up going overt and conducting interviews until after the 2020 election on December 8th, 2020, after I continually pushed the issue at various meetings.

So I wanted to continue on with this, my memory of events from May 2019 to December 8th, the date we went overt with the case.

So throughout that time period we were obtaining multiple electronic search warrants, so email accounts. There were QuickBooks accounts. There was a Dropbox. There was an Apple iCloud. There was the laptop.

And with Hunter Biden being an attorney, all of this information had to go through a lengthy review. So it had to go through a filter team, a filter AUSA. So they're

filtering out any attorney-client privilege documents. And then ultimately we on the team, on the investigative team, would get the documents to review for relevancy or nonrelevancy.

Throughout this entire time, we're getting these email search warrants. We're reviewing the records. We're working as a team. We're actually bringing in people to do the filter review.

Throughout all this time we're having biweekly meetings. At these biweekly meetings, I am continually bringing up that we need to go overt.

There came a point in time to where there were some bank reports out there that were going to get released, and they were going to include potentially the names of the investigators from the IRS and the FBI who received those bank reports.

So with that being released in the public, we're like it's going to out our investigation, so we need to come out and go overt with the tax case.

And I remember there were always times to where we were always on an impending election cycle. It was always the election being brought up.

In early 2020, it was the midterms. I think that Iowa was the very first one where we weren't sure what we were allowed to do or we weren't -- it was always wait and see. And then ultimately --

Mr. Zerbe. Correct. So when you say the midterms, you mean the caucuses and the primaries for the Presidential run?

Mr. [REDACTED]. Yeah. No, I'm sorry. I mean the -- exactly. I'm sorry. The primaries.

So we on our side were preparing for the day of action. We were trying to establish who were the witnesses we wanted to talk to, who were -- we wanted to do search warrants. We wanted to do search warrants of physical residences.

In a failure to file case, that's typically what you want to do, is search warrants. So get inside the house and get evidence related to the unfiled returns, see if they were trying to get their returns filed and just never ended up doing it.

We were always talking about those search warrants, talking about going overt. And it was always we need [to] go through the evidence. We need to go through all [of] the search warrant records. We need to make sure that we've kind of gone through everything before we go overt.

And we didn't agree with it. We pushed this up our management chain that we didn't agree with it.

Our leadership, so leadership within my office, my S-A-C, my SAC, she agreed that we needed to go overt, but at the end of the day they outweighed us on this.

One other thing I would like to note is September 4th, 2020, we had a conference call and [DOJ Tax and Delaware USAO] told us essentially that we were on pause from any overt activities or any activities that could be overt whatsoever. So we couldn't -- we weren't allowed to issue subpoenas.

So I have an example of this -- so October 20th, 2020, right before the election, we're getting ready to go overt the week or two after the election. The election's in early November. We're getting ready to go overt after the election.

And we needed to do a walk-by to make sure where Hunter Biden lives. That's typical of our -- we would go in general clothes, walk by the residence, see what's going on, see if there's Secret Service.

And in an email to Mark Daly, one of the DOJ Tax attorneys, he says: "Tax does not approve. This will be on hold until further notice."

I have never in my career have had Tax Division, let alone approve us doing a walk-by or anything like this.

So my response to him was: "I'm sure I'll get asked." So this is October 20th, 2020. "But can you ask for the reasons why, since I think this would still be a covert action, especially since the U.S. Attorney approved this?"

He says: "Call when free."

And, ultimately, we never were able to do the walk by the residence until after the election. And that's ultimately when we went overt and were able to do the activities that day on December 8th.

Another devastating blow came to the investigation when we lost one of the AUSAs to the private sector in early 2020.

Former AUSA Jamie McCall, who was a judge advocate for the Marine Corps, working primarily as a prosecutor, achieving the rank of captain in the Marine Corps, was a hardworking, no-nonsense kind of AUSA.

I always thought in talking with him that he wanted to do the right thing for the right reason. He would constantly push the envelope, and it was apparent that he was following the evidence and not working to create roadblocks. I firmly believe that his departure had a significant impact on the future of the investigation and the investigative steps.

So I plan on providing you some more assistance -- or some more instances in which the assigned prosecutors did not follow the ordinary process, where they slow-walked and put in unnecessary approvals.

This is obviously not all of them, but is a small set of examples. I can recall [a] meeting prior to the 2020 election in September of 2020 when we were discussing [with the prosecutors] potential additional electronic search warrants and covert subpoenas related to the case.

One of the prosecutors suggested removing the subject's name from the request.

I said on that call that I didn't feel comfortable with removing the subject's name from any documents just based on what might or might not be approved, and I told them that I thought that that was unethical.

DOJ Tax Attorney Jack Morgan said that doing it without Hunter Biden's name would essentially get us most of what we were seeking. I have never been a part of an investigation where we talked [with the prosecutors] about even removing the subject's name from a subpoena, especially a covert subpoena.

Okay. So after the day of action on December 8th, 2020, the prosecutorial team met --

Mr. Zerbe. Explain "day of action."

Mr. [REDACTED]. Okay. Day of action was when we went and attempted to do interviews.

All along we were preparing for doing interviews. I had a list of probably 30 people and I tiered them. So it was Tier 1, Tier 2. And I had a proposal early on that said I want to go and talk to all these people.

It got whittled down to, I think, 10 people on the day of action, some of those people who we were only allowed to serve subpoenas and weren't allowed to talk to.

So that day of action happens. We go and talk to everyone.

So that night, December 8th, 2020, the prosecutorial team met on a phone call. During that phone call we talked about a storage unit that Hunter Biden vacated when he vacated his Washington, D.C., office and stored a lot of the items in there. That was uncovered through that day of action.

On the night, at the direction of Lesley Wolf, I prepared an affidavit in support of the search warrant for the storage unit. And I thought, in looking back at this, that these were pretty telling.

Mr. Zerbe. You need to be clear. Lesley Wolf, who was Lesley Wolf?

Mr. [REDACTED]. Lesley Wolf was the assistant United States attorney in Delaware.

I say to her on December 8th, 2020: "Sending the draft affidavit. I guess I'm happy we drafted this before. I kept the computer language in the warrant in case there are electronic devices."

So I'm going to move on to the next paragraph.

"We will work to get this approved ASAP on our end. So please communicate your thoughts. I would like to possibly execute this sometime next week. I think that is reasonable, given the upcoming holiday."

Her response to me, December 9th, was: "We are getting to work on this, but I want to manage expectations with you regarding timing. It has to go through us, DOJ Tax, possibly OEO, and definitely [Eastern District of Virginia] (EDVA), who has never seen the case before, layer in the filter requirements in the Fourth Circuit, and it's just not clear it's going to happen next week, even with everyone making it a priority."

So that tells me two things right there. That David Weiss wasn't really in charge. And it also tells me that I have never had a case [investigation] to where, if we needed to get records and preserve them, that we didn't do everything in our power to get a search warrant approved and get moving on that expeditiously.

So I guess with the storage unit -- we asked them to keep an eye on it and tell us if anyone went to it. But it was highly unusual that I'm being told that we couldn't even do it the following week.

So let me go back to this.

So after I sent -- after we sent each other these emails, it was ultimately decided by AUSA Lesley Wolf to not do the storage unit search warrant.

On a phone call with AUSA Lesley Wolf -- and this is just from my recollection, I

didn't document this in notes -- I told her that I completely disagreed with her and that we weren't following the appropriate investigative steps to get the stuff in the storage locker and that I thought that she might be acting inappropriately.

At the time AUSA Wolf asked me if we had problems working together now and if I had issues with her moving forward. I responded at the time that I didn't and that we could move forward.

After thinking about it further, I approached them with an idea, AUSA Wolf, and I said: What if we didn't tell Hunter Biden's counsel about the storage unit? He's been given a request for records. What if at the time that he's given for those requests for records he doesn't access the unit? And if he doesn't access the unit, we know he's not complying with that request. So if at the end of that time he doesn't access it, let's do a search warrant on it then. She told me she would think about it.

So I pushed this up to my leadership. I pushed it through my SSA. They all agreed with it. They thought it was a great idea. So they called David Weiss, the U.S. attorney in Delaware.

David said to them that -- they called it "[REDACTED] Plan." "Yes, that sounds like a great idea. Let's plan on doing that." That's what he told them from what I was told after that call, on the call with -- on that call.

So I find out a couple days later that, on a phone call from them, that AUSA Wolf and DOJ Tax Mark Daly called Hunter Biden's counsel and told them about the storage location and said that the request for records includes the stuff [in] there.

So they literally went around my back, my idea, around what we [had] already talked about, and did something completely different. And I guess it was at this point -- there were a lot of things that happened before this. But it was at this point for me that I started to believe that the attorneys with the Delaware U.S. Attorney's Office

and DOJ Tax were not acting appropriately, they were not following the appropriate investigative steps, and that we were not a part of the trajectory and/or the planning of the investigation as we normally are.

I can recall another situation in which investigative activities were being held up by unnecessary approvals and constant slow-walking. In essence, they were not letting me do my investigative job.

So this is an email regarding requesting documents. So I say: "Attached are these document requests for interviews I'm planning to do that are out of town."

So I'm planning to do these interviews, and I send those document requests to them.

Lesley Wolf says to me on September 9th, 2021: "I do not think that you are going to be able to do these interviews as planned. The document requests require approval from Tax Division. At present, Jack and Mark are racing to get the EWC motion on Stuart's desk" -- so Stuart was the [Acting] Deputy [Assistant] Attorney General, Stuart Goldberg at Tax Division -- "Stuart's desk for approval before he leaves town for a week.

"Along with the approval for the" -- and I'm going to leave the name out of that -- "both of these items are higher priority and we can't pull time and attention away to move these subpoenas through.

"Appreciate that are you always trying to stay active and do some travel before your end, but we will be able to get these interviews and document requests done when we have a little more breathing room."

My response to her, September 10th, 2021, was: "Okay. I had planned stuff like this for weeks in advance to prevent this from happening. I had brought up these interviews on multiple occasions, dating back to August 18. And now we are being prevented from doing it 4 days before.

"This is making it difficult for me to do my job. I don't understand why DOJ Tax senior management is needing to approve every simple document request and/or witness interview, and maybe this is a conversation that needs to be had at a higher level.

"I can push these interviews off. Just know that I'm trying to do as much as I can to plan and get the tasks handed down to me accomplished in a timely manner in an effort to ultimately finish the pros report.

"I discussed with Mark" -- Mark Daly, DOJ Tax attorney -- "that interviews we had planned for the end of the month should be a priority as they relate to a former employee, previous business partners, and some 2018 expenditures. I will have those subpoenas for those interviews in California to the pros team by next week so we don't have this issue again."

And so, again -- end of the month I request [to the prosecutors that] subpoenas go out -- or I request document requests to go out -- to go out and travel. And Mark Daly, DOJ Tax attorney, says in an email to me on September 20th -- and these were document requests relating to prostitutes that Hunter was paying.

He says in this: "Subject: Emails sent to management with list of ten document requests to be served."

And he says: "Ask whether they object."

And I said: "You are the man. I will fill you in tomorrow on my issues. I'm almost at the end of my rope, and I am sick of fighting to do what's right. Can you send me the final version so I can send them?"

So this is me further stating -- what I see as further stating to them that I'm sick of fighting for always doing what's right. There were so many situations, and these are just a few, to where I'm fighting to get document requests to go do interviews. I'm fighting to -- and it's just all: Let me think about it. There's too many approvals to go get that

done.

And then not only was I having issues with the prosecutors on the case, but then I had issues internally within the IRS. And I had to go around my senior leadership to my director of field operations. So that's the fourth person above me.

He told me that I can come to him any time with issues on this case -- it's the director of field operations, his name is Mike Batdorf -- that I can come to him at any time and with any issues that I'm having.

And was raising issues all along with so many various people in my management about the slow-walking, the issues that we were having with doing interviews, with doing document requests.

I said to him, Mike Batdorf, on September 20th: "Again I hate to bother you with this. I'm almost at the end of my rope, and I think I'm at the point again where I need your help. I have a ton of interviews and travel planned and scheduled for the next 3 months. Keeping on a timeline is extremely important, and I don't want this to continue to be a problem. I don't mind the questions from management, but it feels like they are not listening to me."

That is a number one -- like the fact that management was not listening to me is an overarching theme regarding this investigation. It felt like they left me on an island.

Mr. Zerbe. Could you give the date of that email?

Mr. [REDACTED]. Yeah, September 20th, 2021.

Mr. Zerbe. Let me just pause there for a second because I want to be mindful of the chairman.

I would say, [REDACTED], that he's probably going -- you've probably got about another 15 minutes to go.

Mr. [REDACTED]. Yeah.

Mr. Zerbe. He's probably got 15 minutes to go in his opening statement, if that's all right, but we can also pause because I think you're going to get into the prosecutorial memo referral, which is kind of important, but kind of a natural break point.

So we're happy to keep going. We're happy to pause. And if the chairman's got any questions, because I know you're a busy fellow, we can do that, too. So you tell me how you want to --

MAJORITY COUNSEL 1. I think if you have 15 minutes, let's go ahead and finish that up.

Mr. Zerbe. Okay.

MAJORITY COUNSEL 1. And then we can take a short break.

Mr. Zerbe. Okay. Perfect.

Go ahead. I'm sorry.

Mr. [REDACTED]. Okay. I wanted to mention one more thing. I can recall wanting to interview and getting records from Hunter Biden's children and members of the Biden family. There were expenses paid for the children, as well as potential credit card expenditures and Venmo payments, that were deducted on the tax return.

On October 21st, 2021, AUSA Lesley Wolf told us it will get us into hot water if we interview the President's grandchildren. That was completely abnormal, out of the question. And it's a part of our normal process that we go and interview people, especially people who are receiving money or receiving payments related to a case like this.

So that's just another example of issues like that.

So in October of 2021, we had what was called a tax summit to where we all met together. When I say "we all," so the prosecutors, so Jack Morgan and Mark Daly from DOJ Tax, Lesley Wolf and Carly Hudson from the U.S. Attorney's Office in Delaware.

So at that time we decided what charges we were going to push forward in the prosecution report. So we all made the decision on that we were going to move forward with 2014, 2015, 2016, 2017, 2018, and 2019. And it would be felony counts related to 2014 and felony counts related to 2018. That was the decision made at that time.

So I drafted the prosecution report. I spent all Thanksgiving, around that time, drafting this massive report. Our reports are a lot of evidence. There's a lot of stuff that goes into it.

So in November [I] drafted the report. It went up to our internal counsel. So they're called Criminal Tax counsel. Went up to our internal counsel.

They review it for legal issues, and they actually give a recommendation to our leadership on whether to move the case forward or not. They basically give an approval or a declination.

All along they were telling me that that -- CT counsel attorney was telling me -- her name was Christy Steinbrunner -- we're good to go on these, I'm going to give you [a] green [light]. So green being that you're good to go on those years, and yellow, yellow being caution. She was telling me that they were going to concur to it. I was hearing that all along.

And they took almost -- more than 60 days on their review, which is more than they're allowed. Took more than 60 days. And in February of 2022 -- and I'm not going to get into the details of this -- they end up sending a nonconcur, so a declination for all of the tax years at hand.

And I asked -- I messaged the CT attorney, Christy Steinbrunner, and I go: You told me that we were concur, that we were good to go.

And she said: I always told you it was green -- or I always told you it was green

and yellow.

I have to look at what the statement says. But basically she told me what I stated in there, that it was a concur.

So that was one of the first times where I was like, well, gosh, now we have these issues with our U.S. Attorney's Office and DOJ Tax, and now I'm also having issues with CT counsel.

So our leadership ended up pushing that forward and ended up approving it and sending it to DOJ Tax in February or March of 2022.

So let me go to my notes here.

So February 25th, 2022, the IRS sent the prosecution report forward to DOJ Tax and the U.S. Attorney's Office. So in my report proper venue for the case was in D.C. and California. We had no venue in Delaware whatsoever for the tax charges.

I recall hearing --

Mr. Zerbe. And why is that?

Mr. [REDACTED]. So for failure to file charges, if there are failure to file charges, it's where the subject lives.

If it's a false return or if it's an evasion charge -- so if it's false return, it's where the return is prepared or sent from. If it's an evasion charge, it can be where the overt acts occurred. So for 2014 and 2015, venue was D.C. For 2016, '17, '18, and '19, the venue was in California.

On or about March 14th, 2022, they're now able to have what's called a taxpayer conference with defense counsel. That gives an opportunity for defense counsel to come in and present: Here are our defenses. Here's why we don't think that you have a case.

All the cases I've ever been a part of, they're afforded one. In this case I know

that they've had three. With the most recent one, they've had four. So that's high -- I have never heard of that in my career.

So they have the taxpayer conference. On or about April 26th, 2022, they have a second taxpayer conference. At that conference -- at that taxpayer conference they present defenses for 2014 and 2015. We end up reinvestigating the case relating to 2014 and 2015.

I guess -- most importantly, I need to step back a second.

March of 2022, we are told -- I get a phone call that they are bringing the case forward to start -- I need to ask you a question about how I --

MAJORITY COUNSEL 2. We can go off the record, please.

[Discussion off the record.]

[10:41 a.m.]

Mr. [REDACTED]: Okay. So in March of 2022, we know that they are going to D.C. to open a case, okay?

So I'm told -- and this is from my recollection of conversations, and I do not have notes on this. As I am the case agent, we wouldn't typically take notes on this.

I am told that it was sent to the line attorneys in the D.C. U.S. Attorney's Office. They got my prosecution report, all the information that we had, and said, hey, we want to open up this case here. The line attorneys there said, here's the process. We'll get you guys going.

Two days later, I find out another meeting was -- so meanwhile, presenting the case to D.C. was something we asked for but was denied. We were not allowed to go there to present the case to D.C. We were all to rely on the attorneys to go and do that.

So in March -- or a couple days later after that meeting, I get a phone call. And this is -- from my recollection, from Mark Daly, the DOJ Tax attorney. And I think he was a little bit too forward with his information he gave me. But he basically said that now that the U.S. Attorney looked at the case, they don't want to move forward with it.

And essentially what he told me is that not only are they not going to join the case and give us assistance -- so give us another AUSA, give us someone to help there -- they also told our prosecutors that they don't think we have -- that we can -- or they don't think that we have the charges -- or not the ability, but the evidence for the charges to charge in D.C.

So not only was it a, no, we're not going to help you, but it was a, you shouldn't bring the charges here, essentially.

Mr. Zerbe. Can we go off the record?

MAJORITY COUNSEL 1. Off the record, please.

[Discussion off the record.]

MAJORITY COUNSEL 1. On the record.

Go ahead.

Mr. [REDACTED]: So the first impression from the D.C. U.S. Attorney's Office was, yeah, this all looks great. Here's the process. It didn't sound like they were going to move to say no to it. It sounded like, hey, the lower-level attorneys were like, whatever we need to do to get this going. And then it changed.

So, I mean, that was frustrating for me. But at the end of the day -- they're following this normal process that they call[ed] it.

So that all happened. So we're no longer talking about D.C. anymore. Now we have -- the defense is presented 2014, 2015, and I was having a lot of issues with the DOJ Tax attorneys and the AUSA regarding 2014 to 2015, because now they're doubting it. So what we ended up doing is reinvestigating all of it.

We ended up looking at the evidence, and we found emails that actually showed that Hunter Biden [had] planned [for] what happened that caused him to essentially evade his taxes for 2014. We presented this. We dug into it. We figured this all out. And hopefully after this, I can go through some of that for you guys.

But we dug through this all. And then we were like, we finally figured it out. This is why this happened. And it felt like the line attorneys weren't listening to us. They weren't following the evidence. They were saying, well, they provided this defense, so that's the way it has to be, versus us looking at it like, well, no, let's figure out the way that the evidence shows us.

So there was a heated argument between myself and Jack Morgan, the DOJ Tax attorney, where I said, I don't think you are looking at the evidence appropriately. You

are saying something completely different than what the evidence is showing.

And he asks another time, do we have a problem here, [REDACTED]? Are you questioning my ethics? Are you questioning my integrity? Another argument like that.

So we ultimately ended up asking for a meeting with David Weiss, the U.S. Attorney in Delaware. We were afforded that. And at that same time -- so this is in mid-June -- we met with David Weiss and all the leadership. Including FBI, ASAC, SAC, all the people from FBI, and Stuart Goldberg, the [Acting Assistant Attorney General] of Tax Division. We all met in D.C. We were able to present on the findings regarding 2014, 2015, the case, and moving forward related to it.

We were constantly pushing David. We were pushing our leadership with -- I'm using the wrong word. We were reciting what the evidence showed. And I'll show you what the evidence was.

Ultimately, what happened is we have a meeting. A phone call. It's in early August. And we get a phone call, all the teams on it together. So AUSA Lesley Wolf, Carly Hudson, Jack Morgan, and Mark Daly, DOJ Tax.

And they say at that meeting that we are going to approve the recommendation of charges for the -- and this is from my recollection. They are going to approve the recommendation of charges for the 2017, 2018, and 2019 tax years and that the venue for those -- the appropriate venue for those is California. They were not approving 2014, 2015. And I don't remember if it included 2016. I can't remember that off the top of my head.

But I want to say that -- in an email from Mark Daly on August 18th, 2022, after this phone call, he basically said, we have three upcoming interviews, these three interviews for weeks in September. He says, in here, the week of September 19th, we may be conducting the case in two separate districts: Delaware, Los Angeles. And they

say for Los Angeles, they're going to intro the case and possible readback. So that shows me that they're presenting the case out to California, they've approved the charges, and they're moving forward on it.

I want to say one more thing. We also learned that they gave what's called discretion. This is what I was told. This is from my memory. But that they didn't get full on approval. They gave discretion to charge the case. From my understanding with Tax Division, if they were to approve the charges, according to policy, California would have to charge the case.

So we have one last meeting with David Weiss, U.S. Attorney in Delaware, in early September -- it was either end of August, early September 2022 -- to talk about the 2014, 2015 tax year. And at that meeting, 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.

At that time, David is telling us, well, I'm still weighing it. I love the 2014, 2015. Essentially, I want to charge it. And at that meeting, he tells us -- we ask him, when are we going to charge? And he says, well, hopefully end of September. It was kind of up in the air.

Then October 6th happens to where there's an article in -- I apologize. So this gets into what happened and why we were ultimately removed. So October 6th -- I believe is the date -- The Washington Post has an article. In that article, it talks about this difference between the investigators and the prosecutors.

And there are statements that are made in there from Hunter Biden's counsel that basically is saying that we're not getting a -- we're getting a biased view and that -- threatening us with criminal wrongdoing if this is being leaked to the media.

So October 6th, that article comes out. October 7th was the meeting with the leadership and David Weiss. And that's where those statements were made regarding David saying, I'm not the deciding official on whether charges are filed. He has no authority to charge in California, essentially, is what is told to me about that meeting.

After that article on October 6th, we have one more interview left. We're still talking with the AUSAs. They're still meeting with us.

October 12th, 2022, was the last investigative interview that we did. I had a phone call -- I think it was around the week of October 22nd. I have it in my notes over here.

But I had a phone call with AUSA Lesley Wolf, and she asked me for the significant case reporting that my manager sent up to [IRS] leadership. She asked this as a part of discovery. She didn't ask for -- Five months prior to this, we turned over some discovery. It's highly unusual -- or I've never had it happen to where they've asked me for my manager's either emails or discovery.

And it was at that point that I believe things changed with them, and they saw some information in -- or I don't know what it was, but -- they request[ed] discovery to include emails from the team, but it also included emails and documents from supervisors.

And just so you know, that would be super unusual because -- imagine if the chief of our agency had to provide discovery in all the cases that we work. It just would be impossible.

Anyways. So, requests discovery. And then -- I'm sorry. We essentially get

removed from the investigation. So at that point, we are essentially removed.

So I sent an email on December 7th that says, "So I was informed by my SAC that the meeting scheduled for tomorrow needed to be canceled and that he will field updates from now on. Please confirm that this is correct and send out a meeting cancellation to the team." This is December 7th, 2022, to Mark Daly, DOJ Tax.

Mark responds December 8th. David -- meaning David Weiss, U.S. Attorney -- and Darrell -- Darrell Waldon, the SAC of IRS -- had been in conversation, and that's what they have decided. I will let the team know.

So we found out through talking with our SAC that the attorneys had found -- we were always asking for updates on charging. When are we going to charge? When are we going to charge? We were told that the prosecutors had found some emails that concerned them if they could actually charge the case. That's what they said to us.

So at that point, I'm just -- I'm shocked. And I'm like, you guys told me prior to this that these years are slam dunks. We were in a whole posture to charge. And then all of a sudden, they are saying this.

Continue to move forward to end of April. The media article comes out regarding the whistleblower, and I don't think it was maybe 2 weeks later.

Mr. Zerbe. Can we go off the record?

[Discussion off the record.]

MAJORITY COUNSEL 1. We'll go on the record.

Mr. [REDACTED]. I wish to close with one final thought. I think about all of this, the difficult and grinding path that I and my colleagues have had to take in this matter, and how best it could be avoided.

I humbly view my role here today and response to the committee's request was to provide the facts as I best understood them, and to let Congress, the administration, and

the public consider those facts and determine the best path forward.

However, for myself, as I reflect, it is not difficult not to believe that appointing a special counsel in this matter is the best way to go forward to give everyone confidence in the fairness of our tax system.

While the impression was that the U.S. Attorney in Delaware has essentially the powers of special counsel in this case, free rein to do as needed, as is clearly shown, this was not the case. The U.S. Attorney in Delaware in our investigation was constantly hamstrung, limited, and marginalized by DOJ officials as well as other U.S. Attorneys. I view that a special counsel for this case would have cut through the toughest problems that continues to make problems for this case.

I would ask Congress and the administration, after reviewing the facts, to consider a special counsel for this case as well as consider the appropriateness of this special counsel taking under their authority all the related cases and spin-off investigations that have come forward from this investigation, related cases that I believe are subject to the same problems and difficulties we had.

Lastly, I would encourage Congress and the administration to consider establishing an official channel for Federal investigators to pull the emergency cord and raise the issue of the appointment of a special counsel for consideration by your senior officials.

I do not want my colleagues at the IRS, FBI, and other Federal law enforcement agencies to go through my frustrating and disheartening journey. I believe having such a path will strengthen the public's confidence in their institutions and the fair and equal treatment of the Americans under law.

MAJORITY COUNSEL 1. Let's go off the record.

[Discussion off the record.]

MAJORITY COUNSEL 1. We'll go back on the record.

And I'll turn it over to Chairman Smith to ask a few questions.

Chairman Smith. Thank you.

Thank you for your opening statement and getting us started, and thank you for your bravery as to what you stated to do the right things for the right reasons. We appreciate that.

A couple things that I want to talk about. Earlier, you said you sent an email just a few weeks ago to the Commissioner of the IRS. What was the email address that you sent the email to?

Mr. [REDACTED]. So I believe it was just Douglas -- I believe it was just his email that was in our directory --

Chairman Smith. I just wanted to clarify if it was the same email that I have for him. That's why I want to know if you could tell me what his email address that you sent --

Mr. Zerbe. Sure. We'll get it --

Mr. [REDACTED]. I don't have it with me, but I would need to go in my computer, and I can actually see the email.

Chairman Smith. Exactly. If you could get that to us, that would be helpful.

Also, could you tell if that email had been opened?

Mr. [REDACTED]. I didn't put [a] read receipt on it.

Chairman Smith. Okay. Did you get a response from that email?

Mr. [REDACTED]. No, I did not.

Chairman Smith. Okay. In that email, did it ask for him to look at it with concerns of the case? What was the basis of the email?

Mr. [REDACTED]. Do you care if I read it?

Chairman Smith. Sure.

Mr. [REDACTED]: I actually -- if you don't mind, like, it was something --

Mr. Zerbe. Just to be clear, we're happy to share the email with you as well. It was kind of either bring material or don't bring material. So we had not wanted to --

Chairman Smith. Read the email for the record.

Mr. Zerbe. Yeah.

Mr. [REDACTED]: Okay. So it went to Douglas O'Donnell, [Deputy] Commissioner, Daniel Werfel, Commissioner, Jim Lee, chief of IRS CI, Guy Ficco, which is deputy chief, Michael Batdorf, who was the director of field operations, Kareem Carter, who was my special agent in charge, and Lola Watson, who was my assistant special agent in charge.

It says, "My respective IRS leadership, first off, I apologize for breaking the managerial chain of command, but the reason I am doing this is because I don't think my concerns and/or words are being relayed to your respective offices. I am requesting that you consider some of the issues at hand. I'm sure you are aware I was removed this week from a highly sensitive case out of the Delaware U.S. Attorney's Office after nearly 5 years of work. I was not afforded the opportunity of a phone call directly from my special agent in charge or assistant special agent in charge, even though this had been my investigation since the start."

And outside, I still have not received a phone call from my assistant special agent in charge or anyone in my IRS CI leadership other than my supervisor.

"I can't continue to explain how disappointed I am by the actions taken on behalf of our agency. I want to echo that I love my job, I love my agency, and I am extremely appreciative of the job and position that I've had over the last 13 years. There is a human impact to the decisions being made that no one in the government seems to care about or understand. I had opened this investigation in 2018, have spent thousands of hours on the case, worked to complete 95 percent of the investigation, have sacrificed

sleep, vacations, gray hairs, et cetera. My husband and I, in identifying me as the case agent, were both publicly outed and ridiculed on social media due to our sexual orientation. And to ultimately be removed for always trying to do the right thing is unacceptable, in my opinion.

"Again, my leadership above my direct manager, who was also removed, didn't give me the common courtesy of a phone call, did not afford me the opportunity of understanding why this decision was made, and did not afford me an opportunity to explain my case. If this is how our leadership expects our leaders to lead, without considering the human impact -- or without considering the human component, that is just unacceptable, and you should be ashamed of yourselves. I am continually asking myself, is this the kind of culture we want within the IRS and that I want to be a part of? For the last couple years, my SSA" -- supervisor -- "and I have tried to gain the attention of our senior leadership about certain issues prevalent regarding this investigation. I have asked for countless meetings with our chief and deputy chief, often to be left on an island and not heard from. The lack of IRS CI senior leadership involvement in this investigation is deeply troubling and unacceptable. Rather than recognizing the need to ensure close engagement and full support of the investigatory team in this extraordinarily sensitive case, the response too often had been that we were isolated, even when I said on multiple occasions that I wasn't being heard and that I thought I wasn't able to perform my job adequately because of the actions of the U.S. Attorney's Office and Department of Justice.

"My concerns were ignored by senior leadership. The ultimate decision to remove the investigatory team from Delaware, without actually talking with the investigatory team, in my opinion, was a decision made not to side with the investigators, but to side with the United States Attorney's Office and the Department of Justice, who

we have been saying for some time has been acting inappropriately. I appreciate your time and courtesy in reviewing this email. Again, I can only reiterate my love for my work at CI and great appreciation for my colleagues and a strong desire for CI to learn from and be strengthened by my difficult experience. I never thought in my career I'd have to write an email like this, but here I am. Thank you, again, for your consideration with me."

And that email did receive a response.

Mr. Zerbe. We'll go off the record.

[Discussion off the record.]

Chairman Smith. Back on the record.

Mr. [REDACTED]. On May 19th, 2023, Lola Watson wrote to me. On the subject line, it says, "Reminder: Chain of command."

"Good afternoon, Special Agent [REDACTED]. We acknowledge your email received yesterday morning. You have been told several times that you need to follow your chain of command. IRS Criminal Investigation maintains a chain of command for numerous reasons to include trying to stop unauthorized disclosures. Your email yesterday may have included potential grand jury material -- grand jury, a.k.a. 6(e) material -- in the subject line in contents of the email, and you included recipients that are not on that 6(e) list. In the future, please follow previous stated directives and this written directive that no information should be sent to the director of field operations, deputy chief, chief, or any other executive without being sent through my office or the SAC's office first."

Chairman Smith. The letter your counsel sent to the committee references your removal from the case. I think you know that on May 15th, 2023, a letter was sent to me and Ranking Member Neal by another whistleblower's counsel, noting that the entire investigative team had been removed from the case.

Can you confirm that you were removed from the case?

Mr. [REDACTED]: I can confirm that I have been removed from the case, yes.

Chairman Smith. How long had you been working on this investigation by the time you were removed?

Mr. [REDACTED]: Since November of 2018. So approximately 5 years.

Chairman Smith. Who informed you that you were being removed from the investigation?

Mr. [REDACTED]: I learned through my supervisor, Gary Shapley.

Chairman Smith. How were you informed that you were being removed from this investigation?

Mr. [REDACTED]: He told me -- Gary Shapley told me that he was removed and I was removed.

Chairman Smith. So it was by phone call?

Mr. [REDACTED]: Yes.

Chairman Smith. Have you ever been removed from an investigation prior to the one at issue here?

Mr. [REDACTED]: Can we go off the record for a second?

[Discussion off the record.]

MAJORITY COUNSEL 1. We can go back on the record.

Mr. [REDACTED]: So I want to be clear with this. Can I explain what happened?

The assistant special agent in charge, Lola Watson, sent Gary an email -- not me, Gary Shapley -- my supervisor an email saying that they want to have a call regarding Sportsman. So a Sportsman update call. Gary, not feeling comfortable with our leadership, asked me to be on that call as a witness. I was not invited on that call, but I participated via phone on that phone call.

And it was during that call that -- I overheard it, and they said that essentially the ITFC -- so our group was removed from the investigation, and they were going to replace us with some other agents within the D.C. Field Office that they didn't know the names of yet. There was no mention of, we need you to tell [REDACTED]. No mention of me whatsoever. It was just that we were removed from the case.

Chairman Smith. Do you know who it was that said that on the call?

Mr. [REDACTED]. That was Special Agent in Charge Kareem Carter.

Chairman Smith. Okay.

Mr. [REDACTED]. And I can tell you that Supervisor Gary Shapley really challenged him with, you're not doing the right -- you're not making the right decision here. Really challenged him with, are you sure you want to make this decision? So --

Chairman Smith. And the individual that made that statement on the call, who was he employed by?

Mr. [REDACTED]. The Internal Revenue Service.

Chairman Smith. The IRS?

Mr. [REDACTED]. Yes.

Chairman Smith. Not the Department of Justice?

Mr. [REDACTED]. Correct.

Chairman Smith. Who are his supervisors?

Mr. [REDACTED]. His supervisor would be Mike Batdorf, director of field operations, for the IRS Criminal Investigation. And then above him would be Guy Ficco, deputy chief of IRS Criminal Investigation. And then above him would be our chief, Jim Lee, IRS Criminal Investigation.

Chairman Smith. And then who is above Jim Lee?

Mr. [REDACTED]. The Deputy Commissioner, Daniel Werfel, and then Commissioner

Douglas O'Donnell.

Mr. Zerbe. To clarify that, that's the Deputy -- the Commissioner is Werfel.

Mr. [REDACTED]. Yes. You're right. I'm sorry.

The Commissioner is Daniel Werfel. Deputy Commissioner is Douglas O'Donnell.

Chairman Smith. Have you ever been removed from an investigation prior to the one at issue here?

Mr. [REDACTED]. No, I have not.

Chairman Smith. The May 15th letter notes that you and your team were informed that the change was at the request of the Department of Justice. Is that your understanding?

Mr. [REDACTED]. Yes.

Chairman Smith. But it was the IRS employee that, on the phone call, said you were removed?

Mr. [REDACTED]. Correct.

MAJORITY COUNSEL 1. Why do you believe it was the Department of Justice?

Mr. [REDACTED]. I have a document I could go to, but I believe it's because he said it was at the Department of Justice's request. That's just from my recollection of what I heard.

Chairman Smith. If you have a document, that would be helpful.

Who was responsible for communicating your job duties and responsibilities?

Mr. [REDACTED]. It would be my supervisor. My direct supervisor. So Gary Shapley.

Chairman Smith. Who has the ability to reduce or change your job duties and responsibilities?

Mr. [REDACTED]. Anyone from my supervisor all the way up to -- it could be anyone in

that chain of command.

Chairman Smith. Could Commissioner Werfel have any responsibilities and direction of any of his employees at the IRS?

Mr. [REDACTED]. That, I don't --

Mr. Zerbe. Let me rephrase the question.

I think, Chairman, you're asking, would the Commissioner have the authority to assign or reassign your duties if he chose to do so?

Mr. [REDACTED]. That was the purpose of my email, was to make him aware of what happened. And I thought that he was -- I'll give you an example.

With a chief executive officer at a company, you would think that they're in charge of everything that happens within their company. So that was where my thoughts were, is that if I'm having difficulty with my chain of command -- my leadership that I've gone to for so long on this case -- I had to go above them. That was my thought.

Chairman Smith. You've been an IRS employee how long?

Mr. [REDACTED]. 13 years.

Chairman Smith. 13 years.

And do you view the Commissioner of the IRS as the top of the chain of command?

Mr. [REDACTED]. So I think that Janet Yellen out of the Treasury, since we're under the Department of Treasury, would be above that, but --

Mr. Zerbe. Right. Let me go off the record.

[Discussion off the record.]

MAJORITY COUNSEL 1. Back on the record.

Mr. [REDACTED]. Yeah. I would think that the Commissioner is in charge of the IRS.

Chairman Smith. And of all of the 80,000-plus employees of the IRS?

Mr. [REDACTED]: Yes.

Chairman Smith. Who do you believe is responsible for your removal from the case team?

Mr. [REDACTED]: This is my opinion based on my observations and everything that I've seen so far. It would be -- Department of Justice Tax would have been involved, so Mark Daly and Jack Morgan. I think that Stuart Goldberg also would have had some say in this, who is the deputy attorney general for Tax Division. And then David Weiss and the people that were part of the U.S. Attorney's Office, so Lesley Wolf and Carly Hudson. I would say that those people had some say.

Chairman Smith. Is there anyone else at the IRS that we should talk to to fully understand how this decision was made?

Mr. [REDACTED]: It would be the special agent in charge, Kareem Carter. And I think it's important that, on that phone call, we asked for a reason why and weren't given that.

Chairman Smith. Have you been given a reason yet to this day?

Mr. [REDACTED]: No, we have not. And I can tell you in my normal course of investigations I work, why an agent would be removed is for conduct. So if they did something wrong. But I've never seen it to where they would remove from a supervisor down -- anything like that ever.

Chairman Smith. How many people were removed from this team?

Mr. [REDACTED]: So from the way that it was phrased on the phone call, it was my supervisor and our International Tax and Financial Crimes group. So there's 12 people total in our group.

Chairman Smith. So 12 people were removed counting the supervisor?

Mr. [REDACTED]: It would be 13 counting the supervisor. But that's just me going off of my recollection. It's around that figure.

Chairman Smith. Okay. One other thing that I want to just touch on that's a little bit different than this, in your opening statement, you were talking about an individual that made the statement to you saying that the President's grandchildren, you should not interview? What was that?

Mr. [REDACTED]: Yeah. So -- yeah. So AUSA Lesley Wolf -- and this was in quotes, so this must have been something that my -- so I also want to be clear on something else. Normally in an investigation, if we're having a meeting or whatnot, we would take notes, investigative notes, but there really isn't much that goes into those notes in a meeting. And I didn't think I would need to document things that were being said during those meetings.

But at this time, after discussions we were having internally, my supervisor felt it necessary when some of the inappropriate comments that were being made -- to start documenting them.

So, yeah, it says in quotes, "will get us into a lot of hot water if we interview the President's grandchildren." And I don't remember what ultimately happened with the grandchildren. I know I have never interviewed them, and we have not interviewed them.

Chairman Smith. And who was it that said that?

Mr. [REDACTED]: AUSA Lesley Wolf.

Chairman Smith. Was it common when talking about this case to talk about how the President felt?

Mr. [REDACTED]: No, not how the President felt. No, I don't think so.

Chairman Smith. Or to even refer to it as the President's son or the President's grandchildren?

Mr. [REDACTED]: Yeah, I think there were times where we did refer to them as the

President's grandchildren, yes. Like, for example, for James Biden, we would call him the uncle. So that's how we referred to him, as the uncle.

Mr. Zerbe. Let me go off the record.

[Discussion off the record.]

MAJORITY COUNSEL 1. Back on the record.

Mr. [REDACTED]. There were a lot of times to where they would discuss the election or discuss politics, and I had to say, on multiple occasions, that I felt that it was inappropriate that they were saying it. And there were things that would come up. For example -- even though there were smaller transaction amounts -- there were Venmo transactions that were paid to family and friends. And some of these Venmo transactions were deducted.

So I continually asked, Can I go and interview them? And can we understand what these payments were for? If they made other payments? And those were always met with no. And I think one of them was Valerie Owens that we talked about that I wasn't allowed to go and do that interview. I believe that Valerie is a relative of Joe Biden. It might be his sister. I don't -- all I know is she's a relative of his.

Yeah. So standard practice is -- for any transaction, you want to go out -- and a lot of our job is hitting the pavement, going out and talking to people. There was a lot of different investigative steps that we took, that even going and talking to the prostitutes, we found multiple people that he called his employees that were also prostitutes, and that he would have them clean his hotel room or -- there were a lot of these interviews that we ended up going and doing and talking to people that were so worth it, even though someone might -- we were always being told by the prosecutors, you guys are wasting your time going and doing that. It's not worth it. And literally, I would surprise them every time and find everyone.

Chairman Smith. Thank you.

Mr. Zerbe. Thank you.

Mr. [REDACTED]. Thank you.

BY MAJORITY COUNSEL 1:

Q So to follow up on some of the chairman's questions, you mentioned Kareem Carter as the person who made the statement on the phone call about the removal of the team. Is that right?

A Yes.

Q And you mentioned the chain of command up from there.

Do you know whether anyone else in that chain of command was aware of this decision?

A I do not know that. I think they are after my email.

Q Understood.

But you don't know prior to that?

A Yeah. And to be completely candid with you, I was talking with my -- I essentially wanted to have a meeting or a sit-down and explain to -- now above all my leadership -- because at the end of the day, I don't think we would be sitting here right now if us as agents -- myself and the co-case agent and Gary -- were afforded the opportunity to sit down with our chief or deputy chief to explain to them, hey, guys, here's the problems we're encountering. Here's the meeting that [we] just had. What do we do to fix this? Because we're the IRS. They're Department of Justice.

Obviously, we refer the case to them to prosecute, but if we feel that something is going wrong with it, they should be there to help us through those problems, not putting their head down and not listening to us.

Q So you mentioned Michael Batdorf and that he had told you previously that

you could go directly to him. Is that right?

A Yes.

Q Did you do that at the stage where you learned that you were removed?

A I did not.

Q Okay. Did you feel like you could talk to him about this issue?

A No, because I've been having other issues with him on another case I'm working that is -- I felt like that chain of -- that that relationship was broken.

Q When did that relationship start to break down?

A Probably since mid-October, maybe, would be my guess. I mean, it's -- yeah. It's definitely --

Q Mid-October 2022?

A Yes.

Q And you mentioned issues you were having with him on another case. It's totally fine if you don't want to get into the specifics of that particular case, but can you generally describe the issues that you're referring to?

A Yeah. I need to stay very, very high level on this.

I had received approval with a strategy related to this case. And they backtracked that approval a couple weeks later and said to me that we need to put this on pause and that we'll get back to you on what strategy we're going to do moving forward. And we're still on a pause right now.

MAJORITY COUNSEL 1. Can we go off the record real quick?

[Discussion off the record.]

MAJORITY COUNSEL 1. We're back on the record.

BY MAJORITY COUNSEL 1:

Q We were talking about the approval on the strategy for this other case.

And just to clarify, this is a totally unrelated matter?

A Unrelated matter, yes.

Q Okay. And can you describe more about what happened to that strategy?

A It felt like it was -- all along, we had been -- for the past probably year, we had been communicating a strategy on this case that is tackling a big problem and trying to tackle it efficiently, okay? And it's a compliance issue in this area.

So we were briefing our [IRS] leaders and constantly having meetings about what we're planning on doing, and they were on all [of] these phone calls, and we were sending emails of our strategy. And very recently, one of those strategies was moving forward on this compliance issue, and we were a go on it.

And a few weeks later, I receive[d] a phone call that basically says, you're being paused, and we're having to relook at what you were doing, and we will make a determination moving forward.

So now, to all my peers and the different people, I was the one pushing the strategy, and it got halted in place, and now I have to go back to [these] people and explain to them why -- it was just a mess. It was an absolute mess.

Q When did you get that phone call saying that you were being paused?

A It was in February of 2023. It was either a phone call or an email.

Q And have you been able to proceed since then, or do you remain paused?

A On that specific aspect of that investigation, as of right now, yes, we're still on a pause.

Q So other than the removal from the case team, are there any other issues that have come to your attention that give you concern about possible retaliation?

A Yeah. So when I say there's a lot of this -- I sent an email on April 13, 2023, to Lola Watson, my assistant special agent in charge. And I said, "So I want to put" -- [at

this point] we're still on the Hunter Biden investigation.

And I say, "So I want to put some stuff in front of you regarding updates I am hearing on the Sportsman, et al investigation, that I am not hearing through you or Kareem" -- Kareem Carter being the SAC -- "which is concerning to me. I don't think that you or Kareem have any reason to keep things from me, but I wanted to make you both aware of some of these updates."

And some of these updates were Hunter Biden's counsel meeting with DOJ Tax -- or meeting with Main DOJ at the end of the month, which I viewed as a significant update that I hadn't heard through them. Because remember that previous email, all communication was now [to go] through David Weiss and the SAC.

It also says here, "I have heard that David Weiss is currently asking for a prosecution memo" -- prosecution memo -- "from DOJ Tax approving the tax charges. I would consider this a significant update since indicating that David is seeking the charging authority."

And then there's other related investigative questions that I had, but I thought that this was another email in the chain that was, like, no one's -- we were essentially removed since --

Q So this is prior to what we could call formal removal in May 2023. Is that right?

A Yes.

Q So at this time, you were still officially on the case. Is that right?

A Yes.

Q Okay. Is it your testimony that, although you hadn't been formally removed, you felt that you had been cut out of the case prior to that?

A Yes. Absolutely.

Q Okay. And when did you first feel that you were cut out of the case?

A It most likely would have been at the end of October. When they requested my discovery so that -- the significant case reporting and the emails from my supervisor. That was when I felt that the -- or I didn't feel. I thought that the posture changed with our relationship.

[Discussion off the record.]

Mr. [REDACTED]: We're back on the record?

MAJORITY COUNSEL 1. Yeah.

Mr. [REDACTED]: So October 6th was the Post article. And I remember hearing from them that that touched super close to the investigation and that they felt that [it] was information that's coming [from] inside the investigation.

All along, all up until this point, we would constantly be on the forefront of, Hey, any media updates? What's going on? On our weekly calls, we would always discuss media.

Prior to this, there were other leaks. After our day of action in December of 2020, we got word that a couple of the news sources were going to release an article on the investigation. This was a couple days prior to us going public -- going overt.

So that leak happened, and nothing changed after that one. And everything indicated, even in communication in meetings from what I recall -- we thought that the leak was potentially from someone in [the] Department of Justice. So we would constantly be talking about, yeah, it's not an IRS person. It's not anyone on the team. It's always -- it appeared like it was someone from Department of Justice. So that's what kind of shocked me with this moving forward.

I was interviewed by an investigator -- I think they were with TIGTA. I told them, I didn't leak anything. I thought that the leak might have come from either defense

counsel, or from DOJ like the other ones came. But what I can tell you, and I've told this to the prosecution team, I've done everything that I can to keep my record clean and to keep my ability to testify as the case agent as clean as I possibly can.

And it honestly -- it hurt. It hurt that these are people I talked with on a daily basis. And even after the investigators came and I told them that I didn't leak the information, it was a complete shutoff of talking.

So it was end of January, early February, I am told about a meeting that is held with FBI only. There's no IRS people there. And it's regarding some of the spin-off investigations. And one of the former forensic accountants who was on the case was a part of that meeting. So they were moving on with some of our other spin-offs.

We had other tax spin-off investigations that were completely stopped. We haven't done anything on those since. But yet they were moving on those other ones. But we were not there.

BY MAJORITY COUNSEL 1:

Q And is that atypical?

A Yes. Normally, we would have been invited, especially because those other spin-off cases -- one of them has a tax component to it.

Q And the timing of that was late January, early February 2023? Is that right?

A Yes.

Q Okay.

A I did hear from FBI that they were being treated the exact same way -- that they had to communicate through their SAC to the U.S. Attorney in Delaware.

Q Can you tell us who you heard that from?

A So I could -- so her name -- I'm not meaning to be -- so it's Michelle Hoffman. I know she's a career employee there. I would ask that if her name could be redacted,

that we redact it.

Q Understood.

A But I don't want -- because she's not someone that would want to be brought into something like this. She has a career.

Q Understood.

Taking a step back on the issue of spin-offs, how would it typically work if you were working a large case and you learn of other information that leads you to think you need to investigate a spin-off in another issue? What kind of process would normally play out?

A So the process is a little bit different because we're with this international tax group. We can work cases anywhere. So the venue for the stuff we work really doesn't matter.

But typically within our agency, if we have a spin-off and there's -- there were other spin-offs in this case that we spun off the information to another IRS office. So we actually met with them. We sat down. Here's the evidence. And then they took the case on after that.

But the ones that I held closely in this case were ones that were in the area of where we were working this case, and they were -- it was information -- they were current investigations I was conducting.

Q So the nature of these specific spin-offs would typically involve your international tax group --

A Yes.

Q -- on a going-forward basis?

A Yep.

Q Okay. So after October 2022, any other concerns or instances that might

be considered retaliation that you have?

A None that I can think of.

[Discussion off the record.]

Mr. [REDACTED]: Could I say something else real quick?

MAJORITY COUNSEL 2. Of course.

Mr. [REDACTED]: So what's kind of the most shocking to me is that we were on the trajectory of charging the case. And we literally finished our investigative steps. The pros memo from Department of Justice Tax was written. I had worked with the -- they call it a third-party person who reviewed the case. I had discussions with him. And in all reality, we were looking towards indicting.

And to hear from the DOJ Tax people -- they weren't sure whether David was going to be able to sign the indictment alone or whether it would have to be David and the U.S. Attorney in that area.

And now, I've come to learn through everything that David couldn't sign an indictment that's out of district. He had to have that U.S. Attorney there. That's what my understanding is, at least. And I've come later to hear -- through multiple people, that California also said no.

So now you have -- and that's another frustrating part was we asked to present this after we found this new information related to 2014 and 2015 to D.C. We wanted to present the case, the facts. And we were not afforded that. We wanted to do the same thing to California. And we were not afforded that. It was always, we'll handle it.

And this is very atypical. Up until October, we were very involved with -- here's the evidence. Here -- helping them out through their writing of their pros memo.

BY MAJORITY COUNSEL 2:

Q Can we just break down each of the years involved and help us understand

how much money is at stake?

A Yes.

Q Starting with 2014?

A Okay. So 2014 -- it would have been false return and evasion of assessment that we were looking into. So 7206(1) -- Title 26, [U.S.C. Section] 7206(1), and Title 26, [U.S.C. Section] 7201. I'm going to go through the charges, and then I can go through them by year, if that's okay.

Q Okay.

A And then 2015, we proposed charges for Title 26 United States Code [Section] 7203, failure to timely pay tax.

Tax year 2016 was, again, [Title 26, U.S.C. Section] 7203, failure to timely file and pay tax.

2017 was [Title 26, U.S.C. Section] 7203, failure to timely file and pay tax.

2018 was [Title 26, U.S.C. Section] 7201, evasion of assessment and payment; [Title 26, U.S.C. Section] 7203, failure to timely file and pay tax; and [Title 26, U.S.C. Section] 7206(1), false return.

So just to be clear, failure to timely file and pay tax -- that's a misdemeanor. And false return -- false return and evasion are felonies. So false return is basically that an item you report on your return is false. So it's a little bit different than the elements for evasion, but it is essentially the same thing.

And then 2019 was failure to timely file and pay.

So Hunter Biden had had a lot of tax issues, even predating all of this stuff. Back in 2002, he filed his Form 1040 late-filing and owing over \$100,000 in taxes; 2003, owed more than \$100,000 dollars in taxes; 2004, late-filed and owed more than \$20,000 in taxes; and then 2005, late filed his personal return and owed over \$100,000 in taxes.

[11:47 a.m.]

Mr. [REDACTED]. So he had a history of tax issues.

So those tax issues is why he asked for Eric Schwerin to be his finance accounting person. So that happens in 2006, 2007, because of the issues that Hunter was having with his taxes.

So Eric Schwerin actually creates an entity called Owasco P.C., which was a C Corp. And so the problem that Hunter was having was he was receiving a lot of [Form] 1099 income. So that [Form] 1099 income wasn't having any taxes withheld. So that's why he was owing a ton of money when it came to filing his returns.

So he created this C Corporation. The C Corporation would take in this 1099 income, and it would pay him a salary in W-2 wages. So Eric Schwerin sets that up.

BY MAJORITY COUNSEL 2:

Q Do you know what he was doing to earn the money?

A At that time I believe it was legal work. I don't remember off the top of my head. But I know that he worked for a law firm for a period of time. Oldaker Biden -- my memory is not the best on that. I do know it was for legal services.

Moving forward -- and the reason why this was so important is -- for 2014, so he enters into this Burisma contract. And the Burisma contract is with him and Devon Archer. So they were earning a million dollars a year, both of them, for being put on this board. And essentially Archer was put on the board one month before Hunter was. So as a part of getting on that board, Hunter sends an email to Devon Archer, stating here's my plan for how we're going to pay -- or here's our plan for what we're going to do with this million dollars.

At that time Devon Archer and Hunter Biden were also looking into this Bohai

Harvest investment. There was about a million dollars that they had to put forward. Hunter didn't have the money to put that forward. So Devon was, like, why don't I take part of the Burisma money. We can pay another part of it to you and then half of it will go into the investment in this Chinese company.

So [Hunter Biden] sets this out in this email and what ends up happening is -- so imagine this. If you are an owner of a company and your friend tells you that, I want to pay my wages to your company and you're going to loan the money back to me, that's essentially what happened here. He took loans from that corporation -- which were distributions. And he didn't pay taxes on those loans.

So what we had found is that -- can I pause for a second?

MAJORITY COUNSEL 2. Off the record.

[Discussion off the record.]

Mr. [REDACTED]. Back on the record?

BY MAJORITY COUNSEL 2:

Q Yes.

A All right. So essentially for 2014, we had found that Hunter didn't report any of the money he earned from Burisma.

So the reason why this is important is because Hunter set it up this way, to not -- to essentially earn the money through his friend's corporation and then have his friend pay him back half of the money as loans, quote, unquote, loans. So --

Q How much in tax liability are we talking about here?

A Okay. So -- no, these are the -- oh, you printed it up.

Mr. Zerbe. Yeah, I --

Mr. [REDACTED]. Okay. So -- the most conservative approach would have been \$124,845 in tax loss. So this would have --

Mr. Zerbe. For what year?

Mr. [REDACTED]. For 2014.

So this would include payments that he would have received directly from Rosemont Seneca Bohai, so \$315,000, payments that were made by the Rosemont Seneca Bohai entity by Archer for Sportsman or for Hunter's benefit, so \$4,500 that was paid to a medical bill, and then another medical bill of \$6,000. So that's the most conservative approach.

In addition to this, we had a Porsche that was purchased through Rosemont Seneca Bohai that was for Hunter's benefit. That was from Novartus holdings which is Kegnes Rakishev. Kegnes Rakishev is a Kazakhstan official or a Kazakhstan person.

And from what we were told, this was paid for Hunter to build a Tesla dealership in Kazakhstan. I took it to be that it was for future business that the two of them might have together. But the --

BY MAJORITY COUNSEL 2:

Q So none of this was taxed.

A None of it was taxed.

Q And to date none of it has been paid or prosecuted.

A So none of this has been paid or prosecuted.

And I would also like to note that the statute has run out on these tax years or on the 2014 tax year.

Q Okay.

A They were extending that statute up until December of --

Q It's a 6-year statute?

A Yes. They were extending that statute -- he was signing statute extensions.

And from the best of my knowledge, he never continued to sign those. And I do not, as I

know it today, that the 2014 tax year, the statute's gone. I have brought up that --

Mr. Zerbe. Right. Go ahead.

Mr. [REDACTED]. I have brought up that if we went based on an evasion theory, that he evaded these taxes -- so one more step to this is Hunter to his counsel told them about this scheme.

So basically said -- Devon Archer was handling the taxes and I was taking some of the money as loans.

So there's documentation of this and the date, everything. So we viewed that as he's lying to his attorney. He's telling his attorney exactly what happened, and he's trying to cover it up. But ultimately it gets found out, and then Eric Schwerin ends up investigating it and figures out that, hey, you didn't report this money. You need to file an amended return.

It's actually included on the marital separation agreement this tax due and owing related to this unfiled or related to this amended tax return.

So they actually were preparing and trying to file the [amended] returns. We have found out that Hunter might have received advice that if you don't have the money to pay your taxes, then you don't have to -- then I wouldn't file your tax return or that amended tax return.

BY MAJORITY COUNSEL 2:

Q Okay. Under what conceivable theory did DOJ not find that to be worthwhile to prosecute?

A They believed -- they believed the fact that the -- they believed their defense that the money was a loan and that -- so through our investigation we did find out that --

Q What did they contend it was a loan for?

A Well, that was our argument, that you can't loan yourself your own money.

It just doesn't make any sense. So --

Q I mean, this just seems to be a series of sham transactions, correct?

A So, yes, I would agree that the transactions would -- you would want to sham the transactions, yes.

I do know that, there were some issues prevalent that were brought up related to Devon Archer and his credibility. So, also having a potential witness there, was also a problem.

But I offered, well, why don't you have the agent testify to this email? The email's pretty clear in what he's setting out here. Why doesn't an agent testify to this?

Q At least with respect to the Burisma income --

A Okay.

Q -- he's getting a million dollars a year. It started at least part of the way through 2014. Okay. So maybe it's 600 and --

A So it's \$666,667.

Q Okay. So he received 600 -- you know, north of \$660,000 for serving on the Burisma board by all accounts for doing nothing. And that money completely escaped taxation, correct?

A A portion of it was taxed. The reason why a portion of it was taxed -- and I don't want to get into the details. But the money held in the account that was going towards investments, so the half that was going for that Bohai Harvest investment, that half, because there was no offsetting expense, would have been taxed.

Q Okay.

A Does that make sense?

Q Okay. Yes.

A Because there was no offsetting expense, he wasn't deducting the payments

he's making, so Archer wasn't deducting the payments he's making on the return, that money would have been taxed. So that money Archer would have paid some taxes over for about half of it.

Q Okay.

A That's why in our theory our most conservative approach would have been half the money.

Q Okay. Okay. What can you tell us about 2015?

A Okay. So for --

Q He's getting a million dollars from Burisma in 2015, correct?

Mr. Zerbe. Excuse me. I want to make sure.

MAJORITY COUNSEL 2. We're off the record here.

[Discussion off the record.]

MAJORITY COUNSEL 2. Okay. We're back on the record.

Mr. [REDACTED]. So 2014 and 2015 are interrelated because this is -- during 2014 and 2015, Hunter is having his [Burisma] payments paid to Rosemont Seneca Bohai. So essentially what happens in 2015, the amount of taxes he owes at the end of the year, which I'm going to explain in a second, is because of what happened in 2014, because of this setup.

But what he brought up that I wanted to reiterate is the 2014-2015 tax year can still be in play.

And so what ended up happening is we were assigning statute extensions. We were having these meetings on the 2014-2015 tax year. And I believe that from what happened is, because D.C. said no, they have since let that statute run. So they no longer asked for statute extensions.

I never got ahold of those statute extensions. I don't know what they look like.

But what I could say is, if we had a neutral person come in here, in explaining my theory that in an evasion case, it's your last affirmative act. If there are affirmative acts which [I believe] there are within the last 6 years, then we could potentially work that tax year.

Mr. Zerbe. And you use affirmative acts.

Mr. [REDACTED]: I believe that there could be but I'd have to look at -- I would argue that there could be. And then that being the meeting that he had with his attorneys where he basically tells them what happened and I view that as a lie, because what he did was actually different than what happened.

BY MAJORITY COUNSEL 2:

Q Okay.

A So 2015?

Q 2015.

A All right. So in early 2016, Hunter and Devon Archer receive a document request related to Devon Archer's Tribal bonds scheme. So that document requests from Hunter.

So Eric Schwerin says: What's this Rosemont Seneca Bohai entity? You always told me that you had it taken care of.

So Eric Schwerin starts investigating it. Starts investigating it in March and April. Eric realizes that the [Burisma] money from 2014 wasn't reported. So they need to report that, the money that Rosemont Seneca Bohai is earning, [on Hunter's] 2015 [tax extension].

So on the extension they include income from Burisma. They pay a large amount of money with the extension. And when the return is filed, Hunter owes, with this 2015 filing, so October 15, 2016, he owes \$176,550 with no payment. So at the time of filing, it's that amount.

In May of 2017, Hunter starts a self-imposed \$10,000-dollar-a-month payment plan, making seven payments of \$10,000 over the period May of 2017 through March of 2018, and then stops.

So our theory was with our case was that the amount that he owed after that payment plan stopped would be the most conservative amount. So it would be \$100,675.

But you could argue that the actual amount that he reported when he filed his return and did not pay \$176,000, that that would be the tax amount [charged].

BY MAJORITY COUNSEL 2:

Q Okay.

A And that amount has been paid. That amount has since been paid.

Q The \$176,000?

A The amount that was owed for the 2015 tax year, yes.

Q Okay. And what was that amount?

A It was over \$100,000. So it was including penalties and interest.

Q So 2015's off the table now?

A 2015, yes, 2015 would be off the table because it followed the 2014 tax year.

So that was D.C.

Q Okay. When you sought to get this prosecuted in D.C., what year was that for?

A 2015.

Can you ask the question again. I'm sorry.

Q Well, if you say 2015 has been paid --

A Oh, so --

Q I'm just trying to reconcile. You said 2015 has been paid.

A Yeah, so --

Q But 2015 was also sent to the U.S. Attorney's Office in D.C. for prosecution.

A With a willful failure to timely file and pay [charge] --

Q Uh-huh.

A -- the statute is that the taxes are owed.

And even if you pay them after --

Q Uh-huh.

A -- the crime still --

Q Okay.

A -- occurred.

Q Okay. Fair enough.

A Yes. 2014 and 2015 in D.C.

Q Okay. And then what can you tell us about 2016?

A Okay. For 2016, there's quite a few things. So --

Q Is this D.C. or California, 2016?

A 2016, he didn't file his personal return. But he did file his C Corp return.

Q Okay.

A So he filed one of them but didn't file the other.

And on the personal return, he didn't report payments he received, personal payments he received from Rob Walker.

Q Uh-huh.

A So it was \$162,179, which would have given additional tax due and owing of \$69,000.

Q Okay.

A But those payments, there was a reliance issue with that. He had told this

or Eric Schwerin had told his accountants about those payments -- or the receipt of that money, in the beginning of the year, the [accountants] dropped it off later. So we knew that there was going to be an issue with that.

So the only thing on the table for that year was the failure to timely file and pay the taxes for his personal return --

Q Okay.

A -- which would have been \$45,661 that he filed with -- when his [Form] 1040 was [filed] --

Q Okay. And how about 2017?

A Could I say some other stuff regarding 2016 --

Q Okay.

A -- real quick? During the fall of 2017, Eric Schwerin and his accountant, Bill Morgan -- and I have to say that Bill Morgan has since passed away. He died in 2019. But that was his accountant.

Both made a significant effort in getting Hunter -- in getting the prepared returns to Hunter. They sent multiple emails to Hunter and even a package with the returns, ready to go in his office. All he had to do was sign it and mail it in.

In an email from Hunter to Eric Schwerin on November 17, 2017, he says: "Also, I just saw last week the unmarked envelope in the office requiring signature for my taxes."

This email further confirms that Hunter received the 2016 tax returns but failed to file them timely with the IRS.

And the venue for that would have been California.

Q Is that because he moved to California?

A With the failure to file, it would have been where you lived. I'd have to

look back in my notes. But this one also could be D.C. or California.

Q Okay. When did he move to California? Do you know?

A I know he officially moved April 1st, on or about April 1st, 2018.

Q 2017?

A Yes.

Failure to timely file and to pay taxes owed when -- so this is for both his corporate and personal returns.

Q Uh-huh.

A The taxes owed when he filed his Form 1120 was \$13,630. I don't believe that those taxes have since been paid but -- to the best of my knowledge I don't believe that the corporate taxes, that small amount has been paid.

Q Okay.

A And then for his personal return, failure to timely file and pay his taxes owed when his Form 1040 was filed, \$581,713.

Q So half a million dollars.

A Yep. And that has been paid and that is through, which it's in the media, is through Kevin Morris paid that.

Q When was that paid?

A That was paid in and around October of 2020 or October 2021 -- I apologize -- 2021.

Q Okay. How about 2018?

A All right. So 2018 was the false return year, but then you also have failure to timely file and pay because these are the returns that were filed late.

So what ended up happening is Hunter goes out to California in 2018. In his book he's talking about substance abuse and drug use and all these different --

prostitution --prostitution use and all this different type of stuff.

So in 2019, he marries his wife, Melissa Biden, Cohen-Biden. And he is newly sober. At that same time, I believe there's also a Senate investigation, and he also is having the Arkansas child support payment case. And then at that same time he also had the ex-wife that he was in breach of the marital separation agreement. So he has all these things coming to a head.

And it's not until November of 2020 -- let me go back to the first page. It's not until November of 2019 -- I apologize -- 2019 that he hires Edward White & Company as his new accountants. So he hires Edward White. They're out in California. And the reason why is the judge in the Arkansas court case asked for tax returns.

Q Okay.

A We believe that that was part of the reason why.

So February of 2020, he files his 2017 and 2018 Forms 1040 and 1120. 2016's [Form 1040 was] not filed at that point. July of 2020 --

MAJORITY COUNSEL 2. I should note we're at our hour mark. We want to be respectful of our time. So we may have to push pause.

MINORITY COUNSEL 1. Okay. That's great.

EXAMINATION

BY MINORITY COUNSEL 1:

Q Thank you very much for appearing before us today.

I have some questions that I wanted to go over from some of the things that you had already mentioned, and I want to make sure that I actually had them correct in my notes. Some things should be relatively straightforward.

You talked about being on the case, and you were assigned to the case November of 2018. This was in your opening statement. You were talking about the fact that you

had gotten some comments from some of the AUSAs about the case itself.

You had said, quote, "After three of these filings, they said that we could go forward."

What were the three filings that you were referring to? This was in the context of, I guess, moving the case forward.

Mr. Zerbe. Can we go off the record here?

MAJORITY COUNSEL 1. Off the record.

[Discussion off the record.]

MAJORITY COUNSEL 1. Back on the record.

Mr. [REDACTED]. My initiation packet, so sending the case forward to get -- we call it subject case. It's an SCI. It's elevating the case to actually working the investigation.

My first one showed the unfiled returns and the taxes owed for 2015 and that was it on my first package. So that was the wrongdoing that we were alleging.

And my supervisor goes: You don't have enough. You need to find more.

So I kept digging for more and more.

And even after that point, he goes: You haven't found enough.

So I ended up searching bank reports that [I] ran on the periphery of what we were looking at.

So I ran bank reports for Burisma, and in those bank reports I had found additional payments that Hunter had received. And then at that point I had found that Hunter did not report the income for 2014 related to Burisma.

So now I had a false return year. So that alone -- it was basically so much evidence that I put in there -- allowed us to elevate the case.

BY MINORITY COUNSEL 1:

Q You filed three of those initial reports? Is that what the three filings were,

or was it three times going back to him?

A Three times going back to him. That would be the correct way to state it.

Q Shortly after that, you talked about in March and April of 2018 that Attorney General Barr had made a decision to join the cases. And then you said that Delaware had opened the case. You said January of -- is that 2019 or 2018 or 2020? I didn't get the year.

A It was January of 2019 --

Q Okay.

A -- that Delaware, U.S. Attorney's Office, and FBI had opened up the investigation. They wouldn't have been able to see in our IRS system that we had a case open.

Q Okay.

Mr. Zerbe. Let me go off the record.

[Discussion off the record.]

MAJORITY COUNSEL 3. Back on the record.

Mr. [REDACTED]. Okay. So that would have been that we joined -- you're talking about one that we joined together?

BY MINORITY COUNSEL 1:

Q [Nonverbal response.]

A May of 2019.

Q Okay. You're talking about 2019. You were mentioning the fact that there was a George Murphy that was writing memos or emails and documenting some of his conclusions that were on the other side regarding this case.

Could you tell us more about him? What's his title and who is he and how does he relate to you in terms of your chain of command?

A So it was actually Matthew Kutz. He was my supervisor at the time and from the articles that he was sending me, I would say he had more of a liberal view than I had and it was pretty obvious from the things he would send me and discuss. And that's just me making an observation.

So I later found out about these memos that were put in the file regarding the issues that he saw with the investigation, the fact that we even had it opened. So I only learned about those after.

And then it came to a point to where he's sending us so many media articles about different issues that I had to tell him stop, please. And I had to go around him. And that's when I went to my ASAC at the time, George Murphy, who was above him.

MAJORITY COUNSEL 2. Off the record.

MAJORITY COUNSEL 1. Off the record.

[Discussion off the record.]

MAJORITY COUNSEL 1. On the record.

Mr. [REDACTED]. So these articles were a lot about -- were a lot of articles regarding Trump and getting a fair investigation and things related to that, Trump's tweets and stuff like that. So, that's what drew me to my conclusion.

BY MINORITY COUNSEL 1:

Q What was the purpose behind him sending you the Trump tweets? What was he trying to get at, or was he trying to give you more information for your case? Why would he send those, or do you know?

A Yeah, I think he was bringing up concerns with potentially us prosecuting the case down the road, potential issues we're going to incur. I don't remember the exact email that he sent that caused me to be -- that he had to stop sending me some of the news articles, because it wasn't even the fact that he was sending me these news articles.

It was the opinion he was providing in those emails that I did not agree or that I did not -- not agree with but did not think was appropriate. That's --

Q Okay. You mentioned -- this is a little ways later -- I believe on September the 9th of 2021 that you had an email. You were reading through it, and you had mentioned that Stuart Goldberg was leaving town.

You said there was a name that you wanted to leave out when you were reading the email. What was that name?

A So it was the name of Hunter's personal counsel, George Mesires.

Q Okay. Moving forward -- and we are into October 12th of 2022. You had mentioned, I think, at some point that you had maybe a list of 30 individuals you wanted to interview. Then they had maybe dwindled that down to, say, 10. On October 12th of 2022, you said the last interview took place.

How many interviews did you do in total?

A Of witnesses? Well over 60.

Mr. Zerbe. No, no, no.

Of the 30 that you had put in the list, take her through what happened to that list of the 30.

Mr. [REDACTED]. Oh, okay. So of the 30, of the 30 that were in the list, I believe we talked to or had the opportunity to talk to all of them or a majority of them.

And there were even additional ones that came after that. So I think total in the case we talked to maybe 60 witnesses, if not more.

BY MINORITY COUNSEL 1:

Q Is that typical for the amount of taxes that were owed in this case that you would talk to 60 witnesses?

A Yeah, so I would say when it's a joint investigation with FBI and

IRS -- especially for a false return to where they're deducting things that appear personal, that would be typical that you would go out and talk to people around him at the time, that these returns are around, or that the tax returns are around.

I guess this kind of has a nuance, though. So a lot of the issues that we were encountering were regarding substance abuse. So his frame of mind, was he -- like he was obviously involved in these large dollar deals. But -- how did he act? Was he in a clear frame of mind? Was he a functioning addict? All those different things were important and why we went and talked to a lot of the witnesses we talked to.

Q Okay. A little bit later on you had mentioned that he was sending Venmos to family and friends. In particular, one person was Valerie Owens, his sister.

What was the amount of these Venmo transactions? I know you wanted to reach out and talk to the individuals. What was the size of the Venmo transactions?

A I'd have to look back at them, but they were between zero and \$2,000.

And I know that some of the family members were on trips and went to visit with Hunter during this time period. So that's why some of those things, if they were out there, visiting him and he's claiming that these are business deductions, they would give insight as to where, what business was he doing, stuff like that.

Q Is this typical that you would want to talk to people's grandchildren and relatives when they have amounts that are between zero and \$2,000? Is that typical?

A So I can say for the kids -- there was Columbia school tuition, \$30,000. That was deducted -- I believe that was for [REDACTED] or [REDACTED]. There was prep, study prep, checks that were deducted for one of the kids or one of -- and when I say the kids, one of Hunter's kids.

So it wasn't just those smaller dollar amounts. There were others that were included in there.

BY MINORITY COUNSEL 2:

Q Following up on that, the deductibility of tuition expenses and fees is sort of a matter of law. Right?

A Yeah.

Q -- its treatment is pretty clear in the Tax Code one way or the other.

What kind of information would you generally hope to gain from talking to the grandchildren about payments that were sent?

A So there were other payments or other credit card payments, so for clothing, for jewelry, for certain things. There's a ton of different expenses that were also included in there, in addition to something like Columbia or prep or the tuition.

So as a part of our cases -- you have to have a third party that comes in. And we can't just rely on that statement that, oh, it's not deductible. We have to actually call someone in, as a witness, to --

Mr. Zerbe. Confirm.

Mr. [REDACTED]. -- confirm what that's for. There's a legal term for it, but I can't think of it off the top of my head, for why we have to do that.

BY MINORITY COUNSEL 1:

Q Typically, and we're asking here, if the IRS goes to investigate an individual for taxes that weren't filed or weren't paid, such as the situation that we're in now, the IRS goes out and talks to all of their relatives and grandchildren and other people, 60-plus witnesses, that's typical for a case?

A What I would say to that is every case is different. You have to follow where the evidence leads you. If evidence is leading you to family members or people receiving payments on behalf of that person, then those would be leads that you would go and follow.

So in addition to some of this stuff that we've been talking about, he also had members of his family, including Lunden Roberts, on his payroll. We know that during the time period she was paid, she did not work for him. So he was deducting things for salary for employees that were his family members. A lot of those witnesses are people we would go and talk to.

Q Before you get to this point, is there any set of questions that you send out to the person that they can answer and respond back to you? Or is it at the point that it reaches your group it's like, 60 interviews? You're out, talking to every person that they know.

Is there an opportunity for the person to agree or not agree to anything that you're saying is personal and maybe not a proper business deduction?

A So when it comes to witnesses, those interviews are voluntary. They don't have to talk to us if they don't want to. So a part of what we do in our job is we go out there and we interview witnesses. So there are situations where we can let them know that we're coming but the majority of the time we go and it's a surprise visit. So they don't know that we're coming. They're not prepared for what they're going to say. That's typical of our cases.

Q Is this in a situation where the person contests what they owe, or do you just do this off the bat if it gets referred to your unit?

Mr. Zerbe. I didn't hear that que -- can you --

Mr. [REDACTED]. Yeah.

Mr. Zerbe. Can you say it one more time, [REDACTED]? I'm sorry.

BY MINORITY COUNSEL 1:

Q I'm trying to understand if, in this situation, was there some opportunity where any taxpayer -- doesn't even have to be this particular one -- does the taxpayer

have an opportunity to see the facts and decide whether they're going to contest what you're saying? Could he have just paid this at the very beginning is my question?

A So -- I guess the problem with that would be the reason why -- let's take a step back, big picture.

So there's IRS civil. So they're coming in, and they would do audits. They would do all different sorts of type of work related to civil issues. So that essentially means that you made a mistake on your return. You didn't report something.

Where we come in, IRS criminal investigation, is that there was a willful omission or there was a willful criminal act that you took part in, in order to either evade your taxes, to file a false return, to not file timely your tax return, to not pay your taxes.

There's a big difference and there's a big distinction between what's civil and what's criminal.

And so with us on the criminal side, as far as your question goes, does he get an opportunity to come in and explain, so once our case is referred we offer the person an opportunity to talk to us. We go and do an interview. If he has an explanation, a lot of people will offer their defenses at that time.

In this case, December 8th, 2020, we went and tried to interview Hunter. And he declined to be interviewed. So that's his choice. That's his right. But we did afford him an opportunity to explain what happened.

And then as far as when the case is referred, when a case is referred for prosecution to Department of Justice tax, the target or the subject of that case is entitled to what's called a taxpayer conference. And that's where they meet with their defense counsel, and their defense counsel says here are my defenses. Here's why I don't think you should charge me.

Q And did he do that?

A His account[ant] -- I was not allowed at those meetings which, to be honest with you, that -- sometimes they don't have us at these -- at those meetings. But with a case like this, of this caliber -- we asked to be at those meetings. They said that we couldn't be there. I know of other agents that are at those taxpayer conference meetings.

Q Okay. I want to get some sense generally of your caseload and what you work. How many cases do you currently have? How many cases did you have back in 2018 when this case was assigned to you?

A I was new to the group. So this was one of two cases that I was working at the time. And then moving forward to right now, I have one large case. But it includes probably 80 tangential cases -- or 80 sort of spinoff cases that I'm trying to manage and work, as well.

That's abnormal. Normally for an IRS special agent, normally it's one or two cases that they're working a year because of how much work goes into them.

Q You mentioned that one of your other cases is paused. How many cases do you have that are paused? I don't know how you count the one large one with the 80 tangentials. But how many of those are paused?

A Probably 20-ish. Let me rephrase that. I would say 10 to 15.

Mr. Zerbe. Why are they paused? You might expand on that.

BY MINORITY COUNSEL 1:

Q I was going ask that question. So, yeah, go ahead.

A They are second-guessing the strategy that we're putting forward on those.

Q Do you have any idea of a timeline when they would get back to you on when they would lift the pause?

A I didn't -- I was told it was going to be quick. And it -- I know that my

supervisor is meeting with some of the leadership today to talk about it.

Q In your cases that you've had, first starting back since November of 2018, coming forward, have you had disagreements in other cases that you've been working?

A Yeah, yes.

Q How did that play out? How do your disagreements play out generally?

A I can give you an example of in another situation I was working, we also had a person who had failed to file returns and they earned a significant amount of money and they went out into -- I need to be -- so they had that situation at hand.

I went to the prosecutors on the case. And I said, hey, this person has these unfiled returns. I'm thinking that specifically with what has happened -- and specifically with what has happened in news reporting related to them, I think we need to go talk to them.

And they were, like, well, no, you probably shouldn't do that.

They at the beginning onset they did not agree with me. So me and my supervisor, we sat down with them. And we said here's the reasons why we should go forward and interview [them]. Put [them] on notice regarding a potential tax investigation and see if [they] want to come in and talk to us.

And they were a "no" in the beginning and they changed to being a "yes" and we actually went out and did that and that is turning out to be something successful right now.

Q Is that the same supervisor that you had on this case or --

A Yes.

Q -- is it a different supervisor?

A Same supervisor, Gary Shapley.

But I want to draw your -- so remember that captive insurance case that I talked

about? That was a huge disagreement. I was honestly devastated by that. And I met with top, top officials on presenting the evidence and presenting the case. And at the end of the day it was still a "no."

And that was a huge -- I felt that the evidence was strong enough but their opinion was different than mine. So that was something that -- that's the best example that I can give of that.

Q You said that there are 12 people, roughly, in your group? Is that correct? How many are in your group?

A Twelve.

Q Twelve. Those twelve individuals, did they all -- oh, go ahead.

A Approximately 12. Let me --

Q Okay. Approximately 12. Did all 12 of those individuals work on this case?

A So in some form or fashion, they would have either helped with interviews, been a secondary on interviews. There are a couple of newer agents who haven't had time to help in our group.

But, I think the notion that our group was removed was they weren't going to assign it to another person within my group, if that makes sense. They wanted to go outside of that.

Q How many groups like yours are at IRS?

A There's only one International Tax and Financial Crimes group. There are similar groups but they work different things. So there's a Cybercrimes group. They specifically work cybercrime cases. There's an Excise Tax group. They work alcohol, tobacco. I forget what specific name they have. But they only work those types of cases.

So we have specialty groups that are established around. We're unique to the international tax realm.

Q Do you have any questions?

BY MINORITY COUNSEL 2:

Q I do have a few questions. I apologize that I was late. I had a preexisting commitment this morning.

I want to also clarify some things in your statement.

Could we talk a bit about C.T.?

A Sure.

Q Who is Christy Steinbrunner exactly? What was Christy Steinbrunner's position? Do I have that name right? Christy Steinbrunner?

A Yeah, Christy Steinbrunner.

Mr. Zerbe. Can you spell it?

Mr. [REDACTED]: She had that correct spelling over there. So I think --

Mr. Zerbe. Okay. Good.

Mr. [REDACTED]: She is essentially a line attorney with the national office, and she deals directly with our international tax group.

BY MINORITY COUNSEL 2:

Q But was she a part of C.T.?

A Can you say that again?

Q I think in your testimony we said that the report went up to C.T. --

A Yep.

Q -- and that Christy Steinbrunner had been saying all along that this was good to go. This was the green light. Or a yellow light. I'm trying to figure out what the relationship between her and C.T. was.

[Discussion off the record.]

Mr. [REDACTED]: So within IRS we have what's called Criminal Tax counsel. They're our advisory internal counsel for the IRS. So, when we send a case initiation package forward to DOJ tax, it has to go through their review, as well. And they provide [an] advisory [opinion].

BY MINORITY COUNSEL 2:

Q And so Christy Steinbrunner was not part of that advisory group per se.

A She is -- she's the line attorney who does the initial review --

Q Okay.

A -- of the prosecution report.

Q I see. Then it goes to some sort of review panel? I'm still trying to figure out --

Mr. Zerbe. We'll just take you through it again. Okay. So --

Mr. [REDACTED]: So from my understanding -- and this is what I've learned after is she reviews the prosecution report. She reviewed our package. So let me step back even further.

So this entire case, since Christy was the one who reviewed my initiation package, she's someone I've been communicating to with issues, evidentiary issues, what's been going on in the case. So I've been keeping her apprised with everything that's been going on.

So when the case comes to her, she's not just taking this cold. When the case gets up to C.T. counsel, she reviews it and writes what's called a CEM, a Criminal Evaluation Memo. That CEM, she was telling me the entire time, was a concur and it was what she was calling a green and a yellow light, green for the later tax years, yellow for the earlier tax years.

And what I had learned is that needs to go up to a panel at [CT-Counsel], their national office, because of this case, for them to review.

And what I've heard on the back end -- this is technically hearsay -- is that they all agreed with her recommendation. But then it went to people above her and they told her that -- your writing appears like you want to give a nonconcur. So this needs to be a nonconcur to all charges.

BY MINORITY COUNSEL 2:

Q And there's no document that was produced out of C.T. memorializing that nonconcur judgment?

A So they provided a -- what, the Criminal Evaluation Memorandum? So there is a document that is, yeah, that memo.

Q That's a document that Christy Steinbrunner wrote. And the idea is that -- and I'm just sort of trying to -- she was told that -- because I assume initially when she wrote it, she concluded, this was a green or a yellow.

Was she instructed to change her evaluation or was there a subsequent other written document that evaluated the work that she's submitted and gave other reasons why there was a nonconcurrency?

A So, I mean, I don't know that. Obviously, there has to be records of what went up and then what came back down. So there is definitely -- if it's there, it's there.

But, I have an exchange with her through Messenger where I said to her: Did you know that they were always saying it's going to be a nonconcur?

Ms. Steinbrunner responded: "What? No. I sent them a yellow light."

After discussing this, I couldn't believe, because we were doing everything in our power to show -- because normally what happens is, if they give us a nonconcur, we try to go back to them with additional evidence or additional investigative work so that they

can give us a concur.

The fact that it came back just a flat nonconcur to all years, it was one of many blows that we encountered.

Q Right.

A I had even suggested sending the report up without the subject's name, putting in just the Doe so that people couldn't see. But they said it would be too hard to take out the details related to the subject, that people would know who it was.

Q Can you describe for me to the best of your ability why Christy Steinbrunner -- you just said that she represented to you that her recommendation was a yellow. What is the difference between a yellow and a green? Why would a recommendation be yellow as opposed to green?

A So from what my understanding that she said is, yellow is we're concurring but we're giving cautionary statements of these are the legal impediments that we see. So these are the legal issues that we see. Even though we're agreeing to move it forward, we think that these issues might come up. But a red is basically, we don't think you should move forward on this.

Q Were there specifics that she mentioned as far as what legal issues might, what the hazards of litigation were in particular?

Mr. [REDACTED]: Can we go off the record?

MAJORITY COUNSEL 2. Off the record.

[12:46 p.m.]

MAJORITY COUNSEL 1. We can go back on the record.

Mr. [REDACTED]: Part of the impediments were how a jury was going to look at this.

BY MINORITY COUNSEL 2:

Q And that being because a jury might find the facts sympathetic?

A Yes.

Q You alluded to that possibility as well -- when the case went higher up -- or at least -- I'm not sure if you heard this information directly or if this was information that you testified that you heard indirectly regarding a decision that one part of the DOJ had reportedly made that suggested that facts that might have come out in 2014 or 2015 could create something of a sympathetic taint for later tax years.

Is that something that typically, in your role primarily as an investigator, you would discuss in a normal course of business with those who made the prosecuting decision?

A Yeah, because those are things that we want to counteract throughout our investigation, or those are things that we need to address as a part of our investigation.

Q And --

Mr. Zerbe. I'm sorry. Go ahead.

MINORITY COUNSEL 2. Oh, no, no, I think that you're sort of anticipating my next question.

BY MINORITY COUNSEL 2:

Q Would you be able to describe what those factors might have been that would give concern to those making a prosecuting decision?

A Yeah. So, you're referring to the meeting that we had with David Weiss,

the U.S. attorney, in September of 2022.

In that meeting he had alluded 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 David, at that time, was weighing whether to go forward based on that or not because he was getting swayed one way or the other. And David said he felt strongly with the evidence and what we were presenting.

And another part I want to add in is, when we say that the scheme is developed in 2014 -- so 2014, Hunter is entering this million-dollar board agreement with Burisma. So, he is very well aware. He's not apparent to be on drugs at that point. It's not until Beau dies in May of 2015 that he kind of falls off the wagon and all these different issues start arising.

So I guess that's also important, is that during his sober -- or not his sober time, but during a clear-of-mind time, he's engaging in this agreement. And then that caused the false return to be prepared.

But, looking back at everything, I don't know if those meetings held with us were just to make us happy, because David didn't -- we were already told no by D.C., and they told us not to bring forward a case. I don't even know if at that time whoever at DOJ leadership told them, because I've learned later that he was told that he can't get special counsel authority to charge the case in D.C. and that he needed to follow the normal process.

Q Okay. Thank you. That's a helpful clarification.

Just a few other specific follow-ups.

Going back now to the CT report and your work. I don't know if it was a report per se. But you learned of some judgment on this panel. You went on to say that the leadership nonetheless, notwithstanding this recommendation, ended up pushing this

case through to the DOJ Tax.

What do you mean by "our leadership" in that decision?

A So I don't know -- I know it has to go up to the special agent in charge, but I don't know if it went above him. I thought it would have to go above him. But it was either the director of field operations or the special agent in charge approves the referral that ultimately sends the case to Department of Justice Tax Division.

And so what happens at that point is DOJ Tax then reviews it. In this case, they established a third-party reviewer, John Kane, to come in and look at the merits of the evidence. And then, he's supposed to take an objective view of the case, which he was doing. And that then goes to Stuart [Goldberg, Acting Deputy Assistant Attorney General] to ultimately be approved or declined.

Q In your discussion of the various frustrations that you experienced along the way in terms of conducting your investigation, you discussed internal IRS issues and that often you went to the director of field operations, for instance, and that there was a lot of slow-walking involved in the IRS.

Do you think that the fact that they approved or pushed forward, in IRS leadership and the director of field operations, a case which had otherwise received a negative or a nonrecommended charge from this review panel is indicative of the fact that they weren't trying to slow-walk anything? How do you reconcile, I guess is my --

A No, I understand what you're saying.

So CT counsel is advisory. They took the maximum amount of time to review this case that they could possibly take. That's first off.

As far as my leadership goes, we're trying to point out that the slow-walking and the approvals for everything, a lot of that happened at the U.S. Attorney's Office in Delaware and DOJ Tax level. So it wasn't more -- and we were just trying to make our

leadership aware of all those issues that we were encountering.

Q So the slow-walking was not from the internal IRS per se, or maybe it was at the behest of DOJ --

A Yeah.

Q -- you suspect?

A Yes. And I would like to say that -- it appeared that our agency had their head down and didn't want to know any of the details or problems that we were having. We would communicate a lot of issues up, and they would say that they're communicating those higher than them, but we would never know if that were to happen. We only ever met one time with the chief on this investigation, and it was towards the middle of our investigation.

I wanted to -- maybe this fits, maybe this doesn't, but -- communication issues.

So there's an FBI supervisor -- this is August 25th, 2022. So Garrett Curley is his name. He was an acting supervisor over the group that was working this case.

He says: "I know we have our monthly meetings" -- and this is going to Lesley Wolf, AUSA for Delaware -- "but dissemination of information in between those meetings is being missed. At least for me, I'm finding out about meetings, updates, and interviews well after the fact, which is causing me to send the wrong information to my headquarters. I figured with everyone's schedules, an easiest way to correct this is through an email chain or going back to weekly meetings."

Lesley's response on August 25th, 2022, was: "Garrett (ph), please stand down on this until we've had a chance to connect the next week."

So he was basically shut down after he was like: You guys aren't communicating to me.

Q Did you know if they ended up connecting?

A I believe that they did end up connecting, yes.

Q In my experience, sometimes having long email chains on things like that, sometimes things are missed. Maybe what she was suggesting was a phone call would be easier to talk about.

A Well, we were such a big team, there was a lot of this happening to where -- like, us not being included in the taxpayer conference meetings. There was a lot of information turned over at those meetings that we didn't hear about or we heard about late. So there was definitely a breakdown in communication of what we heard.

And one thing that I want to be clear on, that there was information -- and I don't know the detail of that information that was withheld from us -- but there was information withheld from the investigators.

And some of that was withheld for privilege. But there was other things -- we went out and talked to one of the potential prostitutes. And there were videos that I've seen out there on Twitter, on the internet, and information related to that person that I had never seen before.

And I brought this up as an issue. I'm like: I'm seeing things here. Why am I not seeing that from you guys? And when I say "you guys," the prosecutors. And there was a notion that some information was being held back from us, and I don't know what that information was.

Q Because we discussed this earlier, that there were leaks, there were multiple leaks throughout the course of the investigation.

Would you say that the number of leaks to the media was typical in this case compared to a normal case in CI?

A I would say, in my personal opinion, I would say it was low. With a case of this high-profile nature, I would have thought it was low.

Q But in terms of a comparably high-profile case anyway. There were leaks, and there were some -- but you think --

A So I'd go back --

Q What's an example of another high-profile case that we're comparing that to?

A So some of the information that was released -- or some of the information that was leaked related to the Trump classified documents. So that case. So there were actual pictures that were leaked from inside the search warrant. And this is what my memory of seeing things in the media. So that's something that I remember. But, I mean -- yeah.

Q I guess my follow-up is, do you think in a case where there have been leaks and there's perhaps concern about leaks through the media, it's appropriate for, in some cases on some levels, for information to be held in a tight group to sort of -- prevent further leaks?

A I do understand what you're saying. But if the investigators don't get the material to investigate the case -- typically -- we investigate the evidence, and we send that to the prosecutors to review, or here's the pertinent stuff. It's not the other way around, typically.

So I am following what you're saying, but we had, in my opinion, we had no concerns of leaks on our internal team. Prior to us going overt, prior to that December 8th day of action, up until a couple days before, there were no leaks at all. So that just shows you how tight-knit our group was.

Q I have one more question, and then I can turn to [REDACTED] again.

I want to skip way forward again to the removal of your team from the investigation. I guess I have a few questions.

As far as you know, is there still an active investigation in the matter?

A Yes.

Q Obviously, the IRS is a very large organization, 80,000-some employees.

I think you recited it for the chairman, but just to confirm -- in terms of layers of review between you and Commissioner Werfel, are we talking six, seven, roughly?

A One, two, three, four, five, six. So he'd be number seven.

Q Number seven.

In the normal course, would you expect that the Commissioner of the IRS would have direct knowledge of any kind of personnel shifting or maneuvers seven levels down?

A I would think in a case of this nature, if I were a leader of -- if I were in charge of an agency, I would want to know about stuff that's going on with inside the IRS, and here's the reason why. It is things like this can affect the reputation of the agency. You know what I mean? It's a big risk with something like this out there. And, that's my opinion.

Q But you have no reason to believe that Commissioner Werfel knew of this short of his being informed by perhaps his deputy or someone below under the normal course of events, someone in the command would have to explicitly inform Commissioner Werfel. For instance, Commissioner Werfel would not in the normal course directly make these personnel changes.

A So I would say that he knew that there were, prior to my email, he knew that there were whistleblowers related to this case because they specifically asked him about whistleblowers within the IRS.

Mr. Zerbe. I want to make sure -- you made one point. I think you need to clarify it for him. He asked if the case is going forward.

I think for everybody here, explain though that it's not just kind of Garanimals

where they can swap you in and out. Talk about, you not being on the case, you have to put somebody in new, but kind of how that impacts. I just want you to understand that.

Mr. [REDACTED]: So what's frustrating -- and I think it's obvious is he removed two of the people who have been challenging and been kind of like this is the -- we're trying to do the right thing, we're trying to do the right thing. And it was kind of like we got loud enough, and they found an avenue to remove us.

I have been told by so many people on this case that we're where we are today because of my work. It's 5 years of an investigation. You can't just pick up that and move it onto someone else.

And if they removed all the prosecutors, DOJ Tax, and had a brand-new team, I would understand that completely if that's the decision that they made. But they just removed us. Not our management -- I mean, that right there should tell you a lot.

Did I answer that?

Mr. Zerbe. Yeah. Let me go off the record.

[Discussion off the record.]

Mr. [REDACTED]: On the record.

I just want to say that I made every effort to -- when we work these cases, you have to be careful of what you might say that could be used against you if you were to go to trial or if you were to go in front of a grand jury. Usually, the IRS special agent is the final witness, the summary witness. So things that you put out there in emails, they can attack you at a later date.

So I did everything that I could to possibly make the record as clean as it possibly could, investigated the case, but in doing that, here's all the things that happened because of that.

MINORITY COUNSEL 2. [REDACTED]?

BY MINORITY COUNSEL 1:

Q Okay. I only have one other question that I wanted to go back to.

In your cases that you have, the what I would say spin-offs and everything that you've worked since November of 2018, are there any other cases that involve sensitive individuals that you would consider to be sensitive cases?

A Not of a political nature.

Q Okay. Is this the only case that involves, say, children or family members of a politician?

A Yes.

Q Okay. Are there any cases that involve politicians themselves?

A That I've been removed from or --

Q Just that you've worked since November of 2018.

A That are spin-offs of this case?

Q Just in general. I'm trying to --

Mr. Zerbe. I don't think she's trying-- let me think about it.

Let me go off the record?

[Discussion off the record.]

Mr. [REDACTED]. On the record.

This is the only one that is of a nature that's politically sensitive. So the answer to your -- yes, this is the only one.

MINORITY COUNSEL 1. Those are all my questions for now. Thank you.

Mr. Zerbe. Can I suggest, if we could take a break.

MAJORITY COUNSEL 1. We'll go off the record.

[Recess.]

MAJORITY COUNSEL 1. We'll go back on the record.

We've got a series of questions we're going to jump back into. I know you had a lot of prepared materials, and I just want you to know that when we get to the end, we'll make sure to give you an opportunity if there's anything we haven't covered. So I don't want you to think it's your last chance to cover stuff.

BY MAJORITY COUNSEL 1:

Q Okay. When we last left off our questioning, we had, I think, just gotten through tax year 2018.

A Yep.

Q Could we go back to what we were talking about? And can you tell us what we need to know about tax year 2019?

A And do you guys care if I -- so I want to put this in an even bigger picture. And I'm sorry I didn't start out with this, but now that I've got some food in my belly.

Global income streams for everyone altogether, so it's for the period 2014 through 2019, our investigative years, so the total global transfers that Hunter and his associates would have received from Ukraine, Romania, and China was \$17.3 million, approximately. Okay? So a staggering amount.

So Burisma paid to everyone involved \$6.5 million. Burisma to Blue Star, \$540,000. Burisma to Boies Schiller -- that was the law firm that Hunter was of counsel for -- \$288,000. So that's \$7.3 million to those people.

Approximate total transfers from the Romania company -- I say the Romania company, I just want to keep it at that -- to everyone was \$3.1 million. The total transfers from HW III to everyone was \$3.7 million. Total transfers from State Energy HK to Rob Walker was \$3 million -- or to Robinson Walker, LLC, correct that.

Total transfers from CEFC Infrastructure to Owasco P.C. was \$100,000. So that's \$6.8 million. So that gives you \$17.3 million.

Of this amount, for the period 2014 through 2020, I have extended it one more year, but it pretty much ends at the end of 2019, that's when income stops coming in, it's \$8.3 million. This is what Hunter would have received of that.

So total Burisma net of Devon Archer payments was \$2.6 million. Total transfers from the Romania company via Rob Walker was \$1 million. Total transfers from HW III net any payments to James Biden was \$2.3 million. The total transfers from CEFC was \$100,000. Total transfers from State Energy HK from Rob Walker was \$664,000.

You also have cash that was deposited. That was \$50,000. You have a chip diamond and a larger diamond. The larger diamond from various reports that I've read, it's about \$80,000. We still don't know where that diamond is at to this day.

You have the Porsche, which was \$142,000. You have half of an investment in a company called American Well that was \$25,000. You have medical payments made by Archer, that's \$10,000. So these are all approximates. Let me just reiterate that. And then you have the one-third capital contribution made into Bohai Harvest that was \$325,000.

You also have other [Form] W-2 payroll that he received of \$859,000. So that gives you a total of \$8.3 million.

This does not also include any benefit or payments received by Kevin Morris.

Okay.

MAJORITY COUNSEL 2. When Kevin Morris paid the 2017 tax bill --

Mr. [REDACTED]. He paid the 2017 tax bill, yes.

MAJORITY COUNSEL 2. That's a taxable event, correct?

Mr. [REDACTED]. So can I -- since it's 6103, can I --

Mr. Zerbe. You can explain it.

Mr. [REDACTED]. Okay. So on Hunter's 2020 tax return --

MAJORITY COUNSEL 2. Let me ask you this. Did he plus it up?

Mr. [REDACTED]. Did he?

MAJORITY COUNSEL 2. Plus it up?

Mr. Zerbe. Let him --

MAJORITY COUNSEL 2. Okay.

Mr. [REDACTED]. What do you mean by "plus it up"?

[Discussion off the record.]

Mr. [REDACTED]. Okay. Yeah. No, I apologize.

BY MAJORITY COUNSEL 2:

Q No worries.

A So on his 2020 tax return, personal tax return, Hunter stated: "See statement in 2020. The taxpayer received financial support from a personal friend totaling approximately \$1.4 million. The parties agreed in 2020 to treat the support as a loan and later documented their agreement in a promissory note in the amount of \$1.4 million, 5 percent interest.

"The promissory note requires periodic payments between 2025 and 2027. The promissory note was executed by both parties on October 13th, 2021.

"The taxpayer is treating this amount as a loan for tax purposes. The balance of the financial support is treated as a gift. No amount of the support is treated as a reported taxable event on this tax return."

So that's what was filed with the return.

Q And has that transaction been investigated or --

A I'm no longer a part of an investigation related to that.

Q Okay. That wasn't the question.

The question was, do you know if that has been investigated by the IRS?

A So I'm going to --

Q It's a voluntary interview. If you're not comfortable saying, you don't have to answer the question, any of our questions.

A It goes back to one of my -- if there is potentially a current investigation that's out there to --

Mr. Zerbe. Let's go off the record.

[Discussion off the record.]

MAJORITY COUNSEL 2. Go back on the record?

Mr. Zerbe. Yes.

MAJORITY COUNSEL 2. Is there anything else about the tax years of 2014 through 2019 that we haven't discussed that ought to be made clear?

Mr. [REDACTED]. Yeah. There's 2018 that we left off on. I went through the global payments.

So 2018 was the false tax return year.

If we don't include relevant conduct -- so relevant conduct is conduct that we didn't subpoena or that we didn't get records for that could, at sentencing, be included.

So if you don't include relevant conduct and it's just expense items that we investigated, Hunter underreported his tax return by \$500,000 or -- give me one second. That's including relevant conduct.

Okay. So he underreported his total income by \$267,000, if you are using the most conservative approach, and that is a tax loss of \$106,000. So that includes deductions for personal wages and salaries paid, personal travel expenses paid, personal children expenses that he paid, and personal other expenses that he paid.

So let's talk about his 2018 tax year.

2018 was so significant because, at the same time he is writing his book, he is

having the returns prepared. And the statements in his book completely contradicted what was being deducted on his tax return. He essentially said in his book that he was in a drug-addled haze and was essentially learning how to cook crack, was some of the quotes in the book.

So some of the items that he deducted were personal no-show employees. He deducted payments that were made to who he called his West Coast assistant, but she was essentially a prostitute.

He made payments -- there's an \$18,000 wire that is made to one of these individuals, and on the wires they say \$8,000 in wage and \$10,000 in golf -- \$10k golf club member deposit. And we know that that \$10,000 went to pay for a sex club. He went to a sex club, and we've talked to the person that owned that sex club, and they confirmed that he was there. And the guy has to pay \$10,000, and the girl -- whoever is referring him there doesn't have to pay anything. So that was deducted on the tax return.

The Columbia tuition was deducted on the tax return. There were all of these sorts of things. And the thing that showed his involvement in it is he would actually go through the bank statements and would highlight items that were -- either he was excluding from being deducted or that he was highlighting from his personal accounts to deduct on his tax return. So it was kind of twofold.

And in addition -- because what we viewed that the accountants didn't feel comfortable with the information being provided by Hunter, they actually made him sign what's called a representation letter. And essentially with this representation letter, he's representing that all the income is being reported and all the deductions are being -- they're for business nature, and they're being reported properly.

BY MAJORITY COUNSEL 1:

Q Why do accountants have clients sign those kind of letters?

A I've never seen that in my career.

Q Do you have an understanding of why they did that in this case?

A So the timing of it occurred after he started submitting a lot of these expenditures. So his expenditures that year were very, very high.

He also tried to -- the money that he earned from Hudson West III, he tried to say that that was a loan. Same thing we have all going along back to Burisma -- I'm loaning from my own capital in the company -- even though he didn't put any capital in the Hudson West III. It was zero. So he was trying to say that it was a loan. But the accountants were so good that they really dug into it, and they were like: No, no, no, you can't deduct this -- or you can't take this as a loan on your tax return.

He tried to -- or he deducted expenses for hotel rooms for one of his drug dealers or what we believed to be one of his drug dealers.

He deducted a hotel room for his dad, Joe Biden. There is an invoice in the dad's name -- I'm sorry. Not the dad, but Joe Biden's name. The President, President Joe Biden's.

MAJORITY COUNSEL 2. For how many nights?

Mr. [REDACTED]. What was that?

MAJORITY COUNSEL 2. For how many nights?

Mr. [REDACTED]. It was for two nights.

And let me correct the record. President Joe Biden's name. And, yeah, that was included.

There was a significant amount of expenses deducted related to his girlfriend at the time, Airbnbs related to her, hotel rooms. So he deducted a lot for the Chateau Marmont, and he actually was blacklisted and thrown out of the Chateau Marmont. We

actually have videos -- or we have photos of the rooms and the destruction that was done to the rooms.

BY MAJORITY COUNSEL 1:

Q When he deducted two nights for Joe Biden -- he deducted those as business expenses? Is that right?

A Yes.

Q Was --

A From what I believe. I apologize. I didn't mean to interrupt you. From what I believe, yes.

Q Okay. And were you aware of any business that he was involved in with Joe Biden?

A So this is a complicated issue, and we really -- there was the 10 percent for the big guy in the Sinohawk deal. We know that the Sinohawk deal never went through. And that relates to CEFC and China. So essentially, Hunter cut everyone out of that.

And we do know that there were WhatsApp -- I believe it was WhatsApp messages found that there is clear indication -- and Hunter is saying this in those WhatsApp messages, that: I'm sitting here with my dad ready to make a deal, we're waiting for the phone call. And that was one of the -- I mean, we couldn't believe that we saw that. That was more indication that the dad might have been involved.

I know that we wanted to get location data because I went to the prosecutors with this, and they, again, came back at me with: Well, how do we know that? He could just be lying and claiming that the dad -- that his dad's there, but his dad is not there.

And I said: Well, this is what we would normally do. And I have it on a meeting agenda where we talk about location data. And I don't know if the FBI ever did anything

with it, but I would think it would be a road we would want to go down or that we could go down, and the reason being that, if President Joe Biden was getting any source of income, whether it's through someone else's entity or for his benefit at some point, that could be income. So that's why it would matter to us.

Q Anything else on tax year 2018?

A There was the fact that he deducted some hotel and travel expenses. So they argued that, well, he tried to make his best effort. And they -- and when I say "they," that's Hunter and his counsel. I would argue that this shows that they are making an effort to not make it look as suspicious. Deducting everything would be overly suspicious in an audit, and therefore he tried making as many deductions as he could to minimize his tax. That's what my beliefs would be.

There is something else. So I told you guys about the additional income. But you also had the unfiled returns. So on his personal return for 2018, he owed taxes of \$620,901. And then for 2019, for the personal return -- so that would have also been a failure to file year -- that was \$197,372.

And there were definitely some issues with the 2019 return. He withdrew money from a 529 plan. It was in the ballpark -- I think I actually -- hold on one second. Let me go into my notes and see if I -- I have the email here.

Q Can I ask you something a little more general?

So given all these specific aspects that you're referring to of activities with regard to tax returns that would you agree, at least, rise to the level of suspicious?

A Yeah.

Q What's your general view of why someone would engage in these kinds of deductions, reporting of expenses, et cetera?

A So from what I believe based on the evidence is his alimony and his child

support payments are based on how much income he earns. So if he reduces his income, he doesn't have to pay as much.

Q And what are you basing that opinion on?

A I would be basing that on discussions I had with prosecutors on the case and my review -- so my recollection of this isn't as clear, but I do recall that coming up in reviewing the marital separation agreement.

And the reason why I say it's complicated is because it changes as you go throughout the years. So I don't remember the specifics, but I know that that was a part of it.

Q Okay. Understood.

You mentioned CEFC. Did you look at an entity called CEFC Infrastructure Investment, LLC?

A I believe so, yes.

Q Do you know what kind of business CEFC was involved in or pursuing?

MAJORITY COUNSEL 1. Can I go off the record?

Mr. [REDACTED]: Yeah. Off the record.

[Discussion off the record.]

MAJORITY COUNSEL 1. Back on the record?

Mr. [REDACTED]: I don't feel comfortable disclosing anything further on that issue.

BY MAJORITY COUNSEL 1:

Q Understood. Okay.

The U.S. House Committee on Oversight and Accountability has publicly identified a series of companies, mostly LLCs, that are connected to this taxpayer. We'd like to walk through the list of companies and ask simply whether or not you've come across them in the course of your investigation. A yes-or-no answer is fine.

Lion Hall Group, LLC?

A Yes.

Q Owasco P.C.?

A Yes.

Q Robinson Walker, LLC?

A Yes.

Q Skaneateles LLC?

A Skaneateles, yes.

Q Seneca Global Advisors, LLC?

A Yes.

Q Rosemont Seneca Partners, LLC?

A Yes.

Q Rosemont Seneca Principal Investments, LLC?

A Yes. Yeah, I know. It's abbreviated RSPI.

Q Rosemont Realty, LLC?

A Yes.

Q Rosemont Seneca Technology Partners, LLC?

A Yes.

Q Rosemont Seneca Thornton, LLC?

A Yes.

Q Rosemont Seneca Advisors, LLC?

A Yes.

Q Rosemont Seneca Bohai, LLC?

A Yes.

Q JBB SR, Inc.?

A Yes.

Q RSTP II Alpha Partners, LLC?

A Yes.

Q RSTP II Bravo Partners, LLC?

A Yes.

Q Owasco, LLC?

A Yes.

Q Hudson West III, LLC?

A Yep.

Q Hudson West V, LLC?

A Yes.

Q And CEFC Infrastructure Investment U.S., LLC?

A Yes.

Q Okay. Did there come a time when you learned about testimony from Attorney General Garland before Congress?

A Yes. So that was actually something I was going to get into in my closing.

So Attorney General Merrick Garland appeared before the Senate Appropriations Committee in April -- April 22nd, 2022. At this hearing, when he was questioned about the Hunter Biden investigation, he said: "Because we put the investigation in the hands

of a Trump appointee from the previous administration who is the U.S. attorney for the District of Delaware, and because you have me as the Attorney General who is committed to the independence of the Justice Department from any influence from the White House in criminal matters, the Hunter Biden investigation is being run by and supervised by the United States attorney for the District of Delaware, he is in charge of that investigation, there will no interference of political or improper kind."

Q And in your experience with the case, did you find that to be accurate?

A Can I say at the time and where I sit now?

Q Sure.

A So at the time -- I don't remember when this topic of what Merrick Garland said came up -- when exactly this came up, but I can tell you that I always viewed it as David was our advocate sometimes. David was -- if we wanted to go with a big issue, we went to him.

Q You're referring to David Weiss?

A David Weiss. I apologize. The U.S. attorney.

So if we wanted -- and I viewed him as he's a Republican from the prior administration. We have to have faith that he's going to do the right thing and that he's going to push this forward and that he is the person we need to get in front of to tell -- because there were times where we didn't believe that what we were stating regarding the evidence was getting to him. Because our understanding of the evidence was different than what some of the line attorneys' understanding of the evidence, and we wanted to present on that. It was the 2014, 2015 issue.

And I'm thankful that we ultimately were able to. But now looking back at it, I think that -- it depends on when he asked for a special counsel, but those meetings that he had with us were for naught because we didn't end up charging 2014, 2015.

Q So looking back on it now -- what is your opinion of whether his testimony was accurate?

A I guess I would say that's not up to me to make that determination, but -- in what I know --

Mr. Zerbe. Do you want to take a break? A pause?

Mr. [REDACTED]. Yeah. Off the record, please.

[Discussion off the record.]

MAJORITY COUNSEL 1. Back on the record.

Mr. [REDACTED]. So in response to your question, I can't speak to what Merrick Garland thought at the time or what he might have been made aware of at that time. I was only aware of certain people within the chain that were aware of this investigation.

But looking back at it, the U.S. attorney, David Weiss, he had to follow the normal process. He had to go to Washington, D.C., the U.S. Attorney's Office, them saying no. So he really wasn't in charge. He had to follow the process.

And at the end of the day, he went to political appointees, and he's technically not a political appointee, so it's all back to square one again.

BY MAJORITY COUNSEL 1:

Q We were talking about a hearing in 2022, which we have as April 26th. I think you said 22nd, but I think it was April 26th.

A Okay.

Q The next year, moving forward to 2023, March 1st, 2023, Attorney General Garland was again testifying before Congress and was asked whether, without special counsel authority, a U.S. attorney could bring charges in other jurisdictions outside of Delaware.

Attorney General Garland said that he had been advised that he has full authority

to make those kind of referrals that you're talking about or bring cases in other jurisdictions if he feels it's necessary, and I will assure that if he does, he will be able to do that.

Based on what you testified to earlier, in your opinion, did U.S. Attorney Weiss have that authority to bring charges in other jurisdictions?

A In what he said, I look kind of at the words from Merrick Garland, and he said he has the full authority to make the referrals. Did I hear that correct?

Q Correct.

A And, yes, he's in charge of making those referrals, but whether --
Mr. Zerbe. Read the whole quote again.

BY MAJORITY COUNSEL 2:

Q Let's just back up here.

The Attorney General said the U.S. attorney in Delaware has been advised that he has full authority to make those kinds of referrals that you were talking about.

A Yes.

Q Or bring cases in other jurisdictions if he feels it's necessary. And I will assure that if he does, he will be able to do that.

And the record reflects -- and correct us if we are wrong -- that the U.S. attorney in Delaware tried to bring a criminal case in D.C., and the U.S. attorney in D.C. said no.

A That's correct.

Q The U.S. attorney for Delaware, Mr. Weiss, tried to bring a case in California -- was it the Central District of California?

A Yes. It was wherever Los Angeles -- yes.

Q And he was told no.

A Yes.

Q Okay. So going back to what the Attorney General said, how do you reconcile those two? Maybe the Attorney General didn't know. Maybe they were actively keeping information from the Attorney General. But it's either that or he's lying.

A Yeah.

Q Are we missing something?

A No, I agree with you completely. And when he said that and I looked back on things, it was completely different from what I recall happening.

My understanding of a person -- so this is from my understanding from what I have heard from other cases that have happened. If you are a special counsel, you have full authority to bring it wherever.

So I do not know if this is true. And I'm sure you guys will figure this out. But DOJ Tax doesn't say: "Okay, you're approved to charge the tax charges." I believe that special counsel has authority to bring whatever charges wherever they want. And in my observations over the past 5 years, that is completely different than what happened.

Q And the Q&A continues, and it just puts a finer point on it. And this is with Senator Grassley at the March 1st, 2023, hearing.

Grassley asks as a follow-up: "Does the Delaware U.S. attorney lack independent charging authority over certain criminal allegations against the President's son outside the District of Delaware?"

And the Attorney General responded: "He would have to bring...if it's in another district, he'd have to bring the case in another district. But as I said, I have promised to ensure that he is 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."

And as we have seen, he tried to bring the case to the U.S. Attorney's Office in

D.C., to the U.S. Attorney's Office in the Central District of California, and he was denied, and he did not have full authority to bring the case, and he did not have special counsel authority. Isn't that correct?

A Yes.

Q And like you testified earlier, we're not talking about \$2,000. Okay? This isn't a \$2,000 type of prosecution. This is -- and I believe your number was \$8.3 million for Hunter Biden. And on top of that, it was \$17.3 million for the group of folks and companies and concerns involved here. Isn't that correct?

A Yes.

MAJORITY COUNSEL 1. On the issue of special counsel authority, do you know whether U.S. Attorney Weiss requested special counsel authority?

Mr. [REDACTED]. I only know this secondhand from what my supervisor told me after that October 7th meeting, that --

MAJORITY COUNSEL 1. And this is what you know -- [who did you hear this] from secondhand?

Mr. [REDACTED]. I know this from Gary -- my supervisor, Gary Shapley -- telling me about what happened during that meeting. That --

Mr. Zerbe. Let's go off.

[Discussion off the record.]

Mr. [REDACTED]. So I heard it was a contentious meeting. My SAC and my supervisor were there. There were members from FBI there. And they had asked him about this, about bringing the case in D.C., and he explained that he was essentially told no. And then he went back and asked for special counsel authority, and they told him no. I don't think they said who he went back to, but they told him no.

BY MAJORITY COUNSEL 1:

Q So you don't know who he requested special counsel authority from?

A Yes, I do not know that. But I know that they ultimately said: No, follow the normal process.

Q Do you know when he requested special counsel status?

A That, I do not know.

Q Do you know if he did it more than one time?

A That, I do not know.

Can I add one more thing to the special counsel? So there are multiple discussions within my agency up to our leadership. So when I say our leadership, [up] to the DFO. So the director of field operations saying: This is a case where we need a special counsel brought in; because of all the problems we're having, we need a special counsel. And he literally looked at us and was like: I don't know what that means. I don't know how to even do that.

And then also to that point, I recall discussions with our FBI counterparts on the case, the same issue. And I thought that they were trying to raise the special counsel issue up through their leadership.

On that note, I just want to let you guys know that the way that FBI and their leadership -- their leadership was very, very much involved in this investigation. I heard of multiple times that they were reporting up to their leadership, meeting with their leadership. They had to advise them on this.

And when I say I felt like we were out on an island, we were left out on an island as it comes to this case. And there was a clear difference between what the FBI was doing and what we were doing when it came to reporting this case and issues up to leadership.

Q When you say FBI leadership was involved, do you know how high up at the

FBI?

A That, I do not know.

MAJORITY COUNSEL 2. You testified this morning in your opening statement that there was a very long list of incidents where the prosecutors in Delaware would not let the investigative team pursue certain matters, whether it was to go overt at a certain point of time, whether it was to conduct interviews, or whether it was with the storage unit.

And my question is, how do you reconcile that long list of efforts to shut down avenues of investigation? How do you reconcile that with, ultimately, the U.S. Attorney's Office in Delaware did try to bring charges in both D.C. and California?

Mr. [REDACTED]. I don't mean to toot [my horn] -- they had me. They had me that pushed -- traveling on weekends. I know that people on the case would say that we would not have a tax case right now if it wasn't for me. If it wasn't for my investigative abilities and the evidence that we found through our investigation, if it wasn't for that, then we wouldn't be sitting here today talking about potential charges.

MAJORITY COUNSEL 2. So is it fair to say that, despite their efforts to shut down avenues of investigation, they couldn't fail to bring the case because of the evidence you and the rest of the team brought to light?

Mr. [REDACTED]. To be honest with you, I think they were -- this is just me talking from my opinion and my perspective -- I think they were always afraid of: well, that's going to be too many approvals, let's not do that. They were afraid of all these different things.

That might touch the campaign, so we can't talk about that right now. That might touch this area, so we can't talk about that right now. And it was always, well, we'll sit here and we'll think about it. We might be able to do it because I'm going to

keep pressuring them to do it.

So I had a long list that I tracked all of our interviews. And I was like, this is when we're doing this. I was very organized, and I was very much, like this is what we're doing to get this case done. And I scheduled everything out. And I didn't want it to be on me that I was the reason why we didn't pursue the charges in the case.

BY MAJORITY COUNSEL 1:

Q Do you take that thorough approach to all your cases?

A Absolutely.

Q And did you have any reason to pursue this case with any more vigor than any other case?

A Yeah, I often ask myself: Am I too much in the weeds, and am I too far into the case that I really don't understand what's going on?

So what I did to combat that was we presented on the issues to neutral third parties. So our DFO, he sat in for: Here is the evidence that we had. Am I looking at this the wrong way? Am I perceiving this? And all the people within that chain of command agreed with what we -- that's why it ultimately was pushed forward.

Q So it wasn't just you pursuing this case on your own?

A No.

Q Okay. I want to go back to what you testified earlier about the day of action.

On that day -- which I understand to be the time when the investigation would go overt. Is that correct?

A Yes.

Q How many interviews were you planning to conduct on that day?

A So our planning for -- I want to say the approximate number would be 10.

Q And how many interviews did you actually conduct on that day?

A So we met with pretty much everyone. Only one person ended up talking that day.

Q And who was that?

A Rob Walker.

Q And was there anyone you were unable to talk to?

A Yeah. There were a lot of people that we were unable to get in touch with.

Q And why were you unable to get in touch with them?

A So one of those was the subject, Hunter Biden. So he had a Secret Service protection detail. So getting access to him was pretty hard.

Q Are there ways you can get access to someone that has Secret Service protection?

A So I didn't go and do that interview. It was -- if we would have gone a week earlier or when we were supposed to go in the beginning of November. We were supposed to go, I believe, November 10th, 11th, or 12th.

And it got pushed for -- I don't remember the ultimate reason, but there were a lot of different things being thrown in. That the election wasn't finalized yet. That we were still technically on a pause.

So I think there were a lot of different balls in the air, and we just didn't go forward at that time.

So the decision was made out of my hands to not -- and if we would have went, then he wouldn't have had a protection detail. So we would have been able to do the interview.

Q Did someone attempt to interview him on the day of action?

A Yes.

Q And who was that?

A Gary Shapley, my supervisor, and Joe Gordon, the supervisor at the FBI.

Q And they were unable to interview the subject?

A Correct.

BY MAJORITY COUNSEL 2:

Q Do they believe they were hampered by having somebody tipped off --

A Yeah. I was --

Q -- that the interviewees were coming?

A Yeah. I was informed of that by my supervisor after. And I know that that's an issue that he's brought up to me regarding letting Hunter's team -- or letting the transition team know, I think, is the way that my boss put it to me.

Q Letting the transition team know, the political team?

A I don't know which. All he ever told me was it was the transition team.

What that entailed, I don't know.

[2:30 p.m.]

BY MAJORITY COUNSEL 2:

Q Okay. This isn't the first time that we've heard about the subject, or the target, being tipped off. You mentioned this morning in context of the storage unit that you did say it was Mark Daly and Lesley Wolf --

A Yes.

Q -- contacted Hunter Biden's lawyers and tipped them off about the storage unit --

A Yes.

Q -- when you had developed a plan where you were going to not alert anyone on the Hunter Biden side of the storage unit, wait and see if they went to get responsive materials, which you knew was in the storage unit, correct?

A Yes.

Q And so by contacting Hunter Biden's lawyers, they totally blew the plan.

A Yes.

Q Is that not favoritism?

A I would hope they weren't doing that for favoritism, but yes, it does look like favoritism.

Q Was there any other, during the course of the investigation -- I know it's 5 years. So, there's a lot of time period here. Were there other instances where the Hunter Biden camp was tipped off by U.S. Attorney officials, or DOJ Tax officials?

A This might not go into that area. But, this is something that I wanted to bring that up I thought was -- so in the Washington -- was it Washington -- hold on. I think it was Washington Post.

In The Washington Post article that came out on October 6th that I referred to, Chris Clark, which is Hunter Biden's lawyer, said in a statement to the newspaper that he's had no contact whatsoever with any Federal investigative agent. Therefore, a rendition of this case from such an agent is inherently biased, one-sided, and inaccurate. It is regrettable that law enforcement agents appear to be violating the law to prejudice a case against a person who is a target simply because of his family name.

And, when he said that, it made me think back on we weren't allowed by the prosecutors at any of the taxpayer conferences. So we couldn't even meet Chris Clark to hear whatever the defense might be.

So I don't know if that was a strategy so that he could make that claim. I don't know. But, looking back at specifically what he said, that caused me pause.

Q Do you think Chris Clark or the lawyers for Hunter Biden actively procured your absence from those meetings?

A I think they could have, yes. They could have asked for the agents to not be there.

Q At these taxpayer conferences, do defense counsel have an opportunity to set the terms ordinarily for those meetings?

A So I'm usually not in charge of them, but I've never heard of them before.

Q But you've never been excluded before either, is that correct, to your knowledge?

Mr. Zerbe. Let's go off the record.

MAJORITY COUNSEL 3. Off the record.

[Discussion off the record.]

MAJORITY COUNSEL 2. We'll go back on the record.

Mr. [REDACTED]. So I know of agents that are part of those taxpayer conferences, one

specifically with Mark Daly. There are other cases where he doesn't have communications with defense counsel without an agent there. I do know that.

BY MAJORITY COUNSEL 2:

Q Okay. So you found it unusual that you were excluded?

A Yes, especially with a case like this.

Q Okay.

A Can I make one more comment?

Q Of course.

A It was relayed to us that his counsel said something like if you charge this case, good luck with finding a job outside of here or good luck with -- it's career suicide I think is what he said.

Q And who was that related to?

A I believe that was --

Q Was that at the taxpayer conference?

A I don't know when that occurred. So I don't know which situation that would have occurred.

Q How was it related to you?

A It was just relayed to me through either one of the attorneys or through David Weiss. I don't remember who said it to us.

Q So you just don't recall who relayed that to you?

A Correct.

Q Okay.

Mr. [REDACTED]: Can we go off the record for a second?

[Discussion off the record.]

Mr. [REDACTED]: Back on?

MAJORITY COUNSEL 2. On the record.

Mr. [REDACTED]. Thanks. Yeah, so not being there, apparently there was information brought up during those meetings that we didn't hear until weeks after, if we heard everything. So there could have been things said there that were never relayed to us.

And it's super important for us because if there's defenses being put out there, we're going to want to know everything, because we're the investigators. We go back and -- when I say the first taxpayer conference, they presented defenses on 2014-2015. We took their defense and worked through them and tried to refute them with the evidence. And not being there gave a whole -- it wasn't efficient. It wasn't -- I don't know.

BY MAJORITY COUNSEL 1:

Q So you testified earlier that there was a time when you got the sense that investigators had not been provided all the information. You had seen public reporting. Videos, you mentioned. Were you aware of Hunter Biden's laptop?

A Yes.

Q Did the IRS have access to the material on that laptop?

A So it was obtained by the FBI, and it was an IRS search warrant. So it was a Title 26 IRS search warrant of that laptop.

Q Can you explain that for a second? So it was a Title 26 search warrant meaning --

A It was only tax charges and the initial warrant that allowed to us essentially get access to the laptop. So we had to get a search warrant of it and it wasn't --

Q And the FBI executed that search warrant?

A So it would have been done by the FBI forensic, like their forensics team.

Q And was the information on that laptop shared with IRS investigators investigating the alleged tax crimes?

A So it's quite complicated, and my memory is not the best when it comes to the laptop, because there were storage backups to it. There was also the laptop.

We had different members of our team that would -- we had one agent who looked through the laptop. We had one agent who looked through backups of it. So there were a variety of people kind of tackling it all at once. That's kind of how we tried to do everything.

So from what I do know -- and this has been -- I believe I've gone back through statements that were documented -- that there were some things that were held back from us for one reason or another. But I don't still know what that is.

Q Were you aware of any other limitations placed on investigators in this case that we haven't discussed?

Mr. [REDACTED]: Can we go off the record?

[Discussion off the record.]

MAJORITY COUNSEL 2. Okay. Back on the record.

Mr. [REDACTED]: Yeah, things related to the campaign were kind of, at least during the investigative stages, were off limits.

BY MAJORITY COUNSEL 1:

Q Do you mean the Presidential campaign?

A Yes, the Presidential campaign.

Q In 2020.

A No. This would have -- yes, but we would not have found out about it until after -- everything was done. So this would have been when we went overt.

Does that make sense?

Mr. Zerbe. Go off the record.

MAJORITY COUNSEL 3. Off.

[Discussion off the record.]

MAJORITY COUNSEL 2. Back on the record.

Mr. Zerbe. Go ahead.

Mr. [REDACTED]. It would occur after our day of action, after we went overt. And I recall there being a crisis management meeting. And because of attorney-client privilege issues, and potentially issues related to the campaign, I felt that some things were off limits discussing.

BY MAJORITY COUNSEL 1:

Q Why did you feel that way?

A Because during interviews there was an atmosphere that made it very difficult to ask questions because -- and I know I wasn't the only one that felt this way -- that you get eyes rolling or --

Q From whom?

A From Lesley Wolf or from Mark Daly or whoever was -- it was a very intimidating atmosphere sometimes to ask questions.

And the same thing goes from our -- we had biweekly meetings that I would run. And I didn't have a problem with bringing up challenging issues. But every single time I brought up challenging issues, they would get shot down.

And I recall having phone calls immediately after with my supervisor and my co-case agent and wanting to pull my hair out because I'm just trying get this case done.

Q And those ideas would be shot down by Lesley Wolf?

A Would be shot down by the prosecutors on the call. So it would be Lesley Wolf or Jack Morgan or Mark Daly.

Q Anyone else?

A It wasn't all the time, but it did happen.

Q Other than the three people you mentioned, anyone else that would fall into the role of shooting down ideas?

A And I want to go back for a second. It was I'm going sit here and think about it, and then you'd have to bring it up again. We're thinking about it. When I say "shooting down," I want to be very loose about that question.

Q Let me clarify my question. So you mentioned the creation of an atmosphere that -- would it be accurate to say -- would make you second-guess raising issues?

A Yeah, absolutely.

Q Okay. And other than Lesley Wolf, Jack Morgan, and Mark Daly, was there anyone else that you think created that atmosphere?

A No.

BY MAJORITY COUNSEL 2:

Q Do you have any information about whether Lesley Wolf was doing this because she wanted a job in the administration? Did she try and get a job with Main Justice?

A I have not heard that. This is my personal opinion that Lesley's always been -- she's a really good arguer. I actually talked with another case agent about that she's really good at arguing and really good at talking her way out of do[ing] whatever.

And it was a lot of things. I'll be completely honest with you. If we would have brought this case in SDNY, who I know was super aggressive because you see it all the time, I don't think we'd be sitting here right now. If we were to bring this in -- maybe even D.C. U.S. Attorney's Office from the get-go, I don't think we'd be here right now.

BY MAJORITY COUNSEL 1:

Q I want to go back to something you mentioned earlier regarding a walk-by of Hunter Biden's residence. I believe you testified that Mark Daly told you that someone had denied your ability to do that walk-by.

A Yeah.

Q Who was it that denied that walk-by?

A It doesn't say. So it would have been any manager above him. So it would have been anyone in his management chain --

Q At DOJ.

A -- at DOJ Tax. And I could tell you that's never happened to where you had someone weighing in on whether you could do a covert action, walking by someone's house.

BY MAJORITY COUNSEL 2:

Q Why did you have to get approval for that?

A Because we were in a posture at that point that we couldn't do anything that appeared -- any investigative activities pretty much whatsoever.

Q But you weren't wearing an IRS windbreaker, and you weren't driving a car marked with IRS letters on it. So how would anyone possibly know? It's a free country. You're allowed to drive by any house you want.

A Yeah, I didn't want it -- because I think at that time we were trying to do surveillance of pretty much everyone we were going to potentially interview. So he was just another one of the people that we wanted to do that for. I guess I don't know --

Q But did you have to travel to do the walk-by?

A No, we would have sent an agent from that area --

Q Okay.

A -- out to help.

Q And was it ordinary that you would have to ask permission from the prosecutors to do something like that in any other case?

A Not at all ordinary.

Q So this was special to the Hunter Biden case.

A Yes. So it says: Tax does not approve.

So whatever that means, tax does not approve.

BY MAJORITY COUNSEL 1:

Q What is that email in reference to?

A This is in reference -- this is October 20th, 2020, walk-by of possible residence.

And Mark Daly says: Tax does not approve. This will be on hold until further notice.

BY MAJORITY COUNSEL 2:

Q And the plan was you were just going have an IRS agent out in California walk by the house?

A Yes.

Q Drive by the house.

A Yes.

Q Check it out.

A Uh-huh.

Q Not stop, not interview anyone, not interview neighbors.

A Nope.

Q Not knock on the door. Just drive by the house.

A Yes.

Q That was denied.

A Yes.

BY MAJORITY COUNSEL 1:

Q We talked earlier about the potential of interviewing I believe it was President Biden's grandchildren. Is that right?

A Yes.

Q So that would be Hunter Biden's children?

A Yes.

Q And the interest in conducting their interviews is because Hunter Biden made payments to those individuals? Is that right?

A Or made payments for the benefit of them.

Q And the interest in interviewing them about those payments was not because he made those payments but was because he deducted those on his taxes. Is that correct?

A Correct.

Q And what type of evidence would you need to properly evaluate whether a deduction was properly taken in an instance like this?

A So you'd want a statement from -- so there's two points to this. You'd first get the records from, let's say it's Columbia school. You get records from Columbia school, and they would show you why the person paid that \$30,000. So that's step one.

Step two would also be, if it's paying for someone else, finding out why that person paid that. Was there any business purpose or reason for paying that? If it was - she did work for me and in return for doing some work for me, I paid for this, so that could potentially be a deduction, so reasons like that.

And I want to be clear on this. I believe what happened down the road is that

there was a potential of it being stipulated, that the kids' expenses were for personal purposes, so it being stipulated from his counsel. But I don't know if we ever officially got that or -- someone -- an attorney can say that and you can still go back on that down the road. You know what I mean?

Q In the absence of a stipulation like that, would it be normal to interview a third party who received a payment that was then deducted on taxes and there was a reason to question the deduction?

A Yes. And to be honest with you, sometimes it doesn't matter the dollar amount. Sometimes -- I've had cases of mine to where there was a small deduction. But then they told us about this information that was completely unrelated to this.

Oh, he told me to open up this bank account for him.

And it can lead on to something that's completely different.

Q In a typical case, would you consider the interviews of individuals like this to be a completely reasonable step in an investigation like the one you were conducting?

A Yes.

Q One other clarifying question on something you mentioned earlier. You mentioned that when you opened the case at IRS, in the course of moving it forward, you learned that the U.S. Attorney's Office had opened their own case. Is that right?

A Yes.

Q And those two cases were merged. Is that right?

A Yes.

Q And my understanding of your testimony earlier is that the merger of those two cases created a process that would be different from if the case had just proceeded at the IRS. Is that right?

A Can you rephrase that question?

Q What would happen in a typical case if the two cases had not been merged?

A Oh, we would have opened the case -- the case would have been sent to the intake, so the tax intake, specifically the tax intake at the D.C. U.S. Attorney's Office. They would have evaluated our -- it's called a [Form] 9131, but -- basically our work product. And they would have done the paperwork to get an investigation going.

So Delaware could have done their own, and we would have done our own thing in D.C.

Q Under the auspices of the U.S. Attorney in the District of Columbia?

A Yes. Because sometimes there are cases to where you have split venue, and sometimes you do want to merge both of them. But I do know of -- yeah, so, it just honestly depends. There are situations where both are true.

MAJORITY COUNSEL 2. Our hour's up.

Mr. Zerbe. Can we take a quick break and just breathe in and out?

MAJORITY COUNSEL 3. Off the record.

[Discussion off the record.]

MAJORITY COUNSEL 2. We'll go back on the record.

BY MINORITY COUNSEL 1:

Q Okay. I wanted to go back to something that you mentioned earlier. You said that in March/April -- and I think you meant 2018, but I'm not sure -- that Bill Barr made the decision to join these cases together.

A So that would have been 2019.

Q 2019.

And then you said that the case in Delaware was opened January of 2019? Is that correct?

A Yep.

Q Okay. And then this case was opened May of 2019?

A So the cases were joined May of 2019.

Q How was it communicated to you that Bill Barr joined these cases together?

A I believe it was my manager that told me. My manager would have been Matt Kutz.

Q How would he have known? Would that have come from Justice somewhere or where does that come from --

A From his leadership, most likely, when we were told -- we were essentially told that we had go up to Delaware to meet them. And the decision was made at his direction, from what I recall.

Q "His" being Bill Barr?

A Yes.

Q Okay. Was there any other discussion of Bill Barr taking interest in this case that you heard of beyond it being joined?

A Not at all.

Q Was there any reporting up the chain that you know of to Bill Barr?

A No, not that I know of.

Q Okay. Who were the Justice attorneys on the case at the time that Bill Barr decided to join these cases together?

A So you had Assistant U.S. Attorney Lesley Wolf, Assistant United States Attorney at the time, Jamie McCall. And then from DOJ Tax it would have been Kimberly Shartar. And I believe it was either -- I think that was Jason Poole, [DOJ Tax,] but I don't know if he was promoted at that point. It could have been also Mark Daly[, DOJ Tax]. So it was two or three attorneys from DOJ Tax.

Q These attorneys that were on the case, did they change when the new

administration started in 2021?

A Could you elaborate more on that?

Q So Lesley Wolf --

A Okay.

Q -- she was there in 2018, 2019 when these cases were joined. Is she still on the case?

A Yes.

Q And was she --

A From what I know, yes.

Q Okay. Was she on the case at the beginning of 2021?

A Yes.

Q January 1 of 2021?

A Yes.

Q The same thing with Jamie McCall. Was he on the case at the very beginning when Bill Barr joined these cases together?

A Yes, he was.

Q Was he on the case January 1 of 2021?

A No.

Q He was gone?

A Yes.

Q Okay.

A And they were --

Q Was someone else put on the case?

A Yes. Carly Hudson.

Q When did Carley join the case?

A At some point in 2020.

Q Do you know how attorneys are added to cases? Do you know if that would have been a Bill Barr decision?

A I don't know, but I don't think so.

Q What about Kimberly Shartar?

A Shartar.

Q Shartar. Was she --

A Shartar.

Q Was she on the case at the beginning?

A I believe so, yes.

Q Was she still on in 2021?

A No. She left for a position to become an Assistant United States Attorney in another district.

Q Was someone else appointed, or put on the case?

A At some point, Jack Morgan was put on [from] DOJ Tax.

Q Do you know when he was added?

A That I do not know.

Q Would it have been before 2021?

A Yes.

Q Jason Poole and Mark Daly -- one of them was on at the beginning?

A Yes.

Q One of them was still on in 2021?

A Yeah, Mark Daly was still on in 2021.

Q Is he still on the case now?

A I believe so, yes.

Q Okay. Now you mentioned the storage unit and the decision regarding the search. That was in 2020, correct?

A Yes.

Q At the time that the search decision was being made in 2020, were these individuals, the ones that we discussed that were there in 2020, were they the ones that would have made the decision about the storage unit?

A One of those people, yes. It would have been up to Lesley Wolf and Mark Daly and potentially Jack Morgan.

Q But that was a decision still made under the prior administration, and it was made sometime in 2020 after Bill Barr had joined the cases, correct?

A Yeah, I don't know if by that point -- I don't know when Bill Barr left Main DOJ.

MAJORITY COUNSEL 2. December 23rd --

Mr. [REDACTED]. Okay.

MAJORITY COUNSEL 2. -- 2020.

BY MINORITY COUNSEL 1:

Q In your experience, would you think that individuals that had been working a case would change their position because a new administration comes in in 2021?

A I have never seen that, and I would have reason to hope to believe that that wouldn't happen. And I have no indication that it was because of a change of administration.

Q It seems as if they were acting -- in my mind their actions seem consistent over the two administrations, that they had a position that they took and they continued with that position going forward when they made their decision to -- when you probably left the case or even today, since we don't know what's going on today in the case.

A Yeah, I would to like say something to that, that it wasn't always all bad as it might -- I know I'm bringing up some of the things that have happened that I thought were out of the ordinary and what, looking back, might have been improper. There was some good that we did, too.

So I don't want it to appear like it was just -- but it was definitely an atmosphere and it was -- as you can see in my emails and, looking back, it was very hard for me to do my job. I was not handheld but --

Mr. Zerbe. Handcuffed.

Mr. [REDACTED]. -- handcuffed.

MINORITY COUNSEL 2. How unusual, or in your experience, how frequently have you seen cases merged from the DOJ and IRS?

Mr. Zerbe. Let's go off the record.

MAJORITY COUNSEL 3. Off the record.

[Discussion off the record.]

BY MINORITY COUNSEL 2:

Q That's what I'm asking. How common is that circumstance?

Sorry. Back on the record.

A I have never had that happen in my career.

Q Would you say it was something of an unusual occurrence for the Attorney General himself to order that?

A Looking back at it, I think he was trying to utilize the resources that he had. And I recall doing venue analyses for them to determine where proper venue was, to see if -- but everything that I did said that we were -- there's no residence of Hunter other than his dad's residence, his dad, President Biden, in Delaware.

So his return preparers are in, I think it's Maryland, his -- at the time were in

Maryland. So everything was pointing to outside of Delaware.

Q Well, when you say utilize his resources, is it usual for the Attorney General to take a specific interest in a case that maybe conservatively would be of, you know, \$1 million in value to the U.S. Government, which, although obviously is a lot of money to the folks sitting here, is pretty small, small dollars relative to the entirety of the fiscal --

A Can ask you your question again? I apologize.

Q Does the Attorney General usually weigh in on cases where you're talking about \$1 million?

A I've never had that happen before.

Q To your knowledge, did Attorney General Barr weigh in, or seek updates on the investigation after those cases were joined?

A Not to my knowledge.

BY MINORITY COUNSEL 1:

Q You mentioned that the FBI leadership was involved in the case.

A Uh-huh.

Q And there was some reporting up the chain that you were aware of regarding the FBI leadership's being kept in the loop, I guess, for lack of a better word.

A Yes.

Q When did that start, that you became aware of it? And when did it start, the reporting up the chain at the FBI?

A I would honestly say it started in the beginning. I was constantly hearing about them having to report up their chain regarding what was going on. And towards the end of the case, what was kind of -- it wasn't amusing to me but, the fact they were updating their leadership on a tax investigation. So their high-up leadership, I should say, was more caring about what we were doing in our investigation.

Q When you say that the FBI leadership was kept in the loop from the beginning, do you mean November of 2018-ish, in 2018 when you first got involved?

A So my knowledge of it would have started occurring in the summer of 2019.

Q Did that continue through 2020?

A I believe so.

Q Are you aware of the FBI leadership at any point talking to Attorney General Barr and his leadership regarding this case? Are you aware of any meetings like that?

A Not that I'm aware of.

Q I want to ask a little bit more about the grandchildren. You said that it's not abnormal to talk to relatives and family. How old were the grandchildren that you were seeking to interview?

A We never got -- I honestly don't even know. I know one of them had to have been in college, so college age, yeah. To be honest with you -- because we were never allowed to go do it -- normally I would have pulled public reporting, or I would have pulled information that would tell me this.

But because we weren't going to go do it, I didn't need to pull any of that. So I didn't know their age.

Q But college age?

A The one, yes, I believe is college or has graduated from college.

Q When asked whether this was a reasonable step, you said that you thought that it was a reasonable step to interview someone because another person took a deduction regarding them on the tax return? That's typical at the IRS?

A It's not -- in my opinion, that's more of a blanket statement.

How we do our jobs is if -- when we're doing an investigation and we're looking into someone's tax returns, we find the areas that there might be fraudulent deductions.

If this is a deductions case, we look at the deductions.

So if we have a payment that's made to ABC company, and on the memo line it says for whatever their daughter's name is, then we would want to go and talk to that person. Why was this payment made on your behalf?

And then that's kind of the reason or the line of why we do those interviews.

Q Okay. You mentioned that, for instance, your first step might have been to go to Columbia school and ask about the \$30,000 and get their records.

Why would that have not been enough to establish what the \$30,000 was for if it was for tuition? Why the extra step of trying to talk to the grandchild?

A So like I said, typically if -- there could be a situation where I did work for someone, and then instead of giving me actual monetary compensation, they pay for my school. So that could be a deduction for you, a legitimate deduction. So as a part of our investigation, we have to figure that out.

BY MINORITY COUNSEL 2:

Q Did you, as a part of your investigation, talk to all of the hotels where payments were flagged?

A Almost 100 percent of them. There was a significant amount of them, yes, specifically for 2018.

Q What were you seeking in talking to the hotels?

A We were seeking records regarding hotel stays and the reason for the expenses. I have the answer for you. It's a Boulware [Greenberg] issue. So that's what the legal term is for it: Boulware [Greenberg]. That's why you want to go to a third party to find out. So we can't just rely on that, this looks personal. We have to actually go and figure that out.

Q Is that the name of a case?

A I believe so, yes.

BY MINORITY COUNSEL 1:

Q In talking to the hotels, did you establish who stayed in the hotels each of the nights that were deducted?

A Yes, we got information from the hotels about whose name was on the room. If there were any issues with the rooms, yeah, there was a lot of information that we got from the hotels.

Q You mentioned one of the nights was in the name of President Biden?

A Yes.

Q Okay. Do you know if his Secret Service was there with him that night? Is that on your hotel records?

A That I do not know.

Q Were you able to establish that he was actually in the hotel?

A No, I was not.

Mr. Zerbe. Can we go off the record?

MAJORITY COUNSEL 3. Off the record.

[Discussion off the record.]

MAJORITY COUNSEL 3. On the record.

Mr. [REDACTED]. Back on the record. I apologize.

I have a receipt of something that was purchased from the person, whoever stayed there, a receipt for food for room service.

BY MINORITY COUNSEL 1:

Q Oh, you have the receipt that someone was in the hotel room?

A Yes.

Q Okay. But not necessarily who it was in that hotel room?

A Correct.

Q Okay. When you interviewed the hotel, did you interview the employees, as well?

A So let me be clear on this. We didn't interview the hotel in this situation. We would have asked for records from the hotel.

BY MINORITY COUNSEL 2:

Q Would you submit that asking for records from a business is less intrusive than surprising an individual for an interview with the Justice Department or the IRS Criminal Investigation Unit?

A When we do interviews, or when we do records requests, we don't -- at least in my profession, we don't consider what's least intrusive. We consider that for search warrants. But when it comes to going to someone's door and knocking on it to see if they want to submit to a voluntary interview, I would not consider that intrusive.

Q Is it not that you wouldn't consider it intrusive per se? It's just whether it's intrusive or not is something that you would not factor into in your investigative process?

A So if it's a situation of either interviewing someone or issuing them a records request, both of them require me going to them to give it to them or to actually go there and talk to them. So both -- in the situation with a hotel, you can mail those certified mail.

Q Right.

A But in terms of individuals, we can't -- there are situations where we could mail them, but typically we go to the door and we knock.

MINORITY COUNSEL 2. Can I --

MINORITY COUNSEL 1. Go ahead.

BY MINORITY COUNSEL 2:

Q What is the purpose of a drive-by?

A To establish if someone's living there, if they're present at home, their modus of -- when they are home and when they're not home. It's to give people or to give the investigators an idea of just their normal course of what they're doing.

And it's also to establish in this case, if there was Secret Service out front, if there was a protection detail. All those various things come into play.

Q In order to establish, for instance, whether the person is home, whether it's lived in, what their pattern of usage of the home was, it's not merely sort of walking by casually on the street. It's repeatedly doing so, correct?

A It doesn't necessarily have to be repeatedly doing so.

Q But it often can be?

A It can be, yes. In our job, we are trained and taught to do surveillance without being caught. So that's part of our training, surveillance or a drive-by or a walk-by.

Q Do we know if Mr. Biden's house was, for instance, at the end of a cul-de-sac? On a street? Had a sidewalk where people typically walk?

A I think this one was in Venice Beach. It so was just on a -- I think I have actually been there. There was a sidewalk. It's a normal neighborhood.

BY MINORITY COUNSEL 1:

Q On surveillance, you had mentioned that you had roughly 60 people that you wanted to interview. Did you put surveillance on all 60 of those individuals?

A No.

Q On how many of them?

A Let me be clear on that, that it was originally, we had a larger group of people that we first wanted to interview. That got smaller, smaller, and smaller until we

got to 10. I believe that all 10 of those people, we did some sort of surveillance to get eyes on them before doing our day of action.

Mr. Zerbe. Just off the record.

MAJORITY COUNSEL 3. Off.

[Discussion off the record.]

MAJORITY COUNSEL 3. Back on.

BY MINORITY COUNSEL 1:

Q I think that I was talking more broadly than just the day of action.

A Okay.

Q Of all the people that you interviewed, which I assume it's roughly 60 or more, how many had surveillance of any sort? A drive-by? A walk-by? A sit in front of their house? How many people?

A It would have been just in that first very instance, the people that we did that December 8th activity related to.

Q So the 10. And would the --

A It would approximately be the 10.

Q Approximately 10.

Would you have done your surveillance over a number of days? Weeks? Is it one day? One hour? How long? How much surveillance?

A I honestly don't know. Some of the time we can -- they have a specialty unit within the FBI that can go and do surveillance if we need it of that particular person.

Q Related to the day of action, which was going to be in 2020 under the prior administration, you had surveillance out on roughly 10 individuals, the ones that you were planning to do the interviews of on that day.

A And I think it was only to establish that they lived there, to verify that the

person lived there.

Q Who are the 10? Do you know who they were?

A I honestly do not.

Q Does it include his family members? Any family members?

A It does, but it -- so one of the family members that we weren't able to -- they didn't allow us to interview but we were able to serve a records request was James Biden and Sara Biden -- I don't think that we did surveillance of them at all -- his ex-wife, Kathleen Buhle. And this is all from my memory. So it was on that day or around that day. There was also, I believe, Hallie Biden?

Q Who is Hallie Biden?

A That is his deceased brother's wife -- widow. I'm sorry.

BY MINORITY COUNSEL 2:

Q For clarity, this was in October of 2020? I'm sorry. The date of action, what date are we looking at again?

A December 8th.

Q December 8th, 2020.

Do you think that, given the fact that many of these were relatives of the President-elect, there would be media presence possibly surrounding some of these individuals?

A Not that I was aware of.

Q But if there were to be media presence in some form or another, would that be of concern to either the Department of Justice or the Criminal Investigation Unit?

A I don't know -- what I can say from my normal process and procedure, if I saw the media out front of someone's house, maybe I might wait until the next day, or wait until that media -- it just depends on the situation. If it's an interview that I need,

the whole purpose of that was that we were trying to somewhat take people off guard, surprise, and get information from them.

But this was their personal residences. I wouldn't expect the media to be outside their personal residences.

Q Can I go back to something that you said -- my colleagues were asking questions previously. We were referring to Lesley Wolf. Our counterparts asked whether she was potentially looking for a job in the administration and you suggested -- not that you were aware of and the like.

But then you said something to the effect of, if we had brought this case in SDNY or D.C., we wouldn't be here right now. That surprised me a bit. And, leaving SDNY aside, I'm curious why you have that opinion about D.C., when we've learned that D.C. declined to take this case up?

A So it was a President Biden-appointed attorney who I believe said no to working this case in Washington, D.C.

When a lot of times when another U.S. Attorney's Office gets a case at the absolute end of that case, they don't like it very much because they didn't do the investigation. So what I was trying to say by that was the D.C. U.S. Attorney's Office and New York, they've worked cases of this caliber. So they know how to aggressively work these cases.

And this is just from my observations and opinion. Let me clarify that. But that's personally what I believe.

Q In your experience, the Attorney General's Office in Delaware has historically not pursued either tax crimes or other financial crimes with any vigor?

A No, I don't want to say that at all. I would want to say that it's a smaller U.S. Attorney's Office. So a lot of times when you have a smaller U.S. Attorney's Office,

they're a lot less -- I don't want to use the wrong word here.

It's just it's -- the problem that the agent that I spoke with that's from that U.S. Attorney's Office that said that they love to slow-walk things. It's very common in that office.

Yeah, I said earlier that they were the JV squad, in my opinion, and weren't up to the task of tackling this.

Q Was this your first time working with that office?

A Yes.

Q So safe to say, you were frustrated with working with that office. But at the same time, as a general matter, as a condition of your job, when you have to work with different U.S. Attorney Offices around the country, oftentimes you get sort of different flavors in an office.

A Yes.

Q Is that safe to say?

A Yes.

Q At least to an extent, sort of understanding the flavor of how that office worked is part and parcel of your job.

A Yes.

BY MINORITY COUNSEL 1:

Q Can I go back to the \$10,000 payments that were made per month? You mentioned that he was making payments voluntarily. Is that correct? Or did he have --

A Yes.

Q -- some sort of installment agreement with the IRS?

A He had a quasi-payment plan that he set up through his accountant, paying \$10,000 a month. But, yes, he had something set up. It wasn't actually officially set up

with the IRS though.

Mr. Zerbe. Let's go off the record.

MAJORITY COUNSEL 2. Off.

[Discussion off the record.]

MAJORITY COUNSEL 3. On.

MINORITY COUNSEL 1. Back on.

Mr. [REDACTED]. Okay. So it wasn't an official monthly installment agreement, no. It was self-imposed through his accountant.

And I would also like to say that his passport was revoked. He wasn't able to get another passport because of the delinquent taxes.

They sent multiple notices. There's an actual email where he asked how long he can go without paying his taxes. And, meanwhile, let me reiterate that in the time after this, when he stopped the payment plan -- he stops making the payment plan. He earns, I think it's over -- I don't want to mistake this number. He earns \$2.4 million from Hudson West III but can't make the \$10,000 payment he was making on his taxes.

BY MINORITY COUNSEL 1:

Q What was the date of when he stopped making the payments?

A March 5th, 2018.

Mr. Zerbe. Is the last payment?

Mr. [REDACTED]. Is the last payment, yes.

BY MINORITY COUNSEL 1:

Q Do you know how much he had paid by that point on the \$10,000 payments, how many months he had paid?

A Seven of them, \$70,000.

Q Okay. I want to go back to the loan. You said that the way that they set it

up was that there was something attached to his return and it said that part of this was a loan and there was an interest rate of 5 percent.

A Uh-huh.

Q Okay. Did you look into any paperwork regarding that loan?

A We did attempt to obtain that note, yes. We did attempt to obtain it, yes.

Q Did you obtain it, or you just attempted?

A I don't recall, and I go back to my previous statement that I don't feel comfortable going any further than.

Q Okay. Okay.

MINORITY COUNSEL 2. For clarity's sake, though, because I just want to make sure something is clear on the record -- do you agree that, assuming that there is a true loan, which is to say, a promissory note with interest, and the interest is [paid]-- it's not a sham. There's nothing untoward about that loan -- an individual making a loan for the ability of another person to satisfy his tax liability. There's no tax fraud element to such a thing.

[3:33 p.m.]

Mr. [REDACTED]: It honestly depends if you're able to sham the transaction.

BY MINORITY COUNSEL 2:

Q Assume it's a true loan. It's a true honest loan. This is not a trick question. I'm not -- I'm just trying to --

A So, yes, if something is a loan, we would give them the benefit of the doubt. And our most conservative approach is that it's not income, correct.

Q Similarly, in the case of someone who provides someone with funds out of detached and disinterested generosity in order to satisfy their tax liability, that would be considered a gift and thus not subject to Federal income tax, at least by the recipient?

A There would be gift tax reporting requirements, and those would have to be upheld, but --

Q By the donor?

A Correct.

Q I want to make sure that, at least on the face of the transaction as described to us, there are certainly two avenues under which such an arrangement would not raise any flags from the perspective of the Internal Revenue Service?

A Correct.

BY MINORITY COUNSEL 1:

Q All right. I want to go back to a little bit of the discussion on the Washington Post article and the comment by Chris Clark, and then there was a question to you.

The statement was that you had heard something somewhere that someone had maybe said that, if they were to charge this, it would be career suicide. That was

hearsay, third party, that --

A Yes.

Q -- you just heard from a third party?

A Yes.

Q You have no name as to who said that?

A I believe it came from Chris Clark, but I only know that from --

Q But you don't know anyone inside that said this would be career suicide to charge this?

A Inside the --

Q The IRS.

A Oh, yeah. No, I -- no. No, no, no. No.

Q Okay. What about from Justice? Did you hear anybody say that?

A No.

Could I add one more thing? I know this is on your time but.

There are potential other spin-offs and things that were in the process of being worked that I somewhat fear are going to get lost in the shuffle of everything that went on in that because, essentially, all I'm having to do is turn my information over to the next case agent. So that is of a definite concern to me, and it's why I think I've been so vocal on the special counsel perspective and having that neutral person come in there and essentially review the evidence and make his decision.

BY MINORITY COUNSEL 2:

Q Can I ask one more question? I did have one more note that I wanted to raise.

What is the difference between making a referral or bringing a case in the case of Mr. Weiss? I'm sort of curious. At least from your perspective, what is the difference

between those two things, at least as spoken by Attorney General Garland?

A I would -- this is my assumption based on that. It's referring the matters from your jurisdiction to another jurisdiction. So referring the work to the other jurisdiction to where you want to charge the case. So that's bringing the case.

Q Those seem to be synonyms, as you're describing them.

Mr. Zerbe. I just want him to see the writing. I think there's a referral to the case or to bring cases.

Mr. [REDACTED]. Yeah, that leads me to believe that statement right there that he has full authority to do whatever he wants with his cases.

BY MINORITY COUNSEL 2:

Q Admittedly, it's an ambiguous term or phrase because he does say make a referral or bring a case. I'm trying to understand what the difference between those two are because you pointed out that he did make a referral and he had authority to make a referral, but what would bringing a case be? What would he do differently if he were to bring a case as opposed to make a referral?

A So you have this right here where it says, "I have not heard anything from that office that suggests they are not able to do anything that the U.S. Attorney wants them to do."

And the U.S. Attorney wanted them to bring charges in the District of Columbia. And that completely contradicts that statement.

Mr. Zerbe. Let me go off the record.

[Discussion off the record.]

MAJORITY COUNSEL 1. Back on the record.

Mr. [REDACTED]. So each of these two statements showed to me that there wasn't going to be anything political involvement in this. That you had this neutral person from

the prior administration that's coming in, and that he's going to be able to do whatever he wants. And that's what they have confidence in.

The problem I saw was that you have President-appointed U.S. Attorneys who are a part of the process now, so now it has become political again. So you have a political appointee from a different party that was literally just nominated. I think it was U.S. Attorney Estrada. And this is the first thing he gets on his desk. So the President just appoints me, and this is the first thing that I've got to deal with.

And the part that was -- I know I use this word a lot -- frustrating was that this was for the years that they told us were slam dunks. Slam-dunk cases. I was told that by the AUSAs and the DOJ Tax attorneys.

BY MINORITY COUNSEL 1:

Q Could it be that, when there's a referral, the receiving AUSA -- it's at their discretion then to decide to bring the case versus just bringing the case directly?

A Yeah. Yes.

Q Could it be that the AUSAs that received it have other considerations based on their jurisdiction and cases that they've seen that have been successful in their own jurisdiction?

A Yes, that is true. AUSAs can provide guidance based on what they know from their area.

Q The AUSA -- Weiss -- he was Trump-appointed, correct?

A Yes.

Q The two -- well, at least for D.C., the AUSA was Biden-appointed, correct?

A Yeah. If you want, the name of him -- just so we're clear for the record. I have it. Matthew Graves.

Q Matthew Graves.

But it isn't that one is more correct than the other, it's just that you have two AUSAs, and they have different opinions of the case?

A So I go back to Merrick Garland's statement that he says. "He is in charge of that investigation. There will not be interference of any political or improper kind."

Q I guess what I'm asking is, if the situation had been turned around and he had taken the case, then we wouldn't be here.

So, as long as it's a yes, then there's no political interference, but if there's a no, then there is political interference? That can't be the way that we decide whether or not an AUSA brings a case.

A So I guess I want to be clear here. I was not afforded an opportunity to present to D.C. on the merits of the case, what we had found through our investigation for 2014, 2015. I was not afforded the opportunity to present to the Los Angeles U.S. Attorney or the U.S. Attorney's Office with the evidence that we had found in this case. That was not given me the opportunity.

So that right there alone, I think, is improper on its face. The people that know the case the best, the case agents that work the case, should be the ones that present on the material.

The thing that draws me pause is the conversations I had with Mark Daly in March 2022 to where -- they get the case. They get the referral. They're like, here's what we're going to do to help you guys. And then a few days later, they meet with the U.S. Attorney, and the U.S. Attorney says, someone in that -- this is all what I heard from it. They said, not only are we not going to help you with that case, but we also don't think you should bring charges here. So that led me to believe that there might be something else going on there.

Q In the other cases that you have, have there not been any disagreements in

any of those cases in your career? When cases go up to the AUSAs, they just take them all? They take every case that IRS sends?

A They do not, no.

BY MINORITY COUNSEL 2:

Q In general, in your experience -- well, I'll just say this.

In my working experience, I often would love to be the person who -- when I feel like I'm closest to the facts -- is the one presenting the information to the principal, making the [decision] -- but quite frankly, I don't always get that opportunity. I think it's an experience that many of us in our legal careers have experienced.

Is this the only time that you haven't been able to present your case to the decision-maker and someone above -- the level above you was in charge of doing that instead? Or even two levels above you?

A Well, yes, there are situations like that. But from what I know, no one from the IRS, my agency, got to present to the D.C. U.S. Attorney's Office or California.

MINORITY COUNSEL 1. We're good.

[Discussion off the record.]

MAJORITY COUNSEL 2. Back on the record.

BY MAJORITY COUNSEL 2:

Q During our discussion of the 2018 tax year, you mentioned that Hunter Biden was making business expenses for prostitutes?

A Yes, in some circumstances.

Q Could you give us a little bit more information on that? What was the nature of the -- was he paying for -- were they on the payroll? Was he paying for travel?

A In some situations, they were on payroll, and that was to get them health insurance in certain situations. There was --

Q So he's paying for health insurance for his prostitutes?

A Not necessarily for -- so let me go back and -- so one of his girlfriends was on the payroll and --

Mr. [REDACTED]: Off the record, please, for a second.

[Discussion off the record.]

MAJORITY COUNSEL 2. Back on the record.

Mr. [REDACTED]: So Lunden Roberts, she was on his payroll. She was not working. She was actually living in Arkansas pregnant with his child, and she was on his payroll.

There were expenditures for one of -- he called it his West Coast assistant, but we knew her to also be in the prostitution world or believed to be in the prostitution world. And he deducted expenses related to her. She relates to the sex club issue.

And then there were -- and I know that my counsel brought this up earlier. There were some flying people across State lines, paying for their travel, paying for their hotels. They were what we call Mann Act violations.

Q Where he was paying for the travel of an individual to fly out to California or wherever?

A Or Boston or wherever he was at. D.C. I think one of them -- he flew someone for the night. So, yeah, there were situations like that as well.

Q And were those Mann Act violations referred to the Justice Department?

A I know that they were compiling them together. I don't know what they ended up doing with them. I know there was an effort at some point to compile them, but I don't know what ultimately happened with them.

Q And did you interview any of the prostitutes that traveled across State lines --

A I don't --

Q -- for that purpose?

A I don't remember. There were -- so let me use the correct term here. If there were prostitutes -- some ended up being his girlfriends. So, they all kind of morphed and changed. So I want to be accurate in how I represent them. But there were a lot of females that I believe he was having sexual relationships with that I ended up interviewing.

Q And he was paying money for the purpose of a sexual relationship, correct? To the best of your knowledge?

A To the best of my knowledge, yes.

Q Okay. The discussion last round about the Attorney General Barr's involvement, are you aware of the Justice Department policies and procedures that relate to sensitive investigative matters and political matters?

A I am not.

Q And do you know if the Attorney General, under the DOJ rules and procedures, has to make some of these decisions?

A I did not.

Q Would it surprise you if, in fact, the Attorney General does have to sign off on certain things when it relates to the son of a Presidential candidate or an incoming President-elect?

A It wouldn't surprise me at all.

Q Okay. When Joe Biden stayed at a hotel and Hunter Biden expensed that as a business expense, did you come across any other evidence that Joe Biden was involved with business dealings of Hunter Biden other than the 10 percent for the big guy that you mentioned earlier?

A Yeah, I'd also mention the WhatsApp. The indication in there that

regarding -- right before they entered into the CEFC deal --

Q Okay.

A -- that the data was there. And then as far as the trip out to California and the hotel stay, we don't know whether that was for a business purpose -- we just know it was supposedly deducted.

Q And that was in 2018?

A Yes.

Q Okay. So Joe Biden wasn't the Vice President at that time?

A No.

Q Correct? And he wasn't President?

A No.

Q So he didn't, to the best of your knowledge, have Secret Service detailed during 2018, correct?

A Not that I'm aware of.

Q It's my understanding -- I think we can stipulate that former VPs get Secret Service for, I think, 90 days or 6 months after their term of office, but then the Secret Service is no longer applicable.

You have no reason to believe that he had Secret Service during the 2018 timeframe, do you?

A No.

Q Okay. Just a question about working with the U.S. Attorney's Office in Delaware.

It seems like the elephant in the room is that -- correct me if I'm wrong, but -- Joe Biden and anyone in the Biden family is royalty in Delaware. Is that not the case?

A It was definitely something that was overly apparent in the State, yes.

Q So whether the President is a Republican or a Democrat, if you are in the district of Delaware, and you are in the U.S. Attorney's Office, and you are trying to bring a case against a family member of Joe Biden, that inherently has its challenges, doesn't it?

A Yes.

Q Because Joe Biden is, in effect, royalty in Delaware, correct?

A I don't know if I would use the term "royalty," but I think he is someone that's a big deal within that State.

Q Right. And so all the nonpolitically-appointed officials in the office certainly could be affected by the fact that we're dealing with Joe Biden, correct? In that office?

A I went into it with the belief that I would hope that that wouldn't happen. But it being in the Delaware area, it very well could have happened that way.

Q Okay. And Lesley Wolf wasn't a political appointee, correct?

A She was -- not to the best of my knowledge.

Q Okay. And Mark Daly wasn't a political appointee, was he?

A Not to the best of my knowledge.

Q And Jack Morgan wasn't a political appointee, correct?

A Not to the best of my knowledge.

BY MAJORITY COUNSEL 1:

Q And when the U.S. Attorney in D.C. declined, that U.S. Attorney was a political appointee, right?

A Yes.

Q And that person was appointed by President Joe Biden. Is that correct?

A From the best of my knowledge, yes.

Q And in the Central District of California, they declined charges in that U.S. Attorney's Office. Is that correct?

A From what I have been told through third party, yes.

Q And that person, that U.S. Attorney, was a political appointee appointed by President Joe Biden. Is that correct?

A Yes.

Q And Attorney General Garland was appointed by President Joe Biden. Is that correct?

A Yes. I would also like to add, I don't know if -- since this recent testimony or things that have happened recently -- if some of this has changed, so --

Q Understood.

A And they very well could change their stance, and so I want to make that clear.

Q Sure. Is there anything else that we haven't covered today that you would like to share with us?

A Yeah. So when we were going through all these issues, we actually sat down after a meeting -- when I say "we," it's me, Gary Shapley, and my co-case agent, Christine Puglisi.

And we wanted to -- at that time -- so this might have been 1 or 2 years ago. I don't recall the time. I'm sure if we go back, we can figure it out. It probably was about a year ago.

But we wanted to get down on paper so that we knew at the time all the problems that we were dealing with. And we have a list of -- what is it -- seven different areas, and they include lack of transparency, outside the normal course of an investigation, recurring unjustified delays, enforcement actions, misrepresentation of investigator's requested actions, investigator discussions related to the conduct of prosecutors. And defense counsel bullying and threats.

This is actually in here. Prosecutors told investigators on a call on August 12th, 2022, that Defense Attorney Chris Clark threatened them, stating that their careers would be ruined if they brought various charges against Hunter.

They also said -- which I think that this is important, too -- in several other conversations, prosecutors told investigators that defense counsel requested meetings with high-ranking DOJ officials before any charging decisions were made.

Q And at the time that Chris Clark made those statements, he was representing Hunter Biden. Is that right?

A Yes.

Q And Hunter Biden's father was the President of the United States. Is that right?

A Yes.

Q And the people that he made that statement to were employees of the Justice Department. Is that correct?

A Yes. And a lot of these things, I think we've already gone over in detail. I'm going to look through here and see if there's anything that stands out that is important to you guys.

MAJORITY COUNSEL 2. Off the record.

[Discussion off the record.]

MAJORITY COUNSEL 1. We'll go back on the record.

Mr. [REDACTED]. So June 15th, 2022, the meeting with Stuart Goldberg, [Acting Deputy Assistant Attorney General]. The meeting with DOJ Tax at Main DOJ where the purpose of the meeting was misrepresented to the agents. We had no idea that they were going to bring up a huge presentation to everyone there regarding the reasons why we shouldn't charge this case.

So they presented on their stuff. I ended up presenting on my side our understanding of the evidence and the investigation. And it caught us off guard because they misrepresented that meeting to us.

BY MAJORITY COUNSEL 1:

Q Who was present at that meeting?

A So you had the SAC and ASAC at the time of FBI. You had my leadership, which included my supervisor. Gary Shapley. That included my SAC at the time. So that would have been Darrell Waldon. And I believe my DFO was also present there. I could be wrong on that. His name was Mike Batdorf. Stuart Goldberg was there. He was the DAG. David Weiss was there. Lesley Wolf, Jack Morgan, Mark Daly, and then the agents from the FBI who were part of the case team.

Q And who gave the presentation?

A Jack Morgan and Mark Daly.

Q So not David Weiss?

A Not David Weiss.

This was lack of transparency section. "Assistant U.S. Attorneys irrationally dismissed most suggestions from the investigators, creating an environment where investigators were apprehensive to bring up differing opinions."

There's one in here that -- can I do something off the record?

MAJORITY COUNSEL 1. Go off the record.

[Discussion off the record.]

MAJORITY COUNSEL 1. Back on the record.

Mr. [REDACTED]: "Prosecutors at one point instructed investigators not to complete any other work that was not specifically tied to the tax year 2014."

And the whole reason behind that was because we were running out of our

statute. We had an issue with our statute that year. So they made us focus everything in our work on 2014.

"Prosecutors instructed investigators not to ask questions in a certain area because they did not want to get DOJ PIN" -- Public Integrity -- "involved because that would result in another layer of approvals."

Yeah. There was -- "A recurring discussion occurred between the FBI and IRS CI" -- so agents with both -- "about the unprofessional conduct engaged by the prosecutors."

And this is under investigator discussions related to conduct of prosecutors.

"FBI telephoned IRS CI in May or June of 2022 suggesting that we request a special counsel be assigned."

Q Do you know who at the FBI made that call?

A I do not know. But I believe that was the supervisor at the time, Joe Gordon.

"At several times during this investigation, we were made aware that FBI leadership was confused and concerned about the path the case was taking. Evidence of this concern was that the Baltimore FBI SAC at the time attended a meeting at Main DOJ at the Tax Division knowing that only tax charges were on the table being discussed. The FBI SAC asked several questions about the tax case and presented rebuttals to DOJ Tax attorneys, who were presenting on defenses raised by defense counsel. The FBI SAC made comments during breaks while talking with Gary Shapley that the issues raised by DOJ Tax that might result in not charging are nonsense."

There was one more thing that I was going to bring up, but I --

Q You've shared a lot with us.

Who was the FBI SAC -- that made the comment you just referred to regarding

"nonsense"?

A So I would have to get that. I know I have it. So we owe you the IRS Commissioner's email, and I can get you that.

Q Okay. Is there --

Mr. Zerbe. What does he want?

Mr. [REDACTED]. The IRS Commissioner's email.

Mr. Zerbe. I got that.

Mr. [REDACTED]. And then the SAC that attended the -- we called it the Tax Summit.

Mr. Zerbe. Okay.

MAJORITY COUNSEL 1. I'm going to go ahead and stop there and turn it over to my colleague.

BY MINORITY COUNSEL 1:

Q We want to follow up.

You mentioned a June 15, 2022, meeting where you say they misrepresented the purpose of the meeting, and they presented the reasons why you should not charge.

What were some of the reasons that they gave at the meeting?

A More so a lot of the evidence related to the defenses that were presented. So I'll give you an example.

I had an argument with one of the DOJ Tax attorneys regarding the loan. The Burisma money loan. And he was telling me -- so the money kind of switches in 2017. Hunter starts paying Archer half of his money from Burisma starting in 2017. And they actually enter into an agreement stating that they're going to do that from that point on. Because at that point, Archer is no longer on the board because he had his pending legal issue going on.

So they kept saying that that money being sent to Archer in the later years was a

repayment of loan. And I literally held up the document. I'm like, there's this document that literally lays this out that this is for services rendered related to the Burisma board. And there's no indication at all, whatsoever, that this money is a loan.

And that was the part where it just got so frustrating with -- I'm showing you evidence, and you're just not listening to me.

BY MINORITY COUNSEL 2:

Q But they had a whole presentation prepared on their decision not to charge?

A It wasn't on their decision not to charge. It was all the reasons why we shouldn't charge for 2014, 2015.

Q How long would you say that presentation was? Was it a PowerPoint?

A I don't remember, to be honest with you.

Q But presumably, there were a litany of reasons?

A Yeah. So when they found out the defense -- that the money was a loan and that part of the taxes were paid, they threw their hands up and they were like, oh, this -- it was essentially like this is the end of the world.

And what me and the investigator did is we figured it out. We found out stuff after that that we didn't know before. And we spent so much time working through the issue and showing how it wasn't a loan at all. There's no indication of it whatsoever. Again, I go back to -- you can't loan yourself your own income.

Q Can I ask a bit about -- you mentioned just in response to [REDACTED]'s question -- or it was related around this information.

You said the prosecutors asked you to limit some of your [questions] -- I'm not sure exactly what you suggested they were limiting -- because they didn't want to get DOJ Public Integrity involved. Can you talk a little bit more about what DOJ Public Integrity is?

A It's just another level of approval that, for certain issues, will come and opine and approve whether -- I believe that Public Integrity is involved if you're issuing a subpoena to an attorney. If they're involved in that. So there are certain things where they give their approvals for whether you can do something or not.

Q Does Public Integrity -- I'm sort of trying to get a sense of what would you say the general purpose of that unit or that approval process is? What is the point of it?

A I believe when cases are of a political nature and when there's complex issues, or when you need someone outside of your team to opine on something, they're the people you go to.

Q So --

A That's my understanding. So this is -- I'm not a part of DOJ. So I only know this from what I've heard.

Q Doesn't the fact that prosecutors were sort of trying to avoid that extra layer of review indicate -- not that they were trying to stonewall the process, but actually rather trying to expedite the process?

A I guess I'm confused by the question.

Q Well, presumably, another layer of review would only add time to various steps along the investigative process, right?

A I just -- I wanted to follow the evidence. I wanted to do the right thing. And I go back to -- if David is truly in charge and he's supposed special counsel, why are we going to these approvals? Why can't David, who is in charge of the investigation, just allow us to do it?

Q I guess I don't know the answer to that question.

But are these -- I don't know to what extent -- maybe you can tell me. Does David have the authority to bypass all DOJ approval processes at his discretion?

A I don't think so. But, in my opinion, that would be something that you guys would have to figure out. What authority did he -- and, everything is pointing to me that he didn't have that authority.

Q As a matter of course, can an AUSA, bypass those kinds of procedures? Who would need to grant permission to bypass the standard DOJ procedures such as getting approval from the Public Integrity?

A Yeah -- I would look at current special counsel cases. What approvals are they having to get? What are they having to do? So that's what I would do if I were trying to figure out an answer to that.

I had no issue -- to be honest with you, I had no issue with getting the approvals. But when you're putting the approvals as a roadblock that we don't want to do it because, well, that's going to take too much time to get those approvals and when we're trying to put everything out there to follow the right path, that is frustrating.

Q I guess what I'm wondering is, is there a balance? In any organization, you know, there are processes and approvals.

It incumbent upon the prosecutors to sort of weigh the probative value of the evidence that they might potentially gather with the speed and other issues potentially related to Public Integrity and the like that could be intended in gathering that evidence?

A I understand what you're saying, but, yeah, I don't know how to appropriately answer that.

Mr. Zerbe. I just want to make sure you answer --

Mr. [REDACTED]. Off the record.

[Discussion off the record.]

MAJORITY COUNSEL 1. Back on the record.

MINORITY COUNSEL 2. I don't have anything else.

MINORITY COUNSEL 1. That's it. We have nothing else.

BY MAJORITY COUNSEL 1:

Q I just have a couple follow-ups or maybe just one.

If someone meets all the elements for a crime of willful evasion and are found to, in conjunction with that, owe a liability, and they pay off that liability years later when they've been caught, has a crime still been committed?

A Yes.

Q Is there anything else we haven't covered today that you would like to share with us?

A Not that I can think of.

MAJORITY COUNSEL 1. With that, I have no further questions. I'd like to thank you for making this disclosure and for coming in and for your service. Thank you very much.

[Discussion off the record.]

MAJORITY COUNSEL 1. Back on the record.

Mr. [REDACTED]: Any of the agents' names that I've said, if those could be redacted. Because, I'm coming forward as a witness. I'm asking for those protections as well, but I don't want to ruin people's careers because they're a part of this investigation, so --

MAJORITY COUNSEL 1. We understand your request, and we'll take that under advisement.

Mr. [REDACTED]: Okay.

MAJORITY COUNSEL 1. Thank you.

Off the record.

[Whereupon, at 4:21 p.m., the interview was concluded.]

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit E

1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
) CRIMINAL ACTION
 v.) NO. 23-mj-274 (MN)
)
 ROBERT HUNTER BIDEN,) CRIMINAL ACTION
) NO. 23-61 (MN)
 Defendant.)

Wednesday, July 26, 2023
 10:00 a.m.
 Initial Appearance
 Plea Hearing

844 King Street
 Wilmington, Delaware

BEFORE: THE HONORABLE MARYELLEN NOREIKA
 United States District Court Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
 DISTRICT OF DELAWARE
 BY: BENJAMIN L. WALLACE, ESQ.
 BY: DEREK E. HINES, ESQ.
 BY: LEO J. WISE, ESQ.

Counsel for the United States

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Defendant with a firearm offense, and for the entry of a guilty plea to the criminal information filed in the separate matter, United States versus Robert Hunter Biden, 23-mj-274-MN, charging the Defendant with two counts of failure to pay taxes. The parties are ready to proceed. I ask permission to pass up an executed version of the plea agreement in the tax case at this time.

THE COURT: You may. Thank you.

MR. WISE: And my understanding, Your Honor, is that we're going -- Your Honor first will conduct the initial appearance on the firearm charge and then turn to the plea hearing on the tax charge.

THE COURT: No. Hold on. Let me just take a look. All right.

Good morning, Mr. Clark, Mr. Biden.

MR. CLARK: Good morning, Your Honor.

THE COURT: Just so that we don't have you feeling that you need to pop up and down, I am fine if you want to when I'm asking questions stay seated so you don't have to just keep popping up.

MR. CLARK: We won't do it any other time.

THE COURT: All right. Thank you. Okay. So we do have two cases here, one is a criminal action based on a felony information related to a gun charge, and the other is Criminal Action 23-274 based on the misdemeanor involving

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APPEARANCES CONTINUED:

CLARK SMITH VILLAZOR LLP
 BY: CHRISTOPHER J. CLARK, ESQ.

-and-

BERGER HARRIS, LLP
 BY: RICHARD I.G. JONES, JR., ESQ.

Counsel for the Defendant

THE COURT: All right. Good morning, everyone. Please be seated. All right. Hold on. Let me just start by reminding everyone that there is no recording of these proceedings that is permitted. For those of you in the back, you are certainly permitted to watch, but we will not have any disruptions. Any disruption or attempt to disrupt will result in the Court's security personnel or the U.S. Marshals escorting you out.

All right. With that.

MR. WISE: Good morning, Your Honor. Leo Wise, Derek Hines, and Benjamin Wallace on behalf of the United States. Now is the time the Court has set for an initial appearance on the criminal information filed in the United States versus Robert Hunter Biden, 23-cr-61-MN charging the

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the tax charges. This is the Defendant's first appearance. I had planned to conduct the initial appearance on the two cases at the same time. Is there any objection to that?

MR. WISE: None, Your Honor. Thank you.

MR. CLARK: None, Your Honor.

THE COURT: I thought it might be more efficient and save some time.

THE COURT: Mr. Biden, in Criminal Action 23-61, the United States Attorney for the District of Delaware has filed a felony information which charges you with possession of a firearm by a person who is an unlawful user of or addicted to a controlled substance in violation of 18 United States Code Sections 922(g)(3) and 924(a)(2).

And in Criminal Action 23-274, the United States Attorney for the District of Delaware has filed a misdemeanor information which charges you with two counts of willful failure to pay tax in violation of 26 United States Code Section 7203. Do you understand that those are the charges that are pending here?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that the maximum penalties for the gun charge are ten years of imprisonment, a fine of \$250,000, three years of supervised release, and a special assessment of \$100?

THE DEFENDANT: Yes, Your Honor.

5

1 THE COURT: And do you understand that the
2 maximum penalties for each of Counts I and II of the tax
3 case are twelve months of imprisonment, a \$100,000 fine or
4 twice the gross gain or loss from the offense, whichever is
5 greater, one year of supervised release, restitution and a
6 \$25 special assessment as well as costs of prosecution?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. Now, Mr. Biden, you have
9 the right to be represented by an attorney in these matters,
10 that means if you can afford to, you can hire an attorney of
11 your own choice. If you can't afford to, you may ask the
12 court to appointment an attorney to represent you. Do you
13 understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. You are presently
16 represented by Mr. Clark. Do you wish to continue that
17 representation?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. Now, Mr. Biden, you have
20 the right to a preliminary hearing in these cases. At that
21 hearing, the government would have to produce sufficient
22 evidence to show that it has probable cause to believe that
23 you committed the crimes with which you are being charged.
24 At that hearing you would have the right to introduce
25 evidence and to cross-examine any adverse witnesses who

7

1 THE COURT: All right. Now, pursuant to the Due
2 Process Act, I confirm that the government has a continuing
3 obligation pursuant to Brady v. Maryland and its progeny to
4 produce all exculpatory evidence and I order that it do so
5 at the appropriate time. The consequences for violating a
6 Brady obligation and/or my order could include, but are not
7 limited to, contempt proceedings, sanctions, referral to
8 disciplinary counsel, adverse jury instructions, exclusion
9 of evidence and dismissal of the charges. Does the
10 government understand that?

11 MR. WISE: Yes, Your Honor.

12 THE COURT: Has all Brady material been
13 produced?

14 MR. WISE: Yes, Your Honor.

15 THE COURT: Mr. Clark, any concerns about that?

16 MR. CLARK: None whatsoever, Your Honor.

17 THE COURT: Thank you.

18 Pretrial release, what is the government's
19 position?

20 MR. WISE: The conditions that have been
21 recommended we agree with.

22 THE COURT: Any concerns about that, Mr. Clark?

23 MR. CLARK: No, Your Honor, we're in accordance.

24 THE COURT: You can't help yourself, you're just
25 going to keep jumping up.

6

1 would be testifying against you. Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. Now, I understand that
4 you intend to plead guilty to the tax charges. Do I have
5 that right?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. Do you understand that
8 if you plead guilty to those charges, you will be waiving
9 your right to a preliminary hearing?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: I also understand that the plan for
12 the gun charge is a Diversion Agreement. Counsel, do we
13 need to do anything regarding a preliminary hearing at this
14 point in light of the planned Diversion Agreement?

15 MR. WISE: No, Your Honor.

16 MR. CLARK: We're in agreement with that, Your
17 Honor.

18 THE COURT: All right. Mr. Biden, you are not
19 required to make any statements to the authorities. If you
20 had already made statements to the authorities, you may stop
21 and not make any more. If you start to make a statement and
22 you change your mind, you may stop at any time. And any
23 statement that you do make may be used against you. Do you
24 understand all of that?

25 THE DEFENDANT: Yes, Your Honor.

8

1 MR. CLARK: I was taught at a hard school.

2 THE COURT: I know. I couldn't even think if I
3 wasn't standing.

4 I understand that pretrial release -- I agree
5 that pretrial release is appropriate subject to the
6 following conditions which I will read into the record. The
7 Defendant must not violate federal, state, or local law
8 while on release.

9 The Defendant must cooperate in the collection
10 of a DNA sample if it is authorized by 34 United States Code
11 Section 40702.

12 The Defendant must advise the court or the
13 pretrial services officer or some supervising officer in
14 writing before making any change in residence or telephone
15 number.

16 The Defendant must appear in court as required
17 and if convicted must surrender as directed to serve a
18 sentence that the Court may impose.

19 I also impose the following additional
20 conditions.

21 Sir, you must submit to supervision by and
22 report to supervision to the probation office in the
23 district in which you are residing. You must continue or
24 actively seek employment. You must communicate in writing
25 all international travel plans and provide supporting

9

1 documentation if requested to both the District of Delaware
 2 and the district in which you are residing. You must not
 3 possess a firearm, destructive device or other weapon. You
 4 must not use alcohol. You must not use or unlawfully
 5 possess a narcotic drug or other controlled substance
 6 defined in 21 United States Code, Section 802, unless
 7 prescribed by a licensed medical practitioner. I will
 8 clarify, however, that marijuana is not legal under federal
 9 law and you are prohibited from using marijuana regardless
 10 of whether it is legal or not in the state in which you are
 11 or it is prescribed by a medical practitioner.

12 You must submit to testing for a prohibited
 13 substance if required by the pretrial services officer or
 14 supervising officer. Testing may be done with random
 15 frequency and may include urine testing, the wearing of a
 16 sweat patch, remote alcohol testing system and/or any form
 17 of prohibited substance screening or testing. You must not
 18 obstruct, attempt to obstruct or tamper with the efficiency
 19 or accuracy of prohibited substance screening or testing.

20 Just give me a minute here.

21 And you must participate in a program of
 22 inpatient or outpatient substance abuse, therapy, or
 23 counseling if directed by the pretrial services officer or
 24 the supervising officer. Do you understand those
 25 conditions, sir?

10

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. Any objection or
 3 comments on the conditions imposed?

4 MR. CLARK: None from the defense, Your Honor.

5 MR. WISE: Nor from the United States, Your
 6 Honor.

7 THE COURT: All right. Mr. Biden, violating any
 8 of the conditions of release may result in the immediate
 9 issuance of a warrant for your arrest, revocation of your
 10 release, an order for detention, forfeiture of any bond or
 11 prosecution for contempt of court, and it could result in
 12 imprisonment, a fine, or both. Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Anything I left out or anything I
 15 need to address with respect to the initial appearances?

16 MR. WISE: Not from the United States, Your
 17 Honor.

18 MR. CLARK: No, Your Honor.

19 THE COURT: Now, we have two cases and two
 20 agreements and I understand that the Diversion Agreement is
 21 not something that is typically before the Court, but you
 22 all did send it to me so I do want to talk about that a
 23 little bit. There are some provisions in those agreements
 24 that are not standard and are different from what I normally
 25 see, so I think we need to walk through these documents and

11

1 get some understanding of what is being proposed so that I
 2 can give due consideration to the determination that you all
 3 are asking me to make. So I want to start with Criminal
 4 Action 23-274 involving the tax charges.

5 All right. Now, Mr. Biden, you told me that you
 6 intend to enter a plea of guilty in those cases, correct?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: So it is my responsibility to make
 9 sure that that plea is a voluntary and knowing plea. And in
 10 order to do that, I first need to ask you a series of
 11 questions. Before I ask you those questions, I am going to
 12 have you placed under oath to answer those questions
 13 truthfully. And it's important that you do answer those
 14 questions truthfully because if you don't, any false answers
 15 may be used against you in a separate prosecution for
 16 perjury. Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. Mr. Buckson, will you
 19 please swear in the Defendant.

20 COURT CLERK: Will you please rise and raise
 21 your right hand. Please state and spell your full name for
 22 the record.

23 THE DEFENDANT: Robert Hunter Biden.

24 R-O-B-E-R-T, H-U-N-T-E-R, B-I-D-E-N.

25 ROBERT HUNTER BIDEN, was duly sworn under oath.

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1 THE COURT: Thank you, sir. You may be seated.

2 All right. Now, sir, if at any time you want to confer with
 3 your counsel when I'm asking you questions, you may, just
 4 let me know. All right?

5 THE DEFENDANT: Thank you, Your Honor.

6 THE COURT: How old are you?

7 THE DEFENDANT: Fifty-three years old, Your
 8 Honor.

9 THE COURT: How far did you go in school?

10 THE DEFENDANT: Law school, Your Honor.

11 THE COURT: When did you graduate from law
 12 school?

13 THE DEFENDANT: 1996.

14 THE COURT: You're member of the bar?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Any particular?

17 THE DEFENDANT: District of Columbia and
 18 Connecticut, Your Honor.

19 THE COURT: Thank you. And you speak and
 20 understand English?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Are you currently or have you
 23 recently been under the care of a physician or psychiatrist?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Have you ever been hospitalized or

13

1 treated for any mental illness or addiction to narcotic
2 drugs of any kind?

3 THE DEFENDANT: I have attended treatment
4 facilities for addiction, Your Honor.

5 THE COURT: Okay. So that was included in my
6 question which is treatment for addiction to drugs.

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: So I need you to tell me about that.
9 How many times have you, to the best of your recollection,
10 been treated whether inpatient or outpatient?

11 THE DEFENDANT: Beginning in 2003 with the
12 inpatient, Your Honor, I have been to I believe close to six
13 inpatient over the course of twenty years.

14 THE COURT: All right.

15 THE DEFENDANT: And I have also been in
16 outpatient programs also during that time.

17 MR. CLARK: Just to be clear, it's numerous,
18 Your Honor.

19 THE COURT: I'm not going to walk through every
20 single one, but I just want to make sure I have some
21 understanding.

22 All right. Now, sir, each time that you were
23 treated in an inpatient facility, what was it for?

24 THE DEFENDANT: For addiction to alcohol
25 primarily originally, Your Honor.

15

1 complete that program or did you leave that program prior to
2 completion?

3 THE DEFENDANT: I completed that program, the
4 inpatient portion of it, Your Honor.

5 THE COURT: Okay. And after you completed that
6 program, did you then continue to use drugs for some period
7 of time?

8 THE DEFENDANT: I did, Your Honor.

9 THE COURT: All right. So when was the last
10 time -- so the fall of 2018 was the last time that you
11 received any treatment, right?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Okay. When was the last time that
14 you used, ingested, or were under the influence of any drug,
15 legal or illegal medication or alcoholic beverage of any
16 kind?

17 THE DEFENDANT: June of 2019, Your Honor.

18 THE COURT: All right. And so just to be clear,
19 you are not presently under the influence of any drug, legal
20 or illegal, medication or alcoholic beverage of any kind, is
21 that correct?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Well, let's just be clear because,
24 you know, people might look at this transcript. I said is
25 that correct and you said no.

14

1 THE COURT: Okay. And have you ever been in an
2 inpatient treatment program where you were treated for
3 something else other than alcoholism?

4 THE DEFENDANT: Drugs, also, Your Honor.

5 THE COURT: Okay. And I'm just not sure how
6 these programs work. I'm sorry. Is it for any particular
7 drug that you're treated or is it just sort of --

8 THE DEFENDANT: No.

9 THE COURT: Everything.

10 THE DEFENDANT: Everything, Your Honor.

11 THE COURT: Okay. And when was the most recent
12 time that you were in treatment? Well, are you currently in
13 treatment for your alcohol or drug issues?

14 THE DEFENDANT: No, I'm not, Your Honor.

15 THE COURT: When was the last time that you were
16 in treatment?

17 THE DEFENDANT: I believe the fall of 2018.

18 MR. CLARK: I think that's right, Your Honor.

19 THE COURT: Okay.

20 THE DEFENDANT: Your Honor, sorry.

21 THE COURT: That's okay. So the fall of 2018,
22 and was that inpatient or outpatient?

23 THE DEFENDANT: Inpatient, and then also
24 outpatient.

25 THE COURT: Okay. And when you -- did you

16

1 THE DEFENDANT: I'm sorry, yes, Your Honor,
2 excuse me.

3 THE COURT: And sir, do you understand what's
4 going on and why we're here today?

5 THE DEFENDANT: Yes, I do understand.

6 THE COURT: Counsel, do you have any doubt as to
7 your client's competence?

8 MR. CLARK: None whatsoever.

9 THE COURT: Any concerns from the government?

10 MR. WISE: No, Your Honor.

11 THE COURT: Based on the information that I
12 received, Mr. Biden, I find that you are competent and
13 capable of proceeding here today.

14 So now I want to talk about the misdemeanor
15 information which contains the tax charges that you are
16 pleading guilty to. Have you received a copy of the
17 information pending against you?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Have you fully discussed those
20 charges and the case in general with Mr. Clark?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Are you fully satisfied with the
23 counsel, representation, and advice you received from him in
24 this case?

25 THE DEFENDANT: Yes, Your Honor.

17

1 THE COURT: You have the right to have the
2 information read out loud at this hearing, but you can also
3 waive that reading. Would you like me to ask the government
4 to read it or do you waive that?

5 THE DEFENDANT: I waive that, Your Honor.

6 THE COURT: Okay. Next, the Memorandum of Plea
7 Agreement which was handed up to me. First, let me ask
8 counsel, what provision of the rules is this plea agreement
9 being presented under?

10 MR. WISE: It's presented under Rule
11 11(c)(1)(B), Your Honor, of the Federal Rules of Criminal
12 Procedure.

13 THE COURT: All right. And so just so we're
14 clear, and Mr. Clark, you agree with that?

15 MR. CLARK: I do, Your Honor.

16 THE COURT: All right. Just so we're clear,
17 this is not a plea under Rule 11(c)(1)(C), what is often
18 called a C plea which binds me to impose a specific sentence
19 if I accept the plea, is that correct?

20 MR. WISE: It is, Your Honor.

21 MR. CLARK: We agree, Your Honor.

22 THE COURT: So in your view, what is my role
23 here under Rule 11(c)(1)(B)?

24 MR. WISE: Your Honor has two roles as Your
25 Honor has already begun to determine that the plea is

18

1 knowing and voluntary under Rule 11(B), and to apprise the
2 Defendant that you are not bound by the recommendation of
3 the United States in this case pursuant to Rule 11(c)(3)(B).

4 THE COURT: That's it?

5 MR. WISE: That's it.

6 THE COURT: All right. Now, is it my role to
7 accept or reject this plea?

8 MR. WISE: It is not, Your Honor.

9 THE COURT: Now, let me just ask you this.
10 Would my role be different if this were a plea under Rule
11 11(c)(1)(A)?

12 MR. WISE: Yes, Your Honor, it would.

13 THE COURT: How would you say it's different?

14 MR. WISE: Both Rule 11(c)(1)(A) pleas and
15 11(c)(1)(C) pleas require the Court to either accept, reject
16 or defer on the plea agreement itself, not on the plea which
17 is governed by like I said a separate provision of the rule
18 which is 11(B), but in terms of the Court's role vis-a-vis
19 the agreement is to accept, reject or defer.

20 THE COURT: All right. And I do want to talk
21 about that a little bit further, but when we talk about the
22 plea, but you can sit down for now.

23 Now, wait, let me ask you this. If it's a
24 11(c)(1)(A) plea, what is your understanding of the factors
25 that I need to look at?

19

1 MR. WISE: So the rule itself is silent on the
2 factors, but the case law suggest that the factors -- that
3 the rejecting or accepting the plea would relate to the
4 Court's traditional role at sentencing, so if, for instance,
5 the Court thought that the charge bargain which is what
6 11(c)(1)(A) does, if the Court thought the charge bargain
7 did not adequately reflect the seriousness of the offense
8 which would affect the Court's ability to sentence, then
9 there is case law that says under those circumstances the
10 Court could reject the charge bargain that was contained in
11 the (c)(1)(A) plea.

12 THE COURT: When you say the charge bargain, you
13 mean the bargain by which the Defendant pleads guilty and
14 the government agrees not to bring other charges or to drop
15 charges that have already been brought?

16 MR. WISE: Exactly, Your Honor.

17 THE COURT: All right. And in looking at an
18 11(c)(1)(A) plea, would I need to consider or are those
19 factors that you just sort of talked about, is that usually
20 referred to as in the interest of justice?

21 MR. WISE: They are, Your Honor.

22 THE COURT: All right. You can be seated.

23 So yesterday I received from third parties a
24 letter with almost 900 pages of attachments in one case, and
25 a memorandum of law with hundreds of more pages of exhibits

20

1 in the other. I have not had time to review those
2 submissions. I understand that there is some objection to
3 them and I will give the Defendant and the government if it
4 wishes an opportunity to respond to those if they choose.
5 But even though I have not been able to review the
6 third-party submissions, I do understand that they request
7 that I reject the plea agreement based on information that
8 the filers submit cast doubt on the investigation performed
9 or the charges brought or both.

10 So let me ask you this. If I were to think that
11 the facts presented in those submissions or even the facts
12 that have been presented to me in this case and the attached
13 agreements suggest that the investigation was lacking or
14 that more serious charges should have been brought, is it
15 within my power to ask or direct the United States Attorney
16 or the Attorney General of the United States to redo the
17 investigation or bring different or more serious charges?

18 MR. WISE: I don't believe so, Your Honor, no.

19 MR. CLARK: We agree, Your Honor, it would raise
20 obviously massive separation of powers questions if that was
21 to be taken.

22 THE COURT: Okay. And isn't that decision about
23 what charges to bring for the prosecutor as part of the
24 Executive Branch?

25 MR. WISE: It is, Your Honor.

21

1 MR. CLARK: We concur, Your Honor.

2 THE COURT: All right. So if there were a
3 failure in the investigation or the charges brought were
4 inappropriate, how would that get addressed in our form of
5 government?

6 MR. WISE: Through the political process, Your
7 Honor.

8 MR. CLARK: In particular, Your Honor, the
9 Executive Branch is charged fully with investigating, making
10 prosecutorial discretion decisions, and indeed that's where
11 the term prosecutorial discretion comes from, it is vested
12 in the Executive Branch.

13 THE COURT: All right. Okay. Let's walk
14 through some of the provisions of the plea, Memorandum of
15 Plea Agreement. Do you have it in front of you, sir?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: It's six pages long and has an
18 attached Exhibit 1 which is four pages long as well as a
19 sealed attachment referenced as Attachment A. Attachment A
20 is a document that is not public, but it is a standard
21 document that is filed in all cases in this district and is
22 not filed only in connection with this case. The Memorandum
23 of Plea Agreement has three signatures on the final page.
24 Is one of those signatures yours?

25 THE DEFENDANT: Yes, Your Honor.

22

1 THE COURT: Okay. And when did you sign it?

2 THE DEFENDANT: This morning, Your Honor.

3 THE COURT: And before you signed it, did you
4 have an opportunity to read it and discuss it with your
5 attorney?

6 THE DEFENDANT: I did, Your Honor.

7 THE COURT: Are you satisfied with the advice
8 and counsel you received regarding the plea agreement.

9 THE DEFENDANT: I am, Your Honor.

10 THE COURT: All right. Let's have a side-bar up
11 here.

12 (Sealed Attachment A side-bar discussion under
13 separate cover.)

14 (End of sealed Attachment A discussion.)

15 THE COURT: All right. Let's go back on the
16 unsealed portion of the record.

17 So I'm now going to ask the prosecutor to read
18 the essential terms of the plea agreement. Sir, I'll ask
19 you to listen carefully to what he says because when he's
20 finished, I'm going to ask you if the agreement as recited
21 by him reflects the deal that you believe you reached with
22 the government.

23 Mr. Wise.

24 MR. WISE: Thank you, Your Honor.

25 Paragraph 1 provides that the Defendant waives

23

1 any challenge to the information based on venue and agrees
2 to plead guilty in the United States District Court for the
3 District of Delaware to Counts I and II of the information
4 which charge him with willful failure to pay tax in
5 violation of Title 26 United States Code Section 7203.

6 Paragraph 2 describes how the Defendant
7 understands that the maximum penalties for each of Counts I
8 and II are as Your Honor previously indicated, twelve months
9 of imprisonment, a \$100,000 fine or twice the gross gain or
10 loss from the offense, whichever is greater, one year of
11 supervised release, restitution and a \$25 special assessment
12 per count and the cost of prosecution which the parties
13 stipulate is zero.

14 Paragraph 3 describes the essential elements
15 that the government would have to prove if the case went to
16 trial and those are one, that the Defendant had a duty to
17 pay tax. Two, that the tax was not paid at the time
18 required by law. And three, that the failure to pay was
19 willful. The Defendant knowingly and voluntarily and
20 intelligently admits his guilt to each of these elements and
21 further admits to the information contained in the statement
22 of facts which is attached to the memorandum as Exhibit 1.

23 Paragraph 4 provides that the Defendant is
24 pleading guilty to Counts I and II because he is in fact
25 guilty.

24

1 Paragraph 5 contains certain stipulations under
2 the sentencing guidelines. Paragraph 5A provides that the
3 amount of loss as to Counts I and II, so a combined loss is
4 no less than \$1,199,524 and no greater than \$1,593,329.

5 Subparagraph B provides that the conduct set
6 forth in the statement of facts which is Attachment A to the
7 Diversion Agreement filed, which will be filed today does
8 not constitute relevant conduct pursuant to United States
9 Sentencing Guideline 1(b)(1.3). Paragraph C provides that
10 provided that the United States does not subsequently learn
11 of conduct by the Defendant inconsistent with the acceptance
12 of responsibility, that it will not oppose a two level
13 decrease pursuant to U.S. Sentencing Guideline 3(e)(1.1)(a)
14 for acceptance. And further, that should it be determined
15 that the Defendant's offense level is 16 or greater prior to
16 the application of the two level reduction for acceptance
17 that the United States will move to reduce the sentence, the
18 guideline by one additional level pursuant to U.S.
19 Sentencing Guideline 3(e)(1.1)(b) for a total reconduction
20 of three levels.

21 It is understood and agreed by the parties that
22 these stipulations are not binding upon either the probation
23 office or the Court.

24 Second, that the Court may make factual and
25 legal determinations that differ from these stipulations

25

1 that may result in an increase or decrease in the sentencing
2 guideline range and the sentence that may be imposed.

3 Paragraph 6 provides that for reasons to be
4 articulated at or near the time of sentencing, the United
5 States will recommend a sentence of probation.

6 Paragraph 7 provides that the United States
7 retains the right to defend the rulings of the District
8 Court in any subsequent proceeding.

9 Paragraph 8 outlines at length the sentencing
10 procedure which I believe the Court will review with the
11 Defendant in more detail.

12 Paragraph 9 contains a broad appellant waiver
13 which I also understand the Court will review with the
14 Defendant in greater detail.

15 Paragraph 10 provides that the Defendant agrees
16 to pay a \$50 special assessment at the day of sentencing.

17 Paragraph 11 provides that the memorandum
18 expressly incorporates Attachment A which is attached and
19 filed under seal and that the government as Your Honor has
20 said routinely files such an attachment even though it may
21 or may not continue additional terms. To the extent it
22 does, however, the parties acknowledge and agree to be bound
23 by it.

24 Paragraph 12 addresses restitution under the
25 Mandatory Victim Restitution Act. And the Defendant agrees

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1 to the entry of the restitution order for the full amount of
2 the victims losses attributable to his activities as ordered
3 by the Court which is expected to be zero because the self
4 assessed tax due at the time of filing and associated
5 interest and penalties have been paid to the Internal
6 Revenue Service by a third party on behalf of the Defendant.
7 However, the Defendant understands that an unanticipated
8 amount of a restitution order will not serve as grounds to
9 withdraw his guilty plea. The parties further understand
10 that should the Internal Revenue Service determine there are
11 additional taxes due and owing for the tax years 2014
12 through 2019, they are not subject to the terms of this
13 agreement and for the purposes of this memorandum the sole
14 victim of Counts I and II is the United States Treasury.

15 And finally paragraph 13 provides that it is
16 further agreed by the parties that the memorandum and
17 Exhibit A together with the sealed attachment supersedes all
18 prior promises, representations and statements of the
19 parties, that the memorandum may be modified only in writing
20 signed by all the parties and that any and all promises,
21 representations, and statements made prior to or after this
22 memorandum are null and void and have no affect whatsoever
23 unless they comport with the subsequent written
24 modifications and provisions of this paragraph.

25 THE COURT: Thank you. I did have a couple of

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1 initial questions.

2 Paragraph 5A says that the amount of losses no
3 less than 1,100 -- well, actually before we ask that,
4 because I'm going to ask how it relates to the facts, why
5 don't you go through Exhibit 1 you referenced, why don't you
6 put Exhibit 1 on the record.

7 MR. WISE: Yes, Your Honor.

8 At all times relevant to the instant
9 Information, the Defendant, Robert Hunter Biden, hereafter
10 Biden, was an attorney and businessman with lucrative
11 domestic and international business interests. From 2017 to
12 2019, he served on the board of a Ukrainian energy company
13 and a Chinese private equity fund. He further negotiated
14 and executed contracts for business and legal services that
15 paid millions of dollars of compensation to him and/or his
16 domestic corporations, Owasco, PC and Owasco, LLC. Through
17 at least early 2017, he also was employed by a prestigious
18 multi-national law firm in an "of counsel" capacity. For
19 this work, he earned substantial income, totaling more than
20 \$2.3 million in 2017 and \$2.1 million in 2018.

21 Biden also has a well-documented and
22 long-standing struggle with substance abuse. Following the
23 death of his brother in 2015, Biden relapsed and over time
24 progressed from alcohol to abusing illegal drugs, including
25 crack cocaine in 2016. This contributed to the collapse of

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1 his marriage, with his divorce finalized in March 2017, as
2 well as the collapse of his most significant professional
3 relationship in Fall 2017. Nonetheless, in 2017, despite
4 his addiction, Biden successfully entered into business
5 ventures and landed legal clients, earning millions of
6 dollars. By his own telling in a memoir published in 2021,
7 Biden's substance abuse worsened in 2018, a year that
8 included a move to Los Angeles and what he has described as
9 a "spring and summer of nonstop debauchery." Even during
10 this period, however, Biden continued to earn money and
11 exercise control over his personal and corporate finances.

12 Federal income tax returns and payments are due
13 on or about April 15th of each year for the prior calendar
14 year. Biden, like many other taxpayers, routinely requested
15 an automatic extension to file his returns, pushing the due
16 date for a tax return to on or about October 15th. An
17 extension of time to file a return, however, does not extend
18 the deadline for payment of taxes, which remain due on the
19 April filing date.

20 During calendar year 2017, Biden earned
21 substantial income, including: just under \$1 million from a
22 company he formed with the CEO of a Chinese business
23 conglomerate; \$666,666 from his domestic business interests;
24 approximately \$664,000 from a Chinese infrastructure
25 investment company; \$500,000 in director's fees from a

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1 Ukrainian energy company; \$70,000 relating to a Romanian
2 business; and \$48,000 from the multi-national law firm.
3 Throughout tax year 2017, Biden worked with a DC
4 and Maryland based accountant to prepare his individual and
5 corporate tax returns. In 2018, this accountant (who died
6 in 2019) prepared Biden's 2017 corporate and individual
7 income tax returns and throughout the fall repeatedly
8 attempted to provide them to Biden for review and signature.
9 These efforts included directly contacting Biden, reaching
10 out to his administrative assistant, and sending copies to
11 his former business partner. The former business partner
12 reviewed the returns and sent several emails to Biden in
13 which he commented on their substance and reminded Biden of
14 his filing obligations. The former business partner left
15 the final returns for Biden at Biden's office. Despite
16 these actions, Biden neither signed nor submitted the
17 individual or corporate income tax returns to the Internal
18 Revenue Service.
19 Not only did the accountant timely prepare
20 Biden's individual and corporate tax returns, the accountant
21 repeatedly encouraged Biden to timely pay the taxes
22 associated with the 2017 tax returns. Beginning in
23 April 2018 and continuing into October 2018, the accountant
24 advised Biden to make his tax payments, noting approximately
25 \$600,000 owed by Biden personally and an additional \$204,000

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1 owed by Owasco, PC. Biden told the accountant he could pay
2 \$25,000 in April 2018 towards his taxes, but no such payment
3 was made to the Internal Revenue Service. His large tax
4 liability stemmed in part from the fact that over the course
5 of 2017, Biden began withdrawing substantial funds outside
6 of Owasco, PC's established payroll system, which had been
7 created, in part, to ensure that Biden had sufficient
8 withholdings to timely pay any outstanding tax liability.
9 The end of year liability should not have come as a
10 surprise. At the time of those withdrawals, Biden's
11 business partner advised him that these transfers, made
12 without withholding, would result in a significant tax
13 liability at year end.
14 Despite his large outstanding tax liability and
15 profligate spending, on or about April 17, 2018, the due
16 date for 2017 tax payments, Biden did, in fact, have the
17 funds available to pay his outstanding 2017 tax liability
18 for both his personal and corporate returns. On or about
19 March 22, 2018, Biden received a \$1 million payment into his
20 Owasco, LLC bank account as payment for legal fees for
21 Patrick Ho, and \$939,000 remained available as of tax day.
22 Over the next six months Biden would spend almost the
23 entirety of this balance on personal expenses, including
24 large cash withdrawals, transfers to his personal account,
25 travel, and entertainment.

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1 Biden continued to earn handsomely and spend
2 wildly in 2018. He received a little over \$2.6 million in
3 business and consulting fees from the company he formed with
4 the CEO of a Chinese business conglomerate and the Ukrainian
5 energy company. However, without the structure of a stable
6 business partner and still in the throes of addiction, Biden
7 essentially ignored his tax obligations, withholding only
8 approximately \$38,465, less than six percent of the taxes
9 owed. Tax returns and filings for tax year 2018 were due on
10 April 15th, 2019. On that date, Biden traded emails with
11 his DC accountant and his attorney about seeking an
12 extension. The accountant advised Biden of his obligation
13 to make a tax payment on that date, irrespective of the
14 extension to file a return. Ultimately, the extension was
15 filed, making the return due on October 15, 2019. Biden,
16 however, paid nothing. As with tax year 2017, at the time
17 his 2018 tax payment was due, Biden continued to have
18 substantial income and the ability to pay his tax liability,
19 having received payments totaling approximately \$758,000
20 during March and April 2019. By late May, Biden had spent
21 almost the entire sum on personal expenses, including large
22 cash withdrawals, payments to or on behalf of his children,
23 credit card balances, and car payments for his Porsche.
24 After numerous programs and trips to rehab,
25 Biden got sober in May 2019, the same month he married his

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1 current wife. He has remained sober since. Biden remained
2 in California and spent much of 2019 painting and developing
3 plans for his memoir, which he began working on through the
4 fall and into the winter. During summer 2019, he was sued
5 in two different domestic-relations lawsuits, both seeking
6 payment of support obligations. He still did not, however,
7 make preparations to file or actually file either his 2018
8 individual or corporate income tax returns on or about
9 October 15, 2019, the extension due date.
10 In or around November 2019, Biden engaged a
11 California accountant to prepare his individual and
12 corporate income tax returns for 2017 and 2018. The
13 California accountant began gathering materials and started
14 preparing Biden's 2017 and 2018 returns in early 2020. By
15 that time, the domestic relations lawsuits had progressed,
16 and having failed to do so previously, Biden was under court
17 order to provide his tax returns or face potential sanctions
18 including imprisonment. On or about January 27, 2020, Biden
19 signed a representation letter for the California
20 accountants, averring that he was providing the accountants
21 with truthful and accurate information and acknowledging his
22 responsibility for the accuracy of those tax returns. Over
23 the days that followed, Biden participated in a series of
24 meetings with the California accountants and identified
25 business and personal expenses in connection with his tax

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1 returns. During this process, Biden miscategorized certain
2 personal expenses as legitimate business expenses, resulting
3 in a reduction in his tax liability. At the same time, the
4 California accountants overreported Biden's income, which
5 partially offset this reduction.

6 Or on about February 18th, 2020, Biden filed his
7 individual and corporate income tax returns with the
8 Internal Revenue Service for tax years 2017 and 2018. On
9 his 2017 Form 1040, Biden reported \$2,376,436 in total
10 income and a self-assessed tax due of \$710,598, of which
11 \$125,909 was timely paid, leaving a balance due and owing of
12 \$581,713. On his 2017 Form 1120 for Owasco, PC, Biden
13 reported gross receipts of \$2,698,041 and a self-assessed
14 tax due and owing of \$13,630. On his 2018 Form 1040, Biden
15 reported \$2,187,286 in total income and a self-assessed tax
16 of \$659,366, of which \$38,465 was timely paid, leaving a
17 balance due and owing of \$620,901. No additional payments
18 were included at the time of filing. On his 2018 Form 1120
19 for Owasco, PC, Biden reported gross receipts of \$2,659,014
20 and a self-assessed tax due and owing of \$4,247.

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

35

1 THE COURT: All right. Thank you. Now I did
2 have a few questions.

3 Paragraph 5A says that the amount of loss as to
4 Counts I and II including the relevant conduct as defined in
5 sentencing guideline is no less than \$1,199,524, and no
6 greater than \$1,593,329. Is that the combined loss or the
7 loss for each count?

8 MR. WISE: Combined loss, Your Honor.

9 THE COURT: All right. In Exhibit 1, there are
10 references to taxes paid by a third party on Mr. Biden's
11 behalf of \$955,800, and \$956,632, as well as \$492,000 in
12 2016 and \$197,000 for 2019. Just looking at 2017 and 2018
13 which are the subject of this case, those numbers add up to
14 more than \$1.9 million. Can you help me square that with
15 the relevant conduct.

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

24 THE COURT: Is that standard?

25 MR. WISE: Yes, Your Honor.

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1 individual tax liability with interest and penalties for tax
2 year 2018.

3 In addition, in or around February of 2020,
4 Biden's California accountants discovered that Biden's 2016
5 Form 1040 had not been filed. The return was originally
6 prepared in or around October 2017 and showed \$15,520 in
7 taxes due and owing. Though it was delivered to Biden at
8 Biden's office, this return was not filed with the Internal
9 Revenue Service. After learning in 2020 that the Form 1040
10 for 2016 remained unfiled, Biden filed a Form 1040 on
11 June 12, 2020. For tax year 2016, Biden reported \$1,580,283
12 in total income and self-assessed tax due of \$492,895, of
13 which \$447,234 was timely paid, leaving a balance due and
14 owing of \$45,661. Biden did not include a payment with this
15 return. On or about October 18, 2021, this liability, plus
16 accrued interest and penalties, was also fully paid by a
17 third party.

18 Finally, after seeking an extension, Biden
19 timely filed his 2019 Form 1040 on or about October 15th,
20 2020. He did not, however, pay his estimated tax due when
21 filing for an extension as required by law. For tax year
22 2019, Biden reported \$1,045,850 in total income and a
23 self-assessed tax due and owing of \$197,372. On October 18,
24 2021, this liability, plus accrued interest and penalties,
25 was also fully paid by the same third party.

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1 THE COURT: Did you want to say something?

2 MR. CLARK: I was going to say it's a relevant
3 guideline, Your Honor, for a failure to pay case omits
4 penalties and interests from the calculation of the tax
5 table loss. And there is a dispute about where in the range
6 it goes, but the explanation, penalties and interest are not
7 properly included under this guideline for this offense.

8 THE COURT: And if it were tax evasion, would
9 those be included?

10 MR. CLARK: It's my understanding that they
11 would be, Your Honor.

12 MR. WISE: Yes, Your Honor.

13 THE COURT: Okay. Paragraph 5b refers to the
14 Diversion Agreement. That's the Diversion Agreement
15 contemplated in the Criminal Action 23-61, the felony gun
16 charge?

17 MR. WISE: Yes, Your Honor.

18 THE COURT: All right. Paragraph 12 refers to
19 restitution, and says the self-assessed tax due at the time
20 of filing and the associated interest and patents have been
21 paid to the Internal Revenue Service by a third party on
22 behalf of the Defendant. What does self-assessed mean?

23 MR. WISE: It means the amount when the returns
24 were prepared that, the return prepared determine what was
25 owed based on the income that was reported and deductions

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1 and credit.

2 MR. CLARK: I think, Your Honor, based on that
3 and all this process, these numbers are based on payout
4 numbers that were obtained from the IRS. Self assessment is
5 a process by which a return filer writes a return, says this
6 is how much tax I owe. There was a lot of process here
7 between the IRS and these returns and at the end of the day
8 a payout number was obtained by the IRS and that number was
9 paid.

10 THE COURT: So this isn't -- that's what I'm
11 trying to figure out, is there someone still looking into
12 that to see if the self-assessed number is accurate, or do
13 you know that it's zero?

14 MR. WISE: So the self-assessed number again is
15 the amount on the return plus the interest and penalties
16 that were derived through the payoff. As the statement of
17 facts addresses, there is a dispute as to what was
18 self-assessed or what the self-assessed number would be for
19 tax year 2018 and that will be addressed in the sentencing
20 memoranda.

21 MR. CLARK: To be clear, the dispute is we think
22 it's lower. As the statement of facts recites, there was
23 actually an overstatement of Mr. Biden's income that year.
24 I mean, my understanding is all of the monies that the IRS
25 takes a position Mr. Biden owes as a result of every tax

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1 year being discussed have been paid based on their
2 calculation, if that answers Your Honor's question.

3 MR. WISE: So our position, Your Honor, is there
4 are additional -- there are deductions that were taken that
5 were improper and so that's why for the loss purposes,
6 putting aside what the payoff number was in our sentencing
7 memorandum, we will address those. The IRS in arriving at
8 the payoff number didn't --

9 THE COURT: Well, I'm just asking because you
10 said it's expected to be zero, why is it expected to be zero
11 if you're telling me that the numbers might be wrong?

12 MR. WISE: Because that is the payoff amount
13 that the IRS gave to the Defendant which is sort of a
14 process that produces that that is separate from the
15 criminal investigation and essentially divorced from it.
16 That's why the agreement doesn't bind the IRS if they then
17 make a decision essentially for additional restitution that
18 could occur.

19 THE COURT: Why do you say it's expected to be
20 zero?

21 MR. WISE: Because as of the payoff number that
22 was given, there is no at this moment restitution owed to
23 the IRS.

24 THE COURT: All right. So those are my initial
25 questions. I may have some more as we go through this, but

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1 that's what I had at this moment.

2 Mr. Biden, does the written agreement as
3 summarized by Mr. Wise accurately reflect the agreement you
4 have reached with the government?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Has anyone threatened you or forced
7 you into entering this written agreement?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Has anyone made you any promises
10 that are not contained in the written agreement?

11 MR. CLARK: Your Honor, with the exception of
12 the Diversion Agreement --

13 THE COURT: We're not making an exception. I
14 want to know, has anyone made you any promises that are not
15 contained in the written Memorandum of Plea Agreement?

16 MR. CLARK: Yes, there are promises from the
17 government in the Diversion Agreement, Your Honor.

18 THE COURT: And sir, are you relying on the
19 promises made in the Diversion Agreement in connection with
20 your agreement to plead guilty?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And if the Diversion Agreement were
23 not valid or unenforceable for any reason, would you enter
24 into the Memorandum of Plea Agreement?

25 THE DEFENDANT: No, Your Honor.

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1 THE COURT: All right. So we're going to
2 discuss that agreement in a bit, but for now let me say --
3 by the way, I didn't get a copy of paragraph 15 of the
4 agreement, but the parties provided me with a copy of that
5 agreement prior to this hearing, so that's what I'm going to
6 quote from at the moment.

7 Paragraph 15 of the Diversion Agreement states
8 the United States agrees not to criminally prosecute Biden
9 outside of the terms of this agreement for any federal
10 crimes encompassed by the attached statement of facts,
11 Attachment A to the Diversion Agreement, and the statement
12 of facts attached as Exhibit 1 to the Memorandum of Plea
13 Agreement filed this same day. This agreement does not
14 provide any protection against prosecution for any future
15 conduct by Biden or by any of his affiliated businesses.

16 And just so we're clear, I think you already
17 answered this, sir, but are you relying on that promise in
18 connection with your agreement to accept the Memorandum of
19 Plea Agreement and plead guilty?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: If that provision were not valid or
22 not enforceable, would you accept the Memorandum of Plea
23 Agreement?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: If you had no immunity from the

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1 government, perhaps even a different prosecutor and the
2 government could bring a felony tax evasion charge or drug
3 charges against you, would you still enter the plea
4 agreement and plead guilty to these tax charges?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: All right. So I need some help here
7 because you all told me this was a plea under Rule
8 11(c)(1)(B) and not (c)(1)(A), but yet I have this provision
9 that I would think is normally in a plea agreement. So tell
10 me, how do these agreements relate? Are they part of a
11 package deal?

12 MR. WISE: So, Your Honor, the United State's
13 position is that the agreements stand alone by their own
14 terms and both agreements include their last paragraph that
15 says that with this one caveat --

16 THE COURT: This is a big caveat, though, if
17 you're telling me Rule 11(c)(1)(B) doesn't give me any
18 authority to look at this, (c)(1)(A) refers to, you know,
19 having an agreement not to prosecute. That's why I'm
20 looking at this. I'm not saying that you're wrong, but I
21 need to understand this.

22 MR. WISE: Sure. So Your Honor, again, our view
23 is the plea agreement stands alone. There is no charge
24 bargaining in the plea agreement, period. And that's what
25 they have agreed to. The Diversion Agreement --

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1 THE COURT: But he would not agree, just so I
2 understand, sir, you would not agree to that plea agreement
3 if you didn't get some immunity from other charges, is that
4 right?

5 MR. CLARK: Speaking for my client, that's
6 correct, Your Honor.

7 THE COURT: I didn't mean that to be a
8 rhetorical question. So you're trying to tell me that
9 that's separate, but I think -- and I understand why he's
10 saying no, I wouldn't -- that isn't separate to me, I need
11 them both.

12 MR. WISE: That's the intention with the
13 agreement he signed.

14 THE COURT: So the intention of the agreement he
15 signed was that it would be completely separate and if that
16 Diversion Agreement were not valid or unenforceable and he
17 were on the hook for other charges that he would still be
18 pleading guilty?

19 MR. WISE: That's right, because that's what the
20 final paragraph of the plea agreement says he's agreeing to,
21 that the plea agreement stands on its own without any
22 additional promises outside the four corners of that
23 agreement.

24 THE COURT: Do you guys need to talk about this
25 for a few minutes?

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1 MR. CLARK: Yes.

2 THE COURT: How about I give you guys an
3 opportunity so we can make sure we're on the same page
4 because part of my charge here is to make sure that the
5 Defendant knows what he's pleading to.

6 MR. CLARK: We appreciate it, Your Honor.

7 COURT CLERK: All rise.

8 (A brief recess was taken.)

9 THE COURT: All right. Please be seated. Where
10 are we?

11 MR. CLARK: Your Honor, I want to apologize for
12 maybe my unartful phrasing for some of the issues that came
13 up a minute ago. Perhaps I can explain the Defendant's
14 position and that may clarify things. There are two
15 agreements in this case. They are both very important to
16 the Defendant. One is a plea agreement that the Court has
17 before it and my client is ready to enter a plea to that
18 plea agreement without contingency, without reservation, and
19 without connection. There is another agreement which is a
20 Diversion Agreement which --

21 THE COURT: Right. So let me just ask you, if
22 that Diversion Agreement were not valid or were
23 unenforceable for some reason, would he enter this plea?

24 MR. CLARK: He is ready to live by the terms of
25 that agreement --

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1 THE COURT: If that Diversion Agreement did not
2 exist, he would be willing to live by the terms of the plea
3 and plead guilty? I have concerns about that Diversion
4 Agreement so I'm asking you, if it were not valid, if it
5 were unenforceable, would he plead to the memorandum of
6 plea?

7 MR. CLARK: Based on our understanding of the
8 Diversion Agreement, which is a bilateral agreement between
9 the Defendant and the government which the government has
10 reaffirmed to me it will stand by, then yeah, he would enter
11 the plea.

12 THE COURT: So you're not answering my question.
13 You're saying well, we think it's valid and enforceable.
14 I'm asking you, if it were not, go with me here, if that
15 agreement were not valid and enforceable, if that agreement
16 did not exist and he could not rely on it, would he enter
17 the memoranda of plea?

18 MR. CLARK: You're asking for a hypothetical
19 from me, Your Honor.

20 THE COURT: Yes, I'm asking that because --

21 MR. CLARK: Yes, my client would resolve this
22 case on these terms in the hypothetical situation that exist
23 without that Diversion Agreement. I want to be clear that
24 it is the parties' position that there is a Diversion
25 Agreement between the parties which is binding. But take

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1 that out of today's proceeding and my client is ready to
2 enter a plea under the plea agreement.

3 THE COURT: All right. Let me ask you those
4 questions again, Mr. Biden. If the Diversion Agreement were
5 not valid and enforceable for any reason, would you enter
6 the Memorandum of Plea Agreement?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And are you relying on the promise
9 in the Diversion Agreement not to prosecute you in
10 connection with your agreement to accept the Memorandum of
11 Plea Agreement and plead guilty?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: And so if you had no immunity from
14 the government through that Diversion Agreement and the
15 government could bring felony tax evasion charges or drug
16 charges against you, would you still enter the plea
17 agreement and plead guilty to these tax charges?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. Now, I want to talk a
20 little bit about this agreement not to prosecute. The
21 agreement not to prosecute includes -- is in the gun case,
22 but it also includes crimes related to the tax case. So we
23 looked through a bunch of diversion agreements that we have
24 access to and we couldn't find anything that had anything
25 similar to that.

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1 So let me first ask, do you have any precedent
2 for agreeing not to prosecute crimes that have nothing to do
3 with the case or the charges being diverted?

4 MR. WISE: I'm not aware of any, Your Honor.

5 THE COURT: Do you have any authority that says
6 that that's appropriate and that the probation officer
7 should agree to that as terms, or the chief of probation
8 should agree to that as terms of a Diversion Agreement?

9 MR. WISE: Your Honor, I believe that this is a
10 bilateral agreement between the parties that the parties
11 view in their best interest. I don't believe that the role
12 of probation would include weighing whether the benefit of
13 the bargain is valid or not from the perspective of the
14 United States or the Defendant.

15 THE COURT: So have you ever seen -- I think I
16 just asked you this, but have you ever seen a Diversion
17 Agreement where the agreement not to prosecute is so broad
18 that it encompasses crimes in a different case?

19 MR. WISE: No. And I would say, Your Honor, I
20 don't think it is broad in the sense that --

21 THE COURT: We're going to talk about that. You
22 can sit down.

23 All right. Now, is an agreement not to bring
24 charges or an agreement to drop charges typically something
25 that is included in a Memorandum of Plea Agreement?

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1 MR. WISE: It can be.

2 THE COURT: And if it were included in the
3 Memorandum of Plea Agreement, would that make this plea
4 agreement one pursuant to Rule 11(c)(1)(A)?

5 MR. WALLACE: It would.

6 THE COURT: In your view, that would change the
7 analysis of what I needed to do in evaluating whether to
8 accept this plea or not, right?

9 MR. WISE: It would.

10 THE COURT: And so let's just understand this.
11 If it were that, then my role would be to accept or reject
12 the plea, right?

13 MR. WISE: It would.

14 THE COURT: What happens if I accept the plea,
15 we go forward to sentencing?

16 MR. WISE: Yes.

17 THE COURT: And what happens if I reject the
18 plea?

19 MR. WISE: Then we -- this is one of the issues
20 with charge bargaining.

21 THE COURT: Because there is a waiver of venue.

22 MR. WISE: Well, there is a waiver of venue, but
23 also, and this has been addressed by some courts outside of
24 this circuit, because of the separation of powers, if the
25 Court were to reject a (c)(1)(A) on its view that the

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1 charges should be different --

2 THE COURT: Well, what if I were to reject the
3 (c)(1)(A) plea on the grounds that it includes an agreement
4 not to prosecute, that as we're going to talk about in a few
5 minutes, I don't really understand the scope of.

6 MR. WISE: So --

7 THE COURT: I mean, forget all the
8 investigation, what charges were brought, I think that the
9 parties have made clear that we live in a system of
10 separation of powers, those powers are given to the
11 Executive Branch. Right?

12 MR. WISE: Right.

13 THE COURT: So I don't mean to violate the
14 separation of powers or do anything unconstitutional. I'm
15 trying to figure out what my role is and what the
16 appropriate rule is that applies to this.

17 MR. WISE: Right.

18 THE COURT: Okay. And so I am trying to
19 understand if I were to reject the plea, I'm not saying I am
20 going to, I have not -- for anyone in the back, I have not
21 made that determination, but if I were to reject the plea,
22 just tell me what happens.

23 MR. WISE: So then we have two charges against
24 the Defendant and they're misdemeanors, so he doesn't need
25 to be indicted and we go forward and there is a trial on

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1 those charges, and there is a possibility that there could
2 be additional charges brought.

3 THE COURT: Related to the tax issues?

4 MR. WISE: Yes.

5 THE COURT: Do you agree with that, Mr. Clark,
6 what would happen? Again, I want to make sure I'm not
7 saying that's my decision.

8 MR. CLARK: I understand, Your Honor. I don't
9 necessarily disagree. I'm not aware of any additional
10 charges that could validly be brought with regard to the tax
11 charges. Again, without getting into the whole
12 investigation, but I do think there is some context that's
13 important here. The U.S. Attorney's Office and me spent
14 five years in meeting after meeting, hours, ten hour long
15 meetings going through my client's taxes on a line-by-line
16 basis, and this is the disposition the parties came to after
17 a five-year investigation that was pursued with unbelievable
18 diligence and doggedness. And so first of all, I don't
19 think there are any other charges to be brought. I think,
20 you know, we thought that just like in any compromise
21 situation, we had valid arguments with regard to these
22 charges, but my client undertook to plead guilty to them
23 because it was the right disposition for all the parties
24 after extensive negotiation, and so yeah, I think we would
25 have two filed informations and the Court and the parties

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1 would figure out how to proceed on those informations and
2 that would be the rest of the process.

3 THE COURT: All right. So you said there might
4 be additional charges. Are you at liberty to tell us what
5 you're thinking those might be or is that just a
6 hypothetical that there might be?

7 MR. WISE: It was a hypothetical response to
8 your question.

9 THE COURT: Is there an ongoing investigation
10 here?

11 MR. WISE: There is.

12 THE COURT: May I ask then why if there is we're
13 doing this piecemeal?

14 MR. WISE: Your Honor may ask, but I'm not in a
15 position where I can say.

16 THE COURT: Okay. So you can sit down.

17 I think what I'm concerned about here is that
18 you seem to be asking for the inclusion of the Court in this
19 agreement, yet you're telling me that I don't have any role
20 in it, and you're leaving provisions of the plea agreement
21 out and putting them into an agreement that you are not
22 asking me to sign off on. So I need you to help me
23 understand why this isn't in the written plea agreement.

24 MR. CLARK: If I may, Your Honor. I mean, the
25 original conception here was something like a deferred

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1 prosecution, non-prosecution agreement, which generally the
2 Court doesn't necessarily weigh in on. I don't think it was
3 the -- we are not asking the Court to rule in any way on the
4 Diversion Agreement. The diversion as far as I understand
5 it has been approved by probation, there is a -- you've
6 arraigned the Defendant on the instrument and I believe that
7 process will go forward.

8 THE COURT: We have to talk about the Diversion
9 Agreement because you have included me into the Diversion
10 Agreement, so we are going to talk about that. But I am
11 just still, you know, normally -- so we have two agreements,
12 we have a plea agreement where you're saying Judge, we're
13 all here in front of you for him to plead. You're saying I
14 don't even get to accept it, I guess I'm supposed to rubber
15 stamp it under Rule (c)(1)(B). But then it would be a plea
16 under Rule (c)(1)(A) if the provision that you have put in
17 the Diversion Agreement which you do not have anyplace for
18 me to sign and it is not in my purview under the statute to
19 sign, you put that provision over there. So I am concerned
20 that you're taking provisions out of the agreement, of a
21 plea agreement that would normally be in there. So can you
22 -- I don't really understand why that is.

23 MR. WISE: So the bargain that was reached by
24 the parties was the Plea Agreement that is in front of Your
25 Honor, which is a (c)(1)(B) as I mentioned, where there is

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1 only a recommended sentence, that is -- that is the Plea
2 Agreement --

3 THE COURT: Well, it's not, because you do
4 reference -- you reference the Diversion Agreement in the
5 Plea Agreement.

6 MR. WISE: Not in the Plea Agreement.

7 THE COURT: You do. I asked you if paragraph 5B
8 referred to the Diversion Agreement and you said yes.

9 MR. WISE: Only insofar as it's not relevant
10 conduct.

11 THE COURT: You reference it in the Plea
12 Agreement, right?

13 MR. WISE: But it doesn't incorporate it.

14 THE COURT: And in the Diversion Agreement, you
15 reference the Memorandum of Plea Agreement, right?

16 MR. WISE: Only part of it.

17 THE COURT: And you say that the -- in the
18 Diversion Agreement when you say there is not going to be
19 any prosecution, you say that's not just prosecution on the
20 gun charge which is the subject of the Diversion Agreement,
21 you say also no prosecution with respect to anything in the
22 statement of facts attached to the memorandum of plea,
23 right.

24 MR. WISE: Yes.

25 THE COURT: All right. Okay. So I don't really

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1 understand, though, why that's not part of the Plea
2 Agreement.

3 MR. WISE: Because by the terms of the Plea
4 Agreement, the only function, the Diversion Agreement --
5 well, it has no function but the parties negotiated that
6 their view, and it's their view, probation can take a
7 different view, Your Honor can take a different view, their
8 view is the firearms offense should not be considered
9 relevant conduct for calculating the guidelines related to
10 the tax offense, that is all that 5(b) says. It does not
11 incorporate the paragraph 15 or any part of the Diversion
12 Agreement, it simply says our view is the Diversion
13 Agreement, the firearm offense should not be considered
14 relevant conduct in calculating the guidelines.

15 I think practically how this would work, Your
16 Honor, is if Your Honor takes the plea and signs the
17 Diversion Agreement which is what puts it into force as of
18 today, and at some point in the future we were to bring
19 charges that the Defendant thought were encompassed by the
20 factual statement in the Diversion Agreement or the factual
21 statement in the Plea Agreement, they could move to dismiss
22 those charges on the grounds that we had contractually
23 agreed not to bring charges encompassed within the factual
24 statement of the Diversion Agreement or the factual
25 statement of the tax charges.

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1 MR. CLARK: That's my understanding, Your Honor,
2 we would be enforcing a contract with the Department of
3 Justice.

4 THE COURT: I don't understand how you have an
5 agreement not to pursue other charges in the case, the
6 misdemeanor case, and you say that is not part of his Plea
7 Agreement.

8 MR. WISE: Because the Plea Agreement does not
9 include that.

10 THE COURT: All right. So let's talk a little
11 bit more about this. To the extent that the agreement --
12 you can sit down.

13 To the extent that the agreement not to
14 prosecute is promised, do the parties have some
15 understanding what the scope of that agreement is?

16 MR. WISE: Yes, Your Honor.

17 THE COURT: No, tell me, like specifically what
18 does it include. You said that there is an investigation, I
19 don't know what that is, but you must know that if there are
20 particular charges that could be brought based on the facts
21 that are there.

22 MR. WISE: So I can tell you what I think we
23 can't charge. I can't tell you what the ongoing
24 investigation is. So, for instance, I think based on the
25 terms of the agreement, we cannot bring tax evasion charges

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1 for the years described in the factual statement to the Plea
2 Agreement. And I think we cannot bring for the firearms
3 charges based on the firearm identified in the factual
4 statement to the Diversion Agreement.

5 THE COURT: All right. So there are references
6 to foreign companies, for example, in the facts section.
7 Could the government bring a charge under the Foreign Agents
8 Registration Act?

9 MR. WISE: Yes.

10 THE COURT: I'm trying to figure out if there is
11 a meeting of the minds here and I'm not sure that this
12 provision isn't part of the Plea Agreement and so that's why
13 I'm asking.

14 MR. CLARK: Your Honor, the Plea Agreement --

15 THE COURT: I need you to answer my question if
16 you can. Is there a meeting of the minds on that one?

17 MR. CLARK: As stated by the government just
18 now, I don't agree with what the government said.

19 THE COURT: So I mean, these are contracts. To
20 be enforceable, there has to be a meeting of the minds. So
21 what do we do now?

22 MR. WISE: Then there is no deal.

23 THE COURT: All right. I guess then the
24 question is where does that leave us? So what do we need to
25 do? Do you guys need some time to talk? Do you need me to

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1 set a date -- do we need to talk about a preliminary hearing
2 since we didn't really need to do one with the agreement?

3 MR. CLARK: We'll waive the preliminary hearing.
4 As far as I'm concerned, the Plea Agreement is null and
5 void. You know, we'll have -- we are going to have to
6 discuss things with the government.

7 THE COURT: All right. So I think we're on the
8 clock now. So what should we do? Do you want me to set a
9 date for pretrial motions? Do you want to exclude a little
10 bit of time so that you have some time to talk? What do you
11 want to do?

12 MR. CLARK: I think we would need thirty days
13 after the trial clock to figure out what's going on.

14 THE COURT: All right. I agree. I know that
15 this has come as a little bit of a curve ball, but I think
16 that having you guys talk some more makes sense, and we will
17 exclude the time up through -- so the thirty days takes us
18 to the Friday before Labor Day. Do you want that or do you
19 want the following week?

20 MR. CLARK: I think that's fine, Your Honor.

21 THE COURT: So we'll exclude up through
22 September 1st, you guys can get me a status report then. I
23 think it does make sense in the interest of justice to do
24 so. We'll get a status report and then we'll figure out
25 where we are.

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1 MR. CLARK: Your Honor, can we ask you to take
 2 ten minutes and see whether we can somehow make any headway
 3 on this?
 4 THE COURT: Okay.
 5 MR. CLARK: Thank you, Your Honor.
 6 COURT CLERK: All rise.
 7 (A brief recess was taken.)
 8 THE COURT: All right. Please be seated. Where
 9 are we?
 10 MR. CLARK: Your Honor, we have had some
 11 discussion between the parties to try to clarify the
 12 understanding and I just want to kind of summarize where we
 13 are and if the government's counsel wants to correct me.
 14 The parties have taken the position that the Diversion
 15 Agreement is a separate agreement from the Plea Agreement.
 16 The Diversion Agreement is a bilateral contract between the
 17 parties. Your Honor has asked the parties what their
 18 understanding of the paragraph 15 of the Diversion Agreement
 19 is. I think there was some space between us and at this
 20 point, we are prepared to agree with the government that the
 21 scope of paragraph 15 relates to the specific areas of
 22 federal crimes that are discussed in the statement of facts
 23 which in general and broadly relate to gun possession, tax
 24 issues, and drug use.
 25 THE COURT: So are you going to rewrite that?

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1 MR. CLARK: The government says that's what it
 2 means and Your Honor asked for what the parties agree.
 3 THE COURT: I'm just looking at the language of
 4 that. So you're comfortable with that's what it means even
 5 though the language of that seems substantially broader?
 6 MR. CLARK: Your Honor, I just put on the record
 7 what I have --
 8 THE COURT: You didn't just answer yes so that
 9 also -- so yes, you are comfortable that that provision
 10 means that it only relate and for what period of time?
 11 MR. WISE: It would be the period of time in the
 12 statement of fact, both statement of facts.
 13 THE COURT: Help me out with that.
 14 MR. WISE: '14 to '19 for the tax offenses and
 15 the drug -- and the admission of drug use in that period and
 16 then the firearms is obviously specifically identified in
 17 the time period in which that was possessed.
 18 THE COURT: All right. So the defense agrees
 19 that the agreement not to prosecute only includes the time
 20 period from 2014 to 2019, it only includes tax charges in
 21 that time period, drug charges in that time period, and the
 22 particular -- the firearms charges that relate to this
 23 particular firearm?
 24 MR. CLARK: Yes, Your Honor.
 25 THE COURT: All right. So you can be seated.

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1 Let me just take a look here. I mean, part of the issue
 2 that I'm having is understanding, you know, regardless of
 3 whether this is a plea under subsection B or subsection A,
 4 it has to be a knowing plea and I'm already faced with the
 5 Defendant under oath saying both that he would not enter the
 6 Memorandum of Plea Agreement if the Diversion Agreement were
 7 not valid, and that he would. And so I'm a little bit
 8 confused about that. So I think we can work through that.
 9 But let's take a look at some of the rest of this.
 10 All right. Sir, other than what we have just
 11 discussed, are there any other promises that have been made
 12 to you to entice you to enter the Memorandum of Plea
 13 Agreement?
 14 THE DEFENDANT: No, Your Honor.
 15 THE COURT: Do you understand that this is the
 16 time to tell me of any promises not in the record or of any
 17 threats that have been made because after today you won't be
 18 able to withdraw your plea based on information that you
 19 could have shared with me here?
 20 THE DEFENDANT: Yes, Your Honor.
 21 THE COURT: Do you understand that the plea --
 22 terms of the Plea Agreement are merely recommendations to
 23 me, that I can reject those recommendations without
 24 permitting you to withdraw your plea and impose a sentence
 25 that is harsher or longer or more severe than the one that

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1 you may anticipate?
 2 THE DEFENDANT: Yes, Your Honor.
 3 THE COURT: Are you pleading guilty of your own
 4 free will because you are, in fact, guilty?
 5 THE DEFENDANT: Yes, Your Honor.
 6 THE COURT: All right. Now I want to walk
 7 through some of the specific provisions of the agreement.
 8 First, venue. Do you have the agreement in front of you?
 9 THE DEFENDANT: Yes, Your Honor.
 10 THE COURT: All right. So paragraph 1 states
 11 that you waive any challenge to the information based on
 12 venue. Do you understand that absent that waiver, you could
 13 challenge this Court being the appropriate Court to hear
 14 these charges?
 15 THE DEFENDANT: Yes, Your Honor.
 16 THE COURT: By entering this plea you are giving
 17 up that challenge?
 18 THE DEFENDANT: Yes, Your Honor.
 19 THE COURT: Did you discuss that provision with
 20 your counsel?
 21 THE DEFENDANT: Yes, Your Honor.
 22 THE COURT: Again, are you satisfied with the
 23 advice that you received?
 24 THE DEFENDANT: Yes, Your Honor.
 25 THE COURT: Now, next, in paragraph 2, Mr. Wise

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1 went over the maximum penalties for Counts I and II when he
 2 summarized the essential terms and I mentioned those to you
 3 earlier when we were doing the initial plea. Do you
 4 understand what the maximum penalties are for each of the
 5 counts that's pending against you?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you need me to go through them
 8 one more time or are you okay?

9 THE DEFENDANT: No, Your Honor, thank you.

10 THE COURT: Paragraph 3. Paragraph 3 list the
 11 essential elements of Counts I and II that the government
 12 would have to prove. Specifically for each count the
 13 government would have to prove beyond a reasonable doubt
 14 that the Defendant, you, had a duty to pay a tax. Two, the
 15 tax was not paid at the time required by law. And three,
 16 that your failure to pay was willful. Do you understand
 17 that if I accept your guilty plea, the government will not
 18 have to prove anything?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Paragraph 3 also references the
 21 statement of facts attached to the Plea Agreement as
 22 Exhibit 1. Mr. Wise read those into the record and that is
 23 something that is not common in my experience. I just want
 24 to ask you about some of those. I'm not going to go through
 25 all of those facts but I want to ask them because it is part

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1 worked there?

2 THE DEFENDANT: Your Honor, I think I was at
 3 Boise Schiller 2010, maybe, was when I started, but I am not
 4 positive of that. That's what I believe.

5 THE COURT: Okay. And were you in an of counsel
 6 position that whole time?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. Now, it says then that
 9 you -- for the work you did, you earned 2.3 million in 2017
 10 and 2.1 million in 2018. Now, you left Boise Schiller in
 11 2017, right?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: So, can you tell me how -- I'm
 14 trying to understand the 2018 \$2.1 million.

15 MR. CLARK: My understanding, Your Honor, is
 16 that sentence picks up the work described in the last couple
 17 of sentences, not just the work for Boise Schiller.

18 THE COURT: Well, Mr. Biden actually knows.

19 THE DEFENDANT: Yeah, exactly, Your Honor, I
 20 believe what the government intended for that sentence was
 21 that it was the total income, not just as it relates to my
 22 capacity for Boise Schiller.

23 THE COURT: So for all your work --

24 THE DEFENDANT: For this work, it's all of the
 25 things that are listed above there.

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1 of the Plea Agreement that is being presented to me and
 2 particularly given our earlier discussion about the fact
 3 that those facts are incorporated into the agreement not to
 4 prosecute.

5 All right. So, do you have those in front of
 6 you?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. So in the very first
 9 paragraph of Exhibit 1, it says towards the end, it says
 10 through at least early 2017 -- I think before that, in the
 11 first paragraph, in the second sentence it says from 2017 to
 12 2019, you served on the board of Ukrainian energy company
 13 and a Chinese private equity fund. Can you tell me what
 14 those companies were?

15 THE DEFENDANT: The Ukrainian energy company was
 16 Burisma, and the Chinese private equity fund was Bohai,
 17 Harvest and Rosemont.

18 THE COURT: And some of this I'm asking just so
 19 I understand because there are other references to Ukrainian
 20 companies and Chinese companies and I can't tell if they're
 21 the same company or not, so that's part of why I'm asking
 22 you. Later in that paragraph, it says through at least 2017
 23 you were employed by a prestigious multi-national law firm
 24 in an of counsel position. It says through at least 2017.
 25 What were the years, do you remember like how long you

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1 THE COURT: All right. Thank you. Okay. In
 2 the next paragraph, it says you have a well-documented and
 3 long-standing struggle with abuse and you did tell me
 4 already, I'm not going to ask you again about your efforts
 5 to treat that. But when we talk about well-documented, is
 6 there a particular thing that we're looking at for where
 7 it's documented or is that just based on your discussions?

8 THE DEFENDANT: Well, I believe the government
 9 is referring to a book that I wrote about my struggles with
 10 addiction in that period of time in my life. And quite
 11 possibly other news outlets and interviews and things that
 12 have been done.

13 THE COURT: Okay. In that paragraph, it refers
 14 sort of towards the middle, it refers to your struggles with
 15 addiction led to the collapse of your most significant
 16 professional relationship. Is that referring to the law
 17 firm or something else?

18 THE DEFENDANT: My business relationship, my
 19 business relationships, all of my business relationships,
 20 ultimately including the law firm. I had a business that
 21 was Rosemont Seneca advisors, and I had a long-standing
 22 business partner from the inception of that company that I
 23 started. And others that all collapsed during that period
 24 of time.

25 THE COURT: So one of the businesses was

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1 Rosemont Seneca. Were there others that collapsed? The one
2 reference here to Owasco.

3 THE DEFENDANT: Virtually everything collapsed.
4 Owasco is the holding company for all of the other companies
5 below there.

6 THE COURT: Okay. And who was your business
7 partner?

8 THE DEFENDANT: A gentleman named Eric Schwerin.

9 THE COURT: All right. The fourth paragraph
10 says during the calendar year 2017, you earned substantial
11 income including just under a million dollars from a company
12 you formed with a CEO of a Chinese business conglomerate.
13 Is that the same or a different Chinese company from the one
14 you referenced earlier?

15 THE DEFENDANT: I started a company called
16 Hudson West, Your Honor, and my partner was associated with
17 a Chinese energy company called CEFC.

18 THE COURT: Who was your partner?

19 THE DEFENDANT: I don't know how to spell his
20 name, Yi Jianming is the chairman of that company.

21 THE COURT: Is that company still in existence?

22 THE DEFENDANT: No.

23 THE COURT: Okay. Then it says you made
24 \$666,666 from your domestic business interest. Is that the
25 Rosemont Seneca one?

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1 THE DEFENDANT: Yes, Your Honor, I believe
2 that's what it refers to.

3 THE COURT: \$664,000 from a Chinese
4 infrastructure investment company. Is that one of the
5 companies we've already talked about?

6 THE DEFENDANT: I believe so, yes, Your Honor.

7 THE COURT: Which one is that?

8 THE WITNESS: I believe CEFC.

9 THE COURT: Okay. \$500,000 in director's fees
10 from the Ukrainian energy company. That's the one that you
11 already told me about?

12 THE DEFENDANT: Same, Burisma.

13 THE COURT: Burisma.

14 Okay. 48,000 from the law firm.

15 THE DEFENDANT: Yes.

16 THE COURT: That's the Boise Schiller?

17 THE DEFENDANT: Yes, it is.

18 THE COURT: All right. Okay. The bottom of
19 that first page, the final paragraph says that the
20 accountant sent copies of the tax documents, copies of the
21 tax documents to your former business partner. Is that
22 Mr. Schwerin?

23 THE DEFENDANT: I believe that's who it's
24 referring to, yes, Your Honor.

25 THE COURT: All right. On the next page, at the

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1 end of the second paragraph, starting four lines from the
2 bottom in the middle of the line, the paragraph talks about
3 your tax liability. And it says the end of year liability
4 should not have come as a surprise. Do you see that?

5 THE DEFENDANT: I'm sorry, I'm just trying --

6 THE COURT: That's okay. Take your time.

7 THE DEFENDANT: Yes, I see that here.

8 THE COURT: It says it should not have come as a
9 surprise. It wasn't a surprise, is that right?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And you knew --

12 THE DEFENDANT: Well, I don't -- I didn't write
13 this, Your Honor, so the characterization --

14 MR. CLARK: Can we elaborate the time there,
15 Your Honor?

16 THE COURT: Yes.

17 MR. CLARK: So essentially there was a tax
18 treatment that was undertaken in that year, and it changed
19 the tax treatment at the very end of the year for a
20 particular asset. And so I think the point is, and I didn't
21 write this either, there was substantial influx of income
22 during that year. There was an issue with this last minute
23 tax treatment change, and so there were expressions at times
24 of surprise at that. I think the government's point is you
25 knew you made a lot of money, it shouldn't have come as a

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1 surprise.

2 THE COURT: My only concern is when I read this
3 as a lawyer, it shouldn't have come as a surprise, that
4 doesn't preclude Mr. Biden from saying yes, it did.

5 MR. CLARK: Your Honor's characterization is
6 exactly right.

7 THE COURT: You're saying it actually was a
8 surprise?

9 MR. CLARK: In that year.

10 THE COURT: You guys are okay with that?

11 MR. WISE: Yes, Your Honor.

12 THE COURT: All right. But you did know that
13 you owed tax money, right?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And your business partner,
16 Mr. Schwerin, told you that no withholdings had been made?

17 THE DEFENDANT: Yes, Your Honor, I believe that
18 to be the case.

19 THE COURT: All right. In the third paragraph,
20 which is actually the second full paragraph, it says on or
21 about March 22nd, 2018, you received a million dollar
22 payment into your Owasco bank account as payment for legal
23 fees for Patrick Ho.

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Who is that payment received from,

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1 was that the law firm?

2 THE DEFENDANT: Received from Patrick Ho, Your

3 Honor.

4 THE COURT: Mr. Ho himself?

5 THE DEFENDANT: Yes.

6 THE COURT: Were you doing legal work for him

7 separate and apart from the law firm?

8 THE DEFENDANT: Yes, Your Honor. Well --

9 MR. CLARK: That wasn't through Boise Schiller,

10 Your Honor, Mr. Biden was engaged as an attorney.

11 THE COURT: Right. So that's why I asked. You

12 were doing work for him --

13 THE DEFENDANT: My own law firm, not as counsel.

14 THE COURT: So you had your own law firm as

15 well?

16 THE DEFENDANT: I think Owasco PT acted as a --

17 acted as a law firm entity, yeah.

18 THE COURT: Okay.

19 THE DEFENDANT: I believe that's the case, but I

20 don't know that for a fact.

21 THE COURT: Okay. The final paragraph on the

22 second page of the exhibit says that you received a little

23 bit more than \$2.6 million in business and consulting fees

24 from the company you formed with the CEO of the Chinese

25 business conglomerate and the Ukrainian energy company, and

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1 -- I guess originally I was asking if that was in addition

2 to the money you had received from the -- if that was in

3 addition to the money you had received from the law firm,

4 but I think we clarified earlier that --

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: So I guess what I'm confused about

7 is -- so is that \$2.6 million, that was in 2018?

8 MR. CLARK: That's our understanding, Your

9 Honor.

10 THE COURT: But it says in the first paragraph

11 of the exhibit for the work that you did for the Ukrainian

12 company and the Chinese company and your domestic

13 businesses, it was \$2.1 million.

14 MR. CLARK: Your Honor, I think actually for

15 this one, and again, we didn't write this, but we don't

16 dispute its accuracy, I think this may summarize a chain of

17 payments that was made over a couple of years.

18 MR. WISE: Your Honor, as I read that, the

19 reference in the first paragraph is to -- is income and it's

20 more than -- the language is more than 2.1 million in 2018,

21 and by contrast the paragraph Your Honor just pointed out,

22 it's talking about fees he generated at about 2.6 million, I

23 think there were expenses that were business expenses that

24 would be taken from those fees that would get you to a lower

25 income number that's north of 2.1 million.

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1 THE COURT: Okay. In the first full paragraph

2 on the third one, it says after numerous programs and trips

3 to rehab, you got sober in May of 2019. Do you see that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: When I asked you earlier when you

6 last used or were under the influence of a controlled

7 substance or a medication, you said June of 2019. What was

8 it that you did in June of 2019?

9 THE DEFENDANT: I was married on May of --

10 May 17th of 2019, and that is my sobriety date.

11 THE COURT: When I asked you earlier --

12 THE DEFENDANT: I was being conservative, Your

13 Honor. I think in between that date to be technically and

14 completely honest from the day that I got married until

15 June 1st, I did have a drink or two.

16 THE COURT: Okay.

17 THE DEFENDANT: So I count my sobriety date at

18 least in the program that you attend as June 1st, so that's

19 why I did that.

20 THE COURT: You said the program you attend. I

21 thought you -- are you attending a --

22 THE DEFENDANT: No, a separate program that

23 required anonymity, Your Honor.

24 THE COURT: Okay. But I am just trying to make

25 sure that we don't --

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1 THE DEFENDANT: No, no, I'm not saying that

2 there are any programs that I'm involved in right now, I'm

3 saying meetings that I go to, the sobriety date is often

4 quoted.

5 MR. CLARK: He draws a distinction between

6 treatment and a program.

7 THE COURT: Okay.

8 THE DEFENDANT: And it's not --

9 THE COURT: And I appreciate that, whether we

10 call it a treatment or something, you are doing something to

11 support your sobriety, is that correct?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Okay. All right. Then that

14 paragraph says that you did not make preparations to file or

15 actually file your 2018 individual or corporate income tax

16 when it was due in 2019. Is that right?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay. And it was due according to

19 this in October of 2019. Right?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And you were sober at that time?

22 THE DEFENDANT: I was, Your Honor.

23 THE COURT: But you didn't file your taxes.

24 THE DEFENDANT: Yes, Your Honor, in putting my

25 life back together, it was a flood, an enormous amount of

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1 problems and by the time I was able to find someone to be
2 able to help me, I was already past the deadline in which I
3 should not have gone past.

4 THE COURT: At the end of the next paragraph, it
5 says that in 2020, during the process of putting together
6 your 2017 and 2018 tax returns, you mischaracterized certain
7 personal expenses as legitimate business expenses. What's
8 that referencing?

9 MR. CLARK: Your Honor, it may be better if I
10 explain it because Mr. Biden is actually not that close to
11 the facts. In essence, in a very compressed time frame,
12 Mr. Biden was asked to identify for all of these tax years
13 that were being done from his credit cards and other bank
14 accounts what's a business expense and what is a personal
15 expense. And he was asked to go through charts and mark
16 them. And there are situations in which he made an error
17 with regard to marking business expenses or personal
18 expenses. In several instances, most of them relate to one
19 account, which was a business line of credit account, which
20 he and his accountants treated as business expenses but that
21 he never reviewed the actual records for because the
22 accountants couldn't get the records. So we concede that he
23 made mistakes, erroneous mistakes in categorizing some of
24 these business and personal expenses. And that's what it
25 refers to.

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1 THE COURT: Do you know the approximate amount
2 of money of these mistakes?

3 MR. CLARK: That's what the discussion of the
4 dispute was. We see it in not minimizing, around \$30,000
5 over the entirety of all the filings. I think the
6 government thinks it's higher. But that's part of what
7 we're going to shake out at sentencing. It is not massive
8 amounts of money from the perspective of these tax returns.
9 And as this points out I think in the next sentence, during
10 the same year that these errors were made, Mr. Biden's
11 accountants erroneously overreported his income by several
12 hundred thousand dollars. And so there is -- there are
13 errors going both ways in that year, some of them are these
14 mistakes, and that mistake by his accountants.

15 THE COURT: And just so I understand, are these
16 things that he made these mistakes and gave them to his
17 accountant and then they were corrected or he made these
18 mistakes, gave them to his accountant and then those
19 mistakes ended up in the filing that were ultimately made to
20 the Internal Revenue Service?

21 MR. CLARK: It was the latter, the accountants
22 didn't catch the mistakes.

23 THE COURT: And again, sir, this was done after
24 you were already sober?

25 THE DEFENDANT: Yes, Your Honor.

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1 THE COURT: All right. In the next paragraph,
2 there are more references to self-assessed tax. Is that the
3 same as we discussed previously, the amount of tax that he
4 determined he owed?

5 MR. WISE: Yes, Your Honor.

6 THE COURT: And at the top of the last page, and
7 also in I guess the last paragraph, or maybe even all those
8 paragraphs, there is a reference to a third party who paid
9 your tax liability. Is it the same person who paid all of
10 the outstanding liability?

11 THE DEFENDANT: Yes, Your Honor. I took a loan
12 from that individual.

13 THE COURT: You took a loan?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you make payments on that loan?

16 THE DEFENDANT: Not currently, Your Honor, but
17 it's a normal typical loan with terms and a time frame.

18 THE COURT: Okay. All right. Let's talk now
19 about the paragraph 9, the appellant waiver provision.
20 Mr. Biden, your agreement contains an appellant waiver
21 provision in paragraph 9. This waiver limits your ability
22 to appeal your sentence. Have you discussed this waiver
23 with your attorney?

24 THE DEFENDANT: Yes. Yes, I have Your Honor.

25 THE COURT: Are you satisfied with the advice

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1 and counsel you have received with respect to the waiver?

2 THE DEFENDANT: Yes, I am, Your Honor.

3 THE COURT: Now, I can read the waiver to you if
4 you would like me to or you can tell me that you're
5 confident that you understand it. Do you want me to review
6 it with you?

7 THE DEFENDANT: I'm confident that I understand
8 it, Your Honor.

9 THE COURT: Do you understand that it is a broad
10 waiver provision and it leaves you with narrow appellant
11 rights should you disagree with your conviction or your
12 sentence?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And that it leaves you little
15 ability to challenge your conviction or sentence?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Do you understand that it is
18 unlikely that the conditions that would allow you to appeal
19 will occur and you will likely have no relief should you
20 receive a sentence that is different than the one that you
21 anticipate?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. I find that the
24 Defendant has knowingly and voluntarily waived his appellant
25 rights.

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Now, as Mr. Wise said earlier, I want to talk to you a little about the sentencing process in federal court. It's not required in a misdemeanor case, but I am going to ask the United States Probation Office to prepare a presentence investigation report to the Court before sentencing. You and the government will have a chance to review and challenge the facts in that report. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: It's been my responsibility under the statute, 18 United States Code Section 3553(a) to impose a sentence that is sufficient but not greater than necessary to provide punishment and afford deterrents. Under the current law I have to follow a three-step process. First, I have to consider the sentencing guidelines that's been calculated by the probation office and any objections to those guidelines. Then, I have to rule on any motions for a departure from those guidelines and explain how those motions if granted would impact the guidelines. And finally, I have to consider all of the factors in the statute including personal factors that would help me to determine what an appropriate sentence is. And that sentence may, again, vary either upwards or downwards from the guidelines.

The government has agreed not to oppose a

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sentence of probation, but it's important that you understand that without reviewing the presentence report, I can't predict for you today whether I will agree that that's an appropriate sentence or not. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you also understand that parole has been abolished and that to the extent that you were given any period of imprisonment, you would not be released on parole from that imprisonment?

THE DEFENDANT: I understand that, Your Honor.

THE COURT: Do you understand that if you're sentenced to a term of incarceration followed by a period of supervised release or a period -- if you were given a period of probation, if you are found in violation of the conditions of your supervised release or your probation that that may be revoked and you would have to serve additional time in prison if you were imprisoned or if you were on probation that you might have to serve time in prison?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that your sentence may include payment of a fine or payment of restitution, and it will include a mandatory special assessment for each offense to which you plead guilty?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you discussed with your counsel

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what the sentencing guideline calculation might be for the offenses to which you are pleading guilty?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And do you understand that if I impose a sentence that is harsher or longer or more severe than the one that you may anticipate, you will still be bound by your plea and will not have the right to withdraw it on that basis?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Now I want to talk about some of the rights that you waive if you plead guilty. Do you understand that you have the right to plead not guilty to this offense, to persist in your plea of not guilty and to have a trial by jury on the offense during which you would also have the right to the assistance of counsel and the right to see and hear all of the witnesses and have them cross-examined on your behalf?

THE DEFENDANT: Yes, Your Honor.

THE COURT: The standard of proving guilt is beyond a reasonable doubt and it is the highest standard of proof in our justice system. If the government failed to establish your guilt beyond a reasonable doubt, you would be acquitted of the charges against you. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

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THE COURT: Do you understand that at trial you would have the right on your own part to decline to testify or to put on any evidence at all and that if you decided not to testify or to put on any evidence, that could not be used against you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that if the case were to go to trial, it would be the government's burden to prove to the jury, again, beyond a reasonable doubt, each of the essential elements of the offenses charge and the jury would have unanimously agree as to your guilt?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you further understand that by entering a plea of guilty, there will be no trial and you will have waived and given up your right to trial by jury as well as the rights associated with that trial?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I'm going to ask the prosecutor to summarize for us what the government would be prepared to prove if the case were to go to trial.

MR. WISE: Your Honor, I have read in its entirety the factual statement that we would be prepared to prove.

THE COURT: All right. Do you want to tell me how that meets the essential elements?

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1 MR. WISE: Yes, Your Honor.

2 THE COURT: I mean, I can figure it out, but I
3 think it's probably worthwhile you telling me.

4 MR. WISE: The first element, the Defendant had
5 a duty to pay a tax. The Defendant earned substantial
6 income as the factual statement points out. And we can go
7 with -- as Your Honor has pointed out, there are several
8 places in the factual statement where it identified where he
9 obviously earned, looking at the first paragraph,
10 2.3 million in 2017 and 2.1 million in 2018, he therefore
11 had a duty to pay a tax on that income. That is the highest
12 level of summary.

13 The tax was not paid at the time required by
14 law. Again, even when he received an extension, the tax was
15 due in April of 2018 for calendar year 2017 and in April of
16 2019 for calendar year 2018. And finally, the failure to
17 pay was willful. And the Plea Agreement statement of facts
18 describes that despite his addiction issues, he was able to
19 generate significant amounts of income and made financial
20 decisions about how to spend that money, and that those
21 decisions did not include meeting his obligations to pay his
22 taxes.

23 THE COURT: All right. Mr. Biden, is there
24 anything you wish to challenge or amend in the government's
25 recitation of proof?

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1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Do you disagree with any of the
3 government's factual recitations?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Mr. Clark, do you have any
6 objections or concerns with the government's recitation of
7 proof?

8 MR. CLARK: I do not, Your Honor.

9 THE COURT: All right. Now at this point I
10 would normally ask Mr. Biden how he pleads, but as we've
11 already discussed, the Diversion Agreement is out there in a
12 felony case, it is cross-referenced in the Memorandum of
13 Plea Agreement. The Plea Agreement is cross-referenced in
14 the Diversion Agreement, so before I ask him how he pleads,
15 I need to understand -- well, ask him how he pleads or
16 decide if I can accept the Plea Agreement, I need to
17 understand the Diversion Agreement.

18 So the felony gun charge here is a bit unusual,
19 and we don't usually make diversion agreements public. I
20 don't usually see a diversion agreement as the parties up
21 here have hinted, but in fact you all did send it to me and
22 it is referenced in the agreement that is before me in the
23 tax case.

24 So it's a little bit unique in that I have a
25 copy of the Diversion Agreement and that the Diversion

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1 Agreement contains what I view to be some nonstandard terms
2 like the broad immunity and a term that invokes the Court or
3 involves the Court as part of that agreement.

4 So given all that, Mr. Wise, why don't you go
5 ahead and summarize the terms of the Diversion Agreement
6 given that the parties have agreed to make it public.

7 MR. WISE: Yes, Your Honor. The first under
8 Roman numeral one, the parties to the Diversion Agreement
9 are the United States of America by and through the United
10 States Attorney's Office for the District of Delaware and
11 Robert Hunter Biden.

12 Roman two describes the terms and conditions of
13 the agreement. Paragraph 1 provides that it's for a
14 two-year period, twenty-four months beginning on the date of
15 approval of this agreement, and that would be when the chief
16 probation officer, Ms. Brey signs it, unless there is a
17 breach as set forth in paragraphs 13 and 14.

18 Paragraph 2 provides that this 24-month period
19 will be known as the diversion period.

20 Paragraph 3 provides that Biden shall waive
21 indictment in relation to the information filed in the gun
22 case, which again is 23cr61 which charges him with one count
23 of knowingly possessing a firearm while an unlawful user or
24 person addicted to a controlled substance in violation of
25 Title 18 United States Code Section 922(g)(3) and 924(a)(2).

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1 And the relevant year for the conduct is 2018.

2 Paragraph 4 provides that if Biden complies with
3 his obligations under the agreement, then the United States
4 within thirty days after the expiration of the diversion
5 period will file a motion with the Court seeking the
6 dismissal of the information.

7 Paragraph 5, Biden agrees that the United States
8 has probable cause to bring the charge in the Information
9 and that the charge is not frivolous or made in bad faith.
10 He also agrees at a future time the United States should
11 move to dismiss the information pursuant to this agreement,
12 he will not be a prevailing party with regard to the
13 Information and he waives any possible claims to attorney
14 fees or litigation expenses arising out of the investigation
15 or prosecution of this case.

16 Paragraph 6 provides that in light of the fact
17 that Biden has accepted responsibility for the actions
18 referred to in the statement of facts as Attachment A to
19 this agreement and taken into consideration Biden's candid
20 acknowledgment of his historical drug use as well as his
21 current sobriety and in consideration for the other terms in
22 the agreement, the United States shall divert this matter in
23 the manner set forth in this agreement pursuant to the terms
24 and conditions also set forth in the agreement.

25 Paragraph 7 provides that Biden agrees to waive

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1 all defenses based on statute of limitations with respect to
 2 charges in the information and any other federal firearm
 3 charges that could be brought with respect to the conduct
 4 set forth in the statement of fact which again is Attachment
 5 A. And he agrees that the applicable statute of limitation
 6 period for any charges arising under the firearms purchase
 7 shall be tolled during the diversion period. He agrees not
 8 to assert any speedy trial rights under the Sixth Amendment
 9 or Federal Rule of Criminal Procedure 48(b) B or any local
 10 rule here in the District of Delaware.

11 Paragraph 8 provides that it is the intent of
 12 this agreement for Biden to agree to be subject to the
 13 jurisdiction of and venue in the United States District
 14 Court for the District of Delaware with respect to the
 15 charge set forth in the information and for any federal
 16 charges arising out of the firearms purchase set forth in
 17 the statement of facts.

18 Paragraph 9 and its subparagraph are the
 19 commitments and undertakings of Biden and that includes not
 20 purchasing, possessing, attempting to purchase firearms as
 21 that term is defined in the relevant statute during the
 22 diversion period, consent to a permanent entry in the
 23 National Instant Criminal Background Check System such that
 24 he will be denied via NICS if he attempts to legally
 25 purchase another firearm.

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1 And then paragraph C, I'm not going to read the
 2 entire paragraph, but it's a provision that the gun in
 3 question is forfeited to the United States.

4 Starting at paragraph 10 --

5 THE COURT: Could I ask to you pause for one
 6 second. I forgot my glasses and I'm going to ask someone in
 7 the back to get my glasses, but I didn't want her to open
 8 the door and freak people out.

9 All right. Apologies, go ahead.

10 MR. WISE: Starting at paragraph 10, or in
 11 paragraph 10 and subparagraph are additional conditions
 12 applicable to the diversion period and these include that
 13 Biden is subject to supervision as directed by U.S.
 14 Probation and Pretrial Services; that he continue to
 15 actively seek employment; that he refrain from unlawfully
 16 possessing controlled substance; that he refrain from using
 17 alcohol; that he submit to substance abuse testing and
 18 participate in substance abuse treatment as directed by the
 19 U.S. Probation and Pretrial Services Office in this
 20 district; that he submits to fingerprinting by the FBI and
 21 it describes what will be done with that fingerprint and how
 22 it will be preserved for a time; that he communicate in
 23 writing all international travel plans and provide
 24 documentation, if requested, to U.S. Probation and Pretrial
 25 and that he not commit a violation of any federal, state or

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1 local law.

2 Paragraph 11, in paragraph 11 Biden acknowledges
 3 and agrees to the statement of facts that are Attachment A
 4 to this agreement and he agrees that they're truthful and
 5 accurate.

6 Paragraph 12, Biden agrees that neither he nor
 7 anyone else at his direction will make any statement in
 8 litigation or otherwise repudiating or contradicting the
 9 statement of fact. If the United States believes such a
 10 contrary statement has been made, and such statement
 11 constitutes a knowing material breach, then the United
 12 States may seek a determination regarding such alleged
 13 breach pursuant to the procedures set forth in paragraph 14.

14 Starting in paragraph 13, it lays out the
 15 procedure if there is a breach. First, paragraph 13. Biden
 16 agrees that a knowing failure to abide by or fully perform
 17 any of the terms, promises, or agreements set forth in this
 18 Agreement shall constitute a breach of this Agreement.

19 Paragraph 14 provides that if the United States
 20 believes that a knowing material breach of this Agreement
 21 has occurred, it may seek a determination by the United
 22 States District Judge for the District of Delaware with
 23 responsibility for supervision of this agreement. Upon
 24 notice to Biden the United States may seek a determination
 25 on a preponderance of the evidence presented to such

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1 District Judge. Biden shall have the right to present
 2 evidence to rebut any such claim. If after that process the
 3 judge overseeing such process makes a final determination
 4 that Biden has committed a knowing material breach of this
 5 agreement, then the United States may elect from two
 6 remedies that are specified in the agreement depending on
 7 the nature and seriousness testify breach.

8 Remedy 1, which is a sub A of paragraph 14 is
 9 the United States may give Biden a specific time period in
 10 which to remedy the breach. If the United States determines
 11 that Biden has failed to remedy the breach during the
 12 specified time period, then the United States may elect
 13 Remedy 2. Remedy 2 is the United States may prosecute Biden
 14 for any federal criminal violation in which the United
 15 States has knowledge including crimes relating to the
 16 conduct set forth in the statement of facts, which is
 17 Attachment A, and that includes obstruction of justice and
 18 any such prosecution is not time barred by any statute of
 19 limitation on the date of signing of this agreement,
 20 notwithstanding the statute of limitation between the
 21 signing and the commencement of such prosecution.

22 And finally, the United States does not require
 23 to offer Remedy 1 before proceeding to Remedy 2 if in its
 24 sole determination the nature and the serious of the breach
 25 warrants termination of the agreement.

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1 Paragraph 15 is the agreement not to prosecute.
 2 The language, the United States agrees not to criminally
 3 prosecute Biden outside the terms of this agreement for any
 4 federal crimes encompassed by the attached statement of
 5 facts, Attachment A, and the statement of facts attached as
 6 Exhibit 1 to the Memorandum of Plea Agreement filed this
 7 same day. This Agreement does not provide any protection
 8 against prosecution for any further conduct by Biden or by
 9 any of his affiliated businesses. Obviously this paragraph
 10 has been orally modified by counsel for Mr. Biden and we
 11 would -- I'm not going to attempt to paraphrase it. I don't
 12 want to make the record muddy. The statement by counsel is
 13 obviously as Your Honor acknowledged a modification of this
 14 provision, and that we believe is binding.

15 Paragraph 16, starting paragraph 16, there are
 16 general terms and conditions, the parties consented to the
 17 public disclosure of this agreement, and shall be publicly
 18 filed. The parties stipulate and agree that the conduct set
 19 forth in the statement of facts does not constitute relevant
 20 conduct for the offenses, to the tax offenses, which Your
 21 Honor has identified as a similar provision in the Plea
 22 Agreement, that the firearms offense is not relevant conduct
 23 for the tax charge.

24 Paragraph 18 this agreement may be executed in
 25 counterparts, each of which constitutes an original and all

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1 of which constitutes one and the same agreement.

2 And paragraph 19 is an incorporation agreement
 3 like in the Plea Agreement, this agreement sets forth all of
 4 the terms of the agreement between the United States and
 5 Biden. It constitutes a complete and final agreement
 6 between the United States and Biden in this matter. There
 7 are no other agreements written or otherwise modifying the
 8 terms, conditions or obligations of this agreement. No
 9 future modifications or additions of this agreement in whole
 10 or in part shall be valid unless they are set forth in
 11 writing or signed by the United States, and Biden and
 12 Biden's counsel.

13 THE COURT: All right. Thank you.

14 Mr. Clark, any corrections you want to make?

15 MR. CLARK: No, Your Honor.

16 THE COURT: The information charges Mr. Biden
 17 with violation of 18 United States Code 922(g)(3). Does
 18 anyone have any concerns about the constitutionality of that
 19 charge in light of the recent Third Circuit *Range* case?

20 MR. WISE: No, Your Honor.

21 MR. CLARK: Your Honor, I note our -- that's one
 22 of the reasons the parties I think are in the disposition we
 23 are in. We don't waive in a later prosecution any
 24 challenges on that.

25 THE COURT: I completely understand that. That

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1 was kind of why I was asking the government the question.
 2 So if 922(g)(3), which makes it unlawful for a
 3 drug user addict to possess a gun were found by some court
 4 to be unconstitutional, what happens to the Diversion
 5 Agreement?

6 MR. WISE: Your Honor, the Diversion Agreement
 7 is a contract between the parties so it's in effect until
 8 it's either breached or a determination, period.

9 MR. CLARK: I can tell you our intention would
 10 be to abide by the agreement and only raise such
 11 constitutional determining at such time that somebody tried
 12 to bring any charges on this, otherwise it's an agreement
 13 between the parties. We are going to honor the agreement.

14 THE COURT: I have had one or two cases
 15 involving a person struggling with addiction who bought a
 16 gun, we usually see a felony charge for false statement.
 17 The Defendant has admitted that his statement was false, but
 18 he wasn't charged. Again, I'm not trying to get into the
 19 purview of the prosecutor, and I understand the separation
 20 of powers, it's in your discretion, but I just want to ask,
 21 does the government have any concern about not bringing the
 22 false statement charge in light of our discussion of
 23 922(g)(3) and the constitutionality of that charge.

24 MR. WISE: No, Your Honor.

25 THE COURT: Paragraph 7 says that the statute of

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1 limitations is waived. Can you just tell me when would the
 2 statute of limitation be waived on a charge for false
 3 statement if the Diversion Agreement were not in place?

4 MR. CLARK: When would it run, Your Honor?

5 THE COURT: I understand it's tolled by the
 6 agreement. I have concerns about the agreement, that's why
 7 I'm asking these questions, so if the agreement weren't
 8 there.

9 MR. CLARK: It would be October 2023.

10 MR. WISE: October 12th, 2023.

11 THE COURT: All right. Thank you.

12 All right. Now I have reviewed the case law and
 13 I have reviewed the statute and I had understood that the
 14 decision to offer the defendant, any defendant a pretrial
 15 diversion rest squarely with the prosecutor and consistent
 16 with that, you all have told me repeatedly that's a separate
 17 agreement, there is no place for me to sign off on it, and
 18 as I think I mentioned earlier, usually I don't see those
 19 agreements. But you all did send it to me and as we've
 20 discussed, some of it seems like it could be relevant to the
 21 plea.

22 One provision in particular stands out to me,
 23 and that is paragraph 14. That paragraph says if the United
 24 States believes that a knowing material breach of this
 25 agreement has occurred, it may seek a determination by the

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1 United States District Judge for the District of Delaware
2 with responsibility for the supervision of this agreement.
3 It then goes on to say that if I do find a breach, then the
4 government can either give the Defendant time to remedy the
5 breach or prosecute him for the crime that is the subject of
6 the information or any other that falls within the language
7 of the agreement. Do I have that understanding correct?

8 MR. CLARK: That's my understanding of the
9 provision, Your Honor.

10 THE COURT: So can you tell me what's
11 contemplated by that, how it would work?

12 MR. WISE: So, Your Honor, obviously the
13 Diversion Agreement covers offenses related to firearms, so
14 if there was a breach, then he could be charged with -- the
15 offenses related to that firearm as well as perjury,
16 obstruction of justice, and any prosecution not barred by
17 the statute of limitations related to that.

18 MR. CLARK: I think Your Honor may be asking the
19 functionality of your involvement. And the concept was
20 along the lines of a VOSR where a situation is brought to
21 the Court and the Court would make a factual determination
22 in the first instance that there was a violation of
23 supervised -- I mean, diversion is not supervised release,
24 but in some senses it can be, and so the idea was that the
25 Court would determine whether or not there was a violation

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1 and then the government would move on to a remedy.

2 THE COURT: First it got my attention because
3 you keep telling me that I have no role, I shouldn't be
4 reading this thing, I shouldn't be concerned about what's in
5 these provisions, but you have agreed that I will do that,
6 but you didn't ask me for sign off, so do you have any
7 precedent for that?

8 MR. WISE: Your Honor, no. No, I don't have
9 precedent.

10 THE COURT: As I read it, tell me if I'm reading
11 this correctly, that under the agreement as you all have
12 drafted it the only way that charges could ever be brought
13 is if I have the hearing that you all agreed that I have to
14 have, right?

15 MR. WISE: Yes.

16 THE COURT: So if I don't have a hearing or make
17 a finding, no criminal charges can be pursued for the gun
18 charge or any other federal charge within the scope of the
19 agreement not to be prosecuted, right?

20 MR. WISE: I believe that's right, Your Honor.

21 THE COURT: So is there some requirement that
22 you have that I have to make that finding that you all
23 agreed that I would without asking?

24 MR. WISE: Is there some --

25 THE COURT: Requirement that says I have to make

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1 that finding?

2 MR. WISE: No.

3 THE COURT: And you don't have any precedent for
4 that, right?

5 MR. WISE: No, Your Honor.

6 THE COURT: Do you have any authority that any
7 Court has ever accepted that or said that they would do
8 that?

9 MR. WISE: No, Your Honor, this was crafted to
10 suit the facts and circumstances.

11 THE COURT: I'm concerned that that provision
12 makes me a gatekeeper to criminal charges and puts me in the
13 middle of a decision as to whether to bring a charge. And
14 we already talked about separation of powers and that choice
15 as to whether to bring charges is not -- that's the
16 executive branch, not the judicial branch, so is this even
17 constitutional?

18 MR. CLARK: I believe it is, Your Honor, because
19 what the structure makes clear is that Your Honor is just
20 finding facts.

21 THE COURT: But no charges -- usually in these
22 agreements, right, Mr. Clark, the prosecutor says we think
23 he breached, and I don't mean to point it out, I'm not
24 saying you're going to breach.

25 MR. CLARK: I understand.

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1 THE COURT: We're doing a hypothetical.

2 MR. CLARK: I understand the question.

3 THE COURT: The prosecutor says there is a
4 breach, Judge, we got to move forward on the information.
5 You then come forward and you're like, Judge, he didn't
6 breach, review this, okay, so that's the standard. The
7 government has -- the executive branch has already made a
8 determination we are going to proceed with the charges.
9 Now, the government cannot make the decision to proceed with
10 charges absent involving the Court.

11 MR. CLARK: Respectfully, Your Honor, I don't
12 think that's the way it's structured and I do think the way
13 it's structured may get some way past your concern. What it
14 is is that it's not that the government has decided to bring
15 charges, it's that the government believes there is a
16 breach. In paragraph 14, the government brings the breach
17 to Your Honor and says we need a determination of whether
18 there is a breach. So it's not a question that we've
19 decided what to opt into, we've decided what to do, we want
20 your -- it's Your Honor, we believe there is a factual
21 dispute between the parties, not a breach, we would like you
22 to make a factual determination.

23 THE COURT: Why can't you do that in the normal
24 way? As I read this, the government has no discretion to
25 bring charges if it believes that a breach has occurred

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1 unless I opine.

2 MR. CLARK: Can we approach and discuss one
3 issue with Your Honor?

4 THE COURT: You mean because it's confidential?

5 MR. CLARK: Yeah.

6 THE COURT: Okay. You're going to have to make
7 -- you're going to have to make a showing as to why. As I
8 understand, once we're in court in the Third Circuit, it's
9 essentially strict scrutiny, so can you explain to me why
10 this is something that cannot go on the record?

11 MR. CLARK: It relates to the plea discussions
12 between the parties generally which aren't discussed
13 publicly.

14 THE COURT: I will allow you to have -- we will
15 have a discussion on the sealed portion, but you're going to
16 have to convince me that it needs to be maintained as
17 sealed. All right? Because I can't -- it's hard for me to
18 say that in the abstract if you're saying that's a plea
19 discussion.

20 MR. CLARK: Your Honor, let me try to handle it
21 separately. There was a desire because of there being as
22 Your Honor has seen a tremendous amount of political drag
23 with this Defendant that the normal mechanism that might
24 take place would have the protection of the Court not in the
25 discretion to bring a charge, but in finding a breach, and

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1 so that that wouldn't be something that would become more
2 politicized, but rather would be something that the parties
3 could rely on, someone we consider a neutral arbiter to
4 determine the breach, not the charge.

5 THE COURT: I understand. Look, I knew why you
6 brought it, okay, I could see why you would want that
7 provision in here, but I don't -- you are putting me -- the
8 government, the executive branch has the discretion to bring
9 charges. Here, the government does not have discretion to
10 continue to pursue this charge or any other charge unless
11 you include the Court. And that seems like it's getting
12 outside of my lane in terms of what I am allowed to do. And
13 thus, I have concerns about the constitutionality of this
14 provision. That gives me concerns about the
15 constitutionality of this agreement because there doesn't
16 seem to be a separate severability, and that gives me
17 concerns about whether the Defendant has the protection from
18 prosecution that he thinks he's getting if this agreement
19 turns out to be not worth the paper it's written on.

20 MR. CLARK: Your Honor, all --

21 THE COURT: My concern is, and part of what I
22 have to do is knowing and voluntary, and I can't let him --
23 I'm not convinced this is a plea under subsection B, but
24 even if it is, and all I have to say is, is it knowing and
25 voluntary. I can't let him plead to something if he thinks

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1 he has protection and he doesn't.

2 MR. CLARK: Absolutely, Your Honor. I think the
3 analogy to a VOSR is not a bad analogy. The government
4 comes to the Court and it says Your Honor, we believe there
5 has been a violation of supervised release. Unless you,
6 Judge, make a factual finding that that's happened, we can't
7 do what we would normally do with regards to this Defendant.
8 Right? And again, it's the fact and then the discretion.
9 Right? And so here it's very analogous to that process
10 which is not a violation of separation of powers. I
11 understand what your Your Honor is saying.

12 THE COURT: I think I might need a little bit
13 more on this because it is confusing to me. But let me --
14 or concerning I should say more than confusing.

15 Let me ask you this, if that provision violates
16 the constitution, what happens to the Diversion Agreement?

17 MR. CLARK: If that provision violates the
18 constitution, the diversion -- first of all, I'm not aware
19 of a manner in which we can challenge the Diversion
20 Agreement, but if it did, I think we would say that, if it's
21 unconstitutional, right --

22 THE COURT: The way I'm seeing it is the
23 government decides -- not to be politicized, the government
24 decides we're going to bring a charge and you say no, that's
25 prohibited by the Diversion Agreement, and the government

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1 says that Diversion Agreement is unconstitutional. You
2 don't have the protection of it. So I'm not going to not
3 voice my concerns when I think that there are -- you know,
4 you telling me we're not going to challenge it, that really
5 doesn't --

6 MR. CLARK: No, I'm not saying that, Your Honor.
7 Under those circumstances we would have a contractual
8 dispute about this contract between the government and us
9 and that would get litigated like any other contractual
10 dispute would get litigated. That's what this is.

11 THE COURT: But what if it is unconstitutional,
12 what happens to the Diversion Agreement?

13 MR. CLARK: I think it's valid but for this
14 provision.

15 THE COURT: Is there a severability provision?

16 MR. CLARK: There isn't, but there is nothing
17 that says it is a unitary contract either, it's kind of half
18 and half. There is no merger clause or severability clause,
19 so in my -- it's a toss up on that, right, Your Honor.

20 THE COURT: So if I say that I am not going to
21 do what is requested, what you all have agreed that I am
22 going to do, what happens to the Diversion Agreement?

23 MR. CLARK: If you're saying it right now in a
24 binding manner --

25 THE COURT: I'm just asking you, I'm not making

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1 a finding, I'm asking you because I'm trying to exercise due
2 deliberation and consideration and make sure that we don't
3 make a misstep.

4 So Mr. Wise, if I say I'm not doing it, your
5 contract has an impossibility in there because nothing can
6 happen, I understand Mr. Clark might say that's fine, Your
7 Honor, but the government, what happens if I say I'm not
8 going to do that, you can agree I'm going to do it, but I'm
9 not?

10 MR. WISE: So in negotiating these terms we
11 obviously agreed to -- as Your Honor has pointed out, the
12 executive branch has the authority to bring charges, we have
13 agreed to a limitation, if you will, that is predicated on
14 the Court taking certain action. If the Court declines to
15 take the action contemplated by the agreement, we would have
16 to examine whether there were other ways to seek the
17 enforcement of the agreement.

18 MR. CLARK: And there is a way to modify the
19 agreement obviously between the parties, Your Honor, so by
20 written modification we could modify that provision if Your
21 Honor said I won't participate.

22 THE COURT: All right. So what are you talking
23 about?

24 MR. CLARK: I'm saying that if Your Honor said
25 I've determined that this isn't proper, I'm not going to

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1 between United States and individuals, but it contemplates a
2 role for a judicial officer that then affects the ability of
3 the government to bring charges.

4 THE COURT: I take your points on the analogy to
5 the VOSR, but I know, I asked if there is any precedent for
6 this, I was told no. I was asked if there is any authority
7 for this, I was told no. And I get the analogy, but I don't
8 think that I can on the fly make the analogy that you're
9 asking me to make or even, you know, you're telling me that
10 this is -- so that this is appropriate. So I am not sure --
11 I'm not sure what to do with that. It may be that you're
12 correct, that that's an appropriate analogy, but it may be
13 that you are not.

14 MR. CLARK: May I propose something, Your Honor?
15 You don't have to -- there is no action again, not to -- I
16 know you don't necessarily want to hear that all the time,
17 that you have to take with a regular Diversion Agreement.
18 Can I propose that Your Honor can take time with regard to
19 this provision, inform the parties, and if you find that the
20 provision is improper, and we can even brief it to you, I'll
21 commit with the government that we'll work under
22 paragraph 19 to implement another procedure. But again, I
23 don't think that needs to hold up today's disposition.

24 THE COURT: The problem that I have, I'm not
25 sure that it doesn't. Again, you all are telling me just

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1 participate, we would work on provision, paragraph 19 which
2 says that, you know, we can modify or add to the agreement
3 with the written consent of the parties and we would come up
4 with an alternative dispute resolution system.

5 I personally, Your Honor, I mean, again, I don't
6 mean to hang everything on a VOSR analogy, I have done many
7 of them in my life, I don't think it is unconstitutional, I
8 think it's very fair question from the Court, I don't think
9 it is, but I think if the Court were to determine it was not
10 appropriate, we would modify the contract and you would
11 determine on another dispute resolution.

12 MR. WISE: The analogy that I would offer, Your
13 Honor, VOSR's statutory framework is many U.S. Attorney's
14 offices' practice around the country have proffer agreements
15 or Queen for a day agreements where a defendant -- a
16 defendant, a witness, a target will sit down, make certain
17 statements pursuant to an agreement and some of those
18 agreements have provisions that in the event that the
19 government believes there is a breach that they lied, they
20 will go to a judicial officer for a determination and if
21 that is the case and the agreement is deemed void, then
22 charges, for instance, 1001 charges making a false statement
23 to a law enforcement officer could be brought. So I think
24 that's a similar -- and those agreements unlike VOSR are not
25 governed by an elaborate statutory scheme, they're contracts

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1 rubber stamp the agreement, Your Honor, because all we're
2 doing is recommending a plea. But it seems like the
3 argument you're making is form over substance. What's funny
4 to me is you put me right smack in the middle of the
5 Diversion Agreement that I should have no role in, you plop
6 meet right in there and then on the thing that I would
7 normally have the ability to sign off on or look at in the
8 context of a Plea Agreement, you just take it out and you
9 say Your Honor, don't pay any attention to that provision
10 not to prosecute because we put it in an agreement that's
11 beyond your ability.

12 So this is what I am going to do. These
13 agreements are not straightforward and they contain some
14 atypical provisions. I am not criticizing you for coming up
15 with those, I think that you have worked hard to come up
16 with creative ways to deal with this. But I am not in a
17 position where I can decide to accept or reject the Plea
18 Agreement, so I need to defer it.

19 First, I don't know which rule this falls under.
20 I am not convinced that it is actually a plea under
21 subsection B, which you all suggest is me rubber stamping
22 the plea if it's a knowing plea. But even if it were, I
23 have testimony under oath both that the Defendant is
24 concerned about ensuring that he has immunity from
25 additional charges, and also that well, he doesn't need that

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1 in terms of the Plea Agreement. So I need to think about
2 that.

3 Additionally, I need some understanding as to
4 why this is a plea under B and that my concern about the
5 form over substance of the agreement not to prosecute is not
6 valid, or why I should do this. So I would like some
7 briefing, additional briefing on why subsection B is the
8 appropriate section, and if I were to determine that this
9 actually is a plea under subsection A, it would be helpful
10 to me to have your views on what it is that makes this plea
11 acceptable, because I'm not saying that it is not, but
12 nobody seems to really have given me that what I would need
13 if I were to determine that as I read this as a whole, I
14 think that that really is what is in front of me. So I need
15 that.

16 And then I would like as you offered, Mr. Clark,
17 you guys can go back and work on whether or not you can take
18 out that provision and come up with something else that's
19 acceptable, and while you do that, you might, though I'm not
20 trying to tell you how to negotiate the Diversion Agreement,
21 you might fix that one paragraph that you have orally
22 modified today.

23 I would like to understand why that provision,
24 if you want it to go forward is appropriate, and why I am
25 not doing something that gets me outside of my lane in terms

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1 of my branch of government if I were to do what is being
2 requested.

3 Does that make sense?

4 MR. CLARK: That makes sense, Your Honor. I
5 think that the parties have been very eager to resolve this
6 matter, and it has been pending for an extended period of
7 time.

8 THE COURT: It hasn't been pending for that long
9 a period of time, I know that when you guys first called,
10 you said you would send me the agreements on a Tuesday or a
11 Thursday and you wanted to have the hearing within a few
12 days. I couldn't accommodate that schedule, but the fact
13 is, this is a -- this is our normal course of timing of
14 things and so I understand, and I certainly understand why
15 you want to get this resolved, but I am not in a position
16 where I can do that now. So if you guys want to tell me
17 when you're thinking you can get me the papers that I'm
18 asking for.

19 MR. WISE: Your Honor, we would -- what I would
20 anticipate is we'll need to order the transcript from
21 today's proceeding to address some of the issues you have
22 raised to make sure we're precisely addressing what you're
23 asking us to, so I think building in a little bit of time to
24 get the transcript and then a reasonable amount of time
25 after that to submit, I would say at least fourteen days.

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1 MR. CLARK: Fine with us, Your Honor.

2 MR. WISE: I would also say, Your Honor, we're
3 not asking the Court to rubber stamp anything.

4 THE COURT: It certainly sounds like it. Tell
5 me again what you think my role is for a plea under
6 11(b)(1)(B).

7 MR. WISE: It's not what I think the Court's
8 role --

9 THE COURT: I agree, I read the rule, the rule
10 says I couldn't accept or reject, you're saying it's not a
11 rubber stamp, so what is it I do?

12 MR. WISE: You don't take action on the Plea
13 Agreement. What Rule 11(c) says is for Rule (c)(1)(B) the
14 Court must advise the Defendant that the Defendant has no
15 right to withdraw the plea if the Court does not follow the
16 recommendation or request. So the rule does not contemplate
17 the Court taking any position on the agreement if it's a
18 (c)(1)(B), rather the rule requires the Court to give that
19 advisement, and that is the extent of the Court's role. And
20 this has been briefed not in this circuit, but in other
21 circuits and we can certainly include that, that's not my
22 view --

23 THE COURT: I certainly understand what -- if
24 it's a plea under subsection (c)(1)(B), I am not going to
25 just agree with you as to the limits of my role. My problem

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1 is I am not -- I am not sure, and I need to understand the
2 propriety, it may very well be that it is appropriate, but
3 as I said, it did catch my attention, you throw me in there,
4 Judge, you're the gatekeeper and then you take me out of the
5 other aspects of the -- you throw me into the Diversion
6 Agreement and then you take me out of the Memorandum of Plea
7 Agreement.

8 So I cannot accept the Plea Agreement today. I
9 mean, based on what you just said, Mr. Wise, Mr. Clark, if
10 you want, I can accept a guilty plea while I defer my
11 decision on the Plea Agreement, which the Supreme Court said
12 is appropriate in the *Hyde* case, 520 U.S. 670 (1997), if
13 your client wants to plead guilty pending my determination
14 on the Plea Agreement.

15 MR. CLARK: We're pleading guilty pursuant to
16 the Plea Agreement, Your Honor, so that would not be
17 something that we would do.

18 THE COURT: Does that mean that I need to take a
19 plea of not guilty?

20 MR. CLARK: I believe you do, Your Honor.

21 THE COURT: All right. So Mr. Biden, I know you
22 want to get this over with, and I'm sorry, but I do want to
23 make sure that I am careful in my view of this. So I do
24 need some more information. And part of that is making sure
25 that your plea gets you what you think it gets and part of

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1 it is making sure that I do justice as I'm required to do in
 2 this court. So I need some additional information. I'm not
 3 saying I'm not going to reject the plea, I'm not saying I'm
 4 going to accept the Plea Agreement. I need more
 5 information.

6 So at this point I'm just going to ask you,
 7 without the Plea Agreement, without me saying that I would
 8 agree to the Plea Agreement, how do you plead to the charges
 9 that we have been discussing?

10 THE DEFENDANT: Not guilty, Your Honor.

11 THE COURT: Thank you.

12 So I will look forward to the parties'
 13 submissions. And after we have a chance to review those, we
 14 will either issue an order as to what we're planning to do
 15 with the plea or we'll have a status conference or we'll get
 16 back here.

17 Do we need to do anything else? I know that we
 18 talked about we were on the clock now. Can we exclude the
 19 time, that gives me some time to look at these for
 20 thirty days or not?

21 MR. CLARK: I would imagine the Court can
 22 exclude the time for briefing, yeah.

23 MR. WISE: We agree, Your Honor.

24 THE COURT: So we will do that. And after we
 25 see it, we will take a look and get back to you.

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1 Mr. Biden, I need you to just stick around for a
 2 minute after we adjourn. I need you -- my deputy is going
 3 to ask you to sign the release order that we talked about,
 4 and then I need you to go downstairs to the marshals for
 5 processing and to catch up with probation.

6 All right?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Anything else that we need to talk
 9 about while we are here today?

10 MR. WISE: Not on behalf of the United States.

11 MR. CLARK: No, Your Honor.

12 THE COURT: Thank you.

13 (Court adjourned at 1:14 p.m.)

14
 15 I hereby certify the foregoing is a true and
 16 accurate transcript from my stenographic notes in the proceeding.

17 /s/ Dale C. Hawkins
 18 Official Court Reporter
 19 U.S. District Court
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit F

MEMORANDUM

TO: Members of the Committee on Oversight and Accountability, Committee on Judiciary, and Committee on Ways and Means

FROM: Chairman James Comer, Chairman Jim Jordan, and Chairman Jason Smith

DATE: September 27, 2023

RE: Impeachment Inquiry

I. Introduction

For the past several months, the House Committees on Oversight and Accountability (Oversight Committee), Ways and Means (Ways and Means Committee), and the Judiciary (Judiciary Committee) (collectively, Committees) have been investigating (1) foreign money received by the Biden family, (2) President Joe Biden's involvement in his family's foreign business entanglements, and (3) steps taken by the Biden Administration to slow, hamper, or otherwise impede the criminal investigation of the President's son, Robert Hunter Biden, which involves funds received by the Biden family from foreign sources. As a result of these investigations, the Committees have uncovered significant new information that raises serious concerns as to whether the President has abused his federal office to enrich his family and conceal his and/or his family's misconduct. This information includes:

The Biden family and their business associates received over \$24 million from foreign sources over the course of approximately five years.

- From 2014 to 2019, Biden family members and their affiliate companies received over \$15 million from foreign companies and foreign nationals in Ukraine, Russia, Kazakhstan, Romania, and China. Biden business associates received an additional \$9 million.
- This money was transmitted to Biden family members from foreign sources through an exceedingly complex chain of transactions that made it difficult to track the flow of these funds.

President Biden was personally involved in his family's foreign business dealings, and those business arrangements intersected with his official duties.

- The President had knowledge of many of his family's business dealings, and indeed participated in them by having phone calls and attending private dinners—including while he was Vice President—with his family's business associates and foreign business associates who would pay his family millions of dollars for no identifiable product or service.

- These foreign business associates of the President’s family had interests in countries where then-Vice President Biden—and as President—played, and continues to play, an active role in formulating and implementing the foreign policy of the United States.

The President has not been truthful about his family’s foreign business entanglements.

- Weeks before the 2020 Presidential election, then-candidate Joe Biden said on national television that his family did not receive any money from China. That was a lie. Joe Biden not only knew about his family’s work with Chinese nationals, business associates have confirmed that Joe Biden met with his family’s Chinese associates—including while he was Vice President.
- President Biden’s assertions that he never discussed business with his family are false.

The Committees have also uncovered substantial information, including through whistleblowers, indicating that the Biden Administration has obstructed the criminal investigation into Hunter Biden. This information includes evidence that Department of Justice personnel blocked avenues of inquiry that could have led to evidence incriminating President Biden and impeded efforts to prosecute Hunter Biden for tax crimes relating to foreign business arrangements that could have implicated President Biden.

As a result of the information assembled by the Committees, on September 12, 2023, Speaker Kevin McCarthy directed the Committees to open a formal impeachment inquiry into President Joe Biden. While work on legislative reforms to address the deficiencies in current law revealed by the Committees’ investigations will continue, the Committees will now additionally focus on determining whether to recommend articles of impeachment against President Biden as detailed below.

This Memorandum further explains the purpose of the inquiry, summarizes the evidence justifying the inquiry, and outlines the scope of this impeachment investigation.

II. Purpose of Impeachment Inquiry

We begin with a brief overview of the impeachment power before turning to the purpose of this specific impeachment inquiry.

The Constitution vests the House of Representatives with the “sole Power of Impeachment”¹ and provides that the “President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”² While removal is automatic once an officer is impeached and convicted, Congress may, in its discretion, go further and disqualify the officer from ever “hold[ing] ... any Office of honor, Trust or Profit under the United States.”³

¹ U.S. Const. art. I, § 2, cl. 5.

² *Id.* art. II, § 4.

³ *See id.* art. I, § 3, cl. 7.

As Alexander Hamilton explained in *Federalist No. 65*, impeachment involves “those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.”⁴ In our nation’s history, such offenses have included bribery, abuse of power, obstruction of justice, obstruction of Congress, perjury, and using one’s office for personal gain.⁵ Hamilton described impeachment as a “bridle in the hands of the legislative body upon the executive servants of the government.”⁶ As an exclusive Congressional authority, impeachment serves as a critical check on the other branches of the federal government.⁷ It also protects our constitutional republic from officers who engage in malfeasance.⁸ After all, once an officer is impeached and convicted, he is automatically removed from office and can be disqualified from ever holding office again.

Given that impeachment is designed, among other things, to protect the American people from corrupt public officials, it makes sense that the Constitution does not limit impeachable offenses to those an officer committed while serving in his current office. In fact, the Constitution says nothing at all about the timing of impeachable acts. An officer may be impeached for conduct in a former office as well as his current office. Indeed, the House has adopted articles of impeachment based on conduct occurring prior to an officer assuming his current position.⁹ As a result, President Biden may be impeached for any impeachable offenses he committed as Vice President in addition to any such offenses he has committed as President.

The purpose of this inquiry—and at this stage, it is just that, an inquiry—is to determine whether sufficient grounds exist for the Committees to draft articles of impeachment against President Biden for consideration by the full House. This impeachment inquiry will enable the Committees to gather information necessary to assess whether President Biden has engaged in impeachable conduct.¹⁰ The decision to begin this inquiry does not mean that the Committees

⁴ See, e.g., *The Federalist No. 65* (Hamilton).

⁵ See, e.g., H. Rep. No. 100-810, at 1 (1988) (first article explaining a conspiracy where a district court judge took money from criminal defendants and, in return, imposed sentences that did not require incarceration); H.R. Res. 755, 116th Cong. (2019) (abuse of power and obstruction of Congress); H. Rep. No. 105-830, at 32-105 (1998) (describing articles based on perjury, obstruction of justice, and abuse of power); H. Doc. No. 62-1140, at 1701 (1912) (“He [the impeached officer] has prostituted his high office for personal profit. He has attempted by various transactions to commercialize his potentiality as a judge.”).

⁶ *The Federalist No. 65* (Hamilton).

⁷ See, e.g., *The Federalist No. 66* (Hamilton) (“[T]he powers relating to impeachments are ... an essential check in the hands of [Congress] upon the encroachments of the executive.”); see also U.S. Const. art. II, § 2, cl. 1 (“The President ... shall have Power to grant Reprieves and Pardons for Offenses against the United States, *except in Cases of Impeachment*.” (emphasis added)).

⁸ See, e.g., 1 Joseph Story, *Commentaries on the Constitution of the United States* § 803, at 568 (4th ed. 1873) (“[Impeachment] is not so much designed to punish an offender as to secure the state against gross official misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity.”).

⁹ In 1912, the House impeached Judge Robert Archbald, who was a federal district court judge and then a federal circuit court judge. When the House adopted thirteen articles of impeachment against him, Archbald was a federal circuit court judge, but six articles were based solely on his conduct as a district court judge, and another was based on his conduct both as a district court judge and as a circuit court judge. More recently, in 2010, the House impeached Judge G. Thomas Porteous, Jr., who was a state court judge before being appointed to the federal bench. One of the articles of impeachment that the House adopted against him was based solely on events that occurred while Porteous was still a state court judge, and a separate article was based on his conduct both while a state court judge and while a federal judge.

¹⁰ See, e.g., *In re Request for Access to Grand Jury Materials Grand Jury No. 81-1, Miami*, 833 F.2d 1438, 1445 (11th Cir. 1987) (“[The House] holds investigative powers that are ancillary to its impeachment power.”).

have reached a conclusion on this question. As the U.S. Court of Appeals for the District of Columbia Circuit has stated, “To level the grave accusation that a President may have committed ‘Treason, Bribery, or other high Crimes and Misdemeanors,’ U.S. Const. art. II, § 4, the House must be appropriately informed.”¹¹ And an impeachment inquiry is the traditional means by which the House assembles and evaluates that information.¹² There is no artificial deadline for concluding this inquiry. The Committees will follow the facts and will take the necessary time to determine whether articles of impeachment should be drafted and referred to the full House for consideration.

While the full House must vote to adopt any articles of impeachment, the full House need not vote to launch this impeachment inquiry. The Constitution, which, again, gives the House the sole power of impeachment, includes no requirement that the full House vote to start an impeachment inquiry. Neither do the Rules of the House of Representatives. In fact, the House has launched several impeachment inquiries without a full House vote,¹³ and four years ago a federal district court expressly rejected the argument that a House resolution is required to begin an impeachment inquiry.¹⁴

III. Basis of Impeachment Inquiry and Information Obtained to Date

The Committees have accumulated significant evidence suggesting that President Biden knew of, participated in, and profited from his family’s international business activities. The evidence further suggests the President may have used certain members of his family—particularly his son, Hunter Biden—to accumulate millions of dollars from foreign individuals and entities for the benefit of his family and himself. In particular, the Committees have assembled information indicating that President Biden may have: (1) performed official acts or changed United States policy as a direct result of the foreign money received by his family; (2) provided access to his federal office in exchange for his family’s receipt of foreign money; and/or (3) knowingly participated in a scheme where foreign business interests were led to believe that they would gain access to him (in his official capacity) if they were to pay substantial amounts of money to his family. If any of these things did occur, that would

¹¹ *Comm. on Judiciary of U.S. House of Representatives v. McGahn*, 968 F.3d 755, 765 (D.C. Cir. 2020) (en banc).

¹² See, e.g., H. Rep. No. 116-346, at 28 (2019) (“Here, consistent with historical practice, the House divided its impeachment inquiry into two phases, first collecting evidence and then bringing that evidence before the Judiciary Committee for its consideration of articles of impeachment.”), <https://www.congress.gov/116/crpt/hrpt346/CRPT-116hrpt346.pdf>; H. Rep. No. 111-427, at 7 (2010) (“[T]he impeachment inquiry was referred by the Committee on the Judiciary to a Task Force on Judicial Impeachment . . . , comprised of 12 Committee Members, to conduct the investigation.”), <https://www.congress.gov/111/crpt/hrpt427/CRPT-111hrpt427.pdf>; H.R. Rep. No. 101-8, at 292 (1989) (explaining that the relevant committee reviewed materials that had been compiled in other proceedings and “began its own investigation” “in connection with the impeachment inquiry”).

¹³ For example, in the 1980s, the full House did not vote to authorize the impeachment inquiries involving Judge Harry Claiborne, Judge Alcee Hastings, or Judge Walter Nixon. And in 2019, the Speaker of the House announced the beginning of a formal impeachment inquiry into President Trump more than a month before the full House voted to authorize it.

¹⁴ See *In re Application of Comm. on Judiciary*, 414 F. Supp. 3d 129, 168 (D.D.C. 2019) (“Even in cases of presidential impeachment, a House resolution has never, in fact, been required to begin an impeachment inquiry.”), *aff’d*, 951 F.3d 589 (D.C. Cir. 2020), *vacated and remanded sub nom. on other grounds DOJ v. House Comm. on the Judiciary*, 142 S. Ct. 46 (2021).

constitute a grave abuse of the high office to which the American people have entrusted President Biden.

The evidence also suggests President Biden has attempted to conceal his association with and participation in various foreign business deals his family members arranged to capitalize on his positions of public trust. And during the few instances in which the President has been given an opportunity to explain his role in his family's foreign business deals, the President has either lied or made assertions that are highly implausible in light of the record before the Committees.

The evidence about the Biden family's business practices the Committees have accumulated, and Joe Biden's participation in those activities, is significant and includes bank records, discussions with former business associates, interviews with investigators from the Hunter Biden criminal investigation, and government records from the Department of the Treasury (Treasury Department), National Archives and Records Administration (National Archives), the Federal Bureau of Investigation (FBI), and Internal Revenue Service (IRS). The Committees have also reviewed records abandoned by the President's son, including messages among Biden family members. These messages appear to confirm President Biden has fostered a system in which he uses his family members as agents that offer access to his positions of public trust, influence on American policy, and protection from investigations or prosecution. Moreover, this system appears to not only financially benefit the President's family but also himself. As recently as 2019, Hunter Biden texted a member of his own family "I Hope you all can do what I did and pay for everything for this entire family Fro [sic] 30 years . . . [U]nlike Pop I won't make you give me half your salary."¹⁵

Devon Archer, a longtime Biden business associate, during an interview with the Oversight Committee, described the Biden "brand" as well as how Hunter Biden placed Joe Biden on phone calls, including on speaker phone, approximately "20 times" with business associates.¹⁶ Rob Walker, another longtime Biden associate, described Joe Biden taking meetings with certain business partners. Archer also explained how then-Vice President Biden sat at dinners with oligarchs who paid his son millions of dollars and met for coffee in Beijing with his son's Chinese business partner. Tony Bobulinski, another Biden associate, has confirmed that Joe Biden was the "big guy" referenced in an email explaining how he and others would divide equity in a joint venture with a corrupt Chinese company. This reference to the "big guy" has been corroborated by reference to Joe Biden as the "big guy" in an FBI document generated prior to the publicization of the email Bobulinski referenced. That same FBI document details a bribery scheme in which the President allegedly participated with his son.

As part of its legislative and oversight work, the Oversight Committee has sought to prevent potential future corruption by a President's or Vice President's family through consideration of legislation aimed at imposing disclosure requirements regarding the financial interests of the family members of Presidents and Vice Presidents. The Oversight Committee has explained its legislative purposes in a series of investigative letters, hearings, and memoranda that also detail through bank records the transfers of funds to the Biden family and its business associates from Ukrainian, Russian, Kazakhstani, Romanian, and Chinese sources.

¹⁵ Text message from Hunter Biden to Naomi Biden, Jan. 3, 2019 (7:39 P.M.).

¹⁶ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 29 and 51.

The information and evidence the Committees have gathered establishes a good faith basis to conclude that the President has been dishonest with the American people. There is significant evidence that the President had involvement in his family's foreign business entanglements and his Administration has taken steps to impede the criminal investigation into his family relating to those entanglements. For these reasons a formal impeachment inquiry into his role in these matters is appropriate and necessary. Below is a summary of the evidence accumulated by the Committees to date.

A. Summary of the Oversight Committee's Financial Investigation

The Oversight Committee has reviewed Suspicious Activity Reports (SARs) from the Treasury Department related to certain companies and business associates affiliated with the Bidens.¹⁷ These SARs included detailed banking information that was flagged by financial institutions involving Biden family members and their business associates.

Based in part on information from these SARs, the Oversight Committee has issued subpoenas to six different banks for records related to companies and individuals who conducted business with certain Biden family members and their related companies. A pattern of incredible financial complexity emerged from Biden associates' bank records and other evidence that spanned from approximately 2014 to 2019. The Biden family used the corporate bank accounts of third-party associates to receive wires from foreign companies and foreign nationals. The Biden business associates would then disperse money to various Biden family members in incremental payments over time. While much of this money went to Hunter Biden's professional corporation, Owasco P.C., and his other bank accounts, other Biden family members and their companies also received significant payments.¹⁸

During the five-year period from 2014 to 2019, Biden family members and their associates received over \$24 million from foreign companies and foreign nationals, with more than \$15 million received by the Biden family and \$9 million by business associates.¹⁹ The Committees have not identified legitimate services that would warrant the lucrative payments from these foreign sources.

¹⁷ Letter from Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Janet Yellen, Secretary, U.S. Dep't of Treasury (Jan. 11, 2023).

¹⁸ The Oversight Committee has identified specific companies that require further investigation based on the financial documents that revealed a pattern of influence peddling and serious ethics issues. Some of these entities are discussed in detail below and include Owasco P.C; Owasco, LLC; Rosemont Seneca Partners, LLC; Rosemont Seneca Advisors, LLC; Skaneateles, LLC; Hudson West III, LLC; Hudson West V, LLC; Robinson Walker, LLC; Rosemont Seneca Bohai, LLC; Rosemont Seneca Thornton, LLC; Lion Hall Group, LLC; and JBBSR, INC.

¹⁹ Memorandum (Mar. 16, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: New Evidence Resulting from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes; Memorandum (May 10, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Second Bank Records Memorandum from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes; Memorandum (Aug. 9, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Third Bank Records Memorandum from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes.

B. Biden Influence Peddling with Ukrainian, Russian, and Kazakhstani Companies and Nationals

(i) *Influence Peddling in Ukraine and Payments from Burisma*

With regard to Ukraine, the Oversight Committee has developed a significant body of evidence consisting of financial records and testimony to suggest then-Vice President Biden's family used his position as Vice President to accumulate millions of dollars from Burisma, a company then implicated in a years-long corruption investigation conducted by Ukrainian authorities. The evidence also indicates that then-Vice President Biden took official action that had the effect of benefiting Burisma. The evidence the Oversight Committee has developed through testimony and bank records is bolstered by an FBI FD-1023 form that alleges the President directly participated in a bribery scheme.

(ii) *Financial Records and Testimony Regarding Burisma Payments*

Hunter Biden joined Burisma as counsel in early 2014 and assumed a position on the board of directors by April/May 2014.²⁰ Devon Archer testified that Hunter Biden became a member of the board of directors after a meeting in Lake Como, Italy, with Vadym Pozharsky, Burisma's corporate secretary, and Mykola "Nikolay" Zlochevsky, Burisma's president.²¹ Pozharsky often communicated with Biden/Archer on behalf of Zlochevsky.²²

For their positions on the board of Burisma, Hunter Biden and Devon Archer were each paid \$1 million per year, equating to each receiving approximately \$83,333 per month.²³ For 2014 and 2015, Hunter Biden and Devon Archer received approximately \$3.32 million. Based on IRS whistleblower testimony provided to the Ways and Means Committee, Hunter Biden and Devon Archer earned \$6.5 million from Burisma.²⁴ This finding is consistent with the Oversight Committee's financial investigation thus far. Money wired by Burisma to the Rosemont Seneca Bohai account was often later transferred to Hunter Biden directly and his professional corporation, Owasco, P.C., in small increments.²⁵ Hunter Biden did not have any relevant qualifications for serving on the board of a Ukrainian energy company (other than his connection to his father).

In February 2015, Viktor Shokin became the prosecutor general of Ukraine, inheriting an ongoing investigation of Burisma's President.²⁶ Devon Archer testified about how Burisma faced "government pressure from [the] Ukrainian Government investigations into Mykola, et cetera."²⁷ On December 4, 2015, the Burisma board of directors met in Dubai.²⁸ After that

²⁰ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 19.

²¹ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 17.

²² See, e.g., Email from Vadym Pozharsky to Hunter Biden dated May 7, 2014 ("Dear Hunter...[G]ood luck to you in China, will convey your message to Nikolay.").

²³ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 18.

²⁴ See Transcript of Special Agent, Internal Revenue Service, H. Comm. on Ways and Means, at 99.

²⁵ Memorandum (August 9, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Third Bank Records Memorandum from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes, at 16.

²⁶ Oleg Sukhov, *Political survivor Shokin takes over general prosecutor office*; KYIV POST (Feb. 10, 2015).

²⁷ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 34.

²⁸ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 31.

meeting, Hunter Biden was asked to alleviate “pressure” Burisma was facing from the Ukrainian government’s investigation into Zlochevsky, and Hunter Biden “called D.C.”²⁹ Five days later—on December 9, 2015—Vice President Biden delivered a speech to the Verkhovna Rada (the Ukrainian parliament), in which he claimed the “Office of the General Prosecutor desperately needs reform.”³⁰ Indeed, on the flight to Ukraine, Vice President Biden reportedly “called an audible” and “changed the plan” regarding the Obama-Biden Administration’s policy concerning the renewal of a \$1 billion loan guarantee for Ukraine, making it contingent upon the firing of Shokin, which could help alleviate some of the pressure that Burisma was getting from Ukraine’s government.³¹

In March 2016, the Rada voted to remove Shokin despite “veteran observers of Ukrainian politics [saying] that the prosecutor . . . had played an important role in balancing competing political interests, helping maintain stability during a treacherous era in the divided country’s history.”³² In a 2018 public appearance before the Council on Foreign Relations, Joe Biden described these events—albeit with inaccuracy regarding certain details:

I’m desperately concerned about the backsliding on the part of Kiev in terms of corruption. They made—I mean, I’ll give you one concrete example. I was—not I, but it just happened to be that was the assignment I got. I got all the good ones. And so I got Ukraine. And I remember going over, convincing our team, our leaders to—convincing that we should be providing for loan guarantees. And I went over, I guess, the 12th, 13th time to Kiev. And I was supposed to announce that there was another billion-dollar loan guarantee. And I had gotten a commitment from Poroshenko and from Yatsenyuk that they would take action against the state prosecutor. And they didn’t.

So they said they had—they were walking out to a press conference. I said, nah, I’m not going to—or, we’re not going to give you the billion dollars. They said, you have no authority. You’re not the president. The president said—I said, call him. I said, I’m telling you, you’re not getting the billion dollars. I said, you’re not getting the billion. I’m going to be leaving here in, I think it was about six hours. I looked at them and said: I’m leaving in six hours. **If the prosecutor is not fired, you’re not getting the money. Well, son of a bitch. He got fired. And they put in place someone who was solid at the time.**³³

The “solid” new prosecutor general of Ukraine who replaced Viktor Shokin was Yuriy Lutsenko, who was not a lawyer and whose “one shining qualification appeared to be his loyalty

²⁹ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 34, 36.

³⁰ Remarks by Vice President Joe Biden to The Ukrainian Rada, Dec. 9, 2015, The White House, *available at* <https://obamawhitehouse.archives.gov/the-press-office/2015/12/09/remarks-vice-president-joe-biden-ukrainian-rada>.

³¹ Glenn Kessler, *Inside VP Biden’s linking of a loan to a Ukraine prosecutor’s ouster*, Wash. Post (Sep. 15, 2023).

³² Andrew E. Kramer, *Ukraine Ousts Viktor Shokin, Top Prosecutor; and Political Stability Hangs in the Balance*, N.Y. Times (March 29, 2016).

³³ *Foreign Affairs Issue Launch with Former Vice President Joe Biden*, Council on Foreign Relations (Jan. 23, 2018) (emphasis added).

to [President Petro Poroshenko].”³⁴ Within a year of the elevation of Lutsenko, Ukrainian prosecutors closed the investigation of Zlochevsky.³⁵

In addition to this sudden change in the Obama-Biden Administration’s strategy regarding Ukraine, Vice President Biden provided further value to his family’s business associates by protecting them from anti-corruption efforts. Devon Archer testified that “people would be intimidated to mess with [Burisma]....legally” because of the Biden “brand.”³⁶ During the transcribed interview with Devon Archer, he described the Biden “brand” and its value to a company such as Burisma:

Q: You keep saying “the brand,” but by “brand” you mean the Biden family, correct?

A: Correct.

Q: And that brand is what, in your opinion, was the majority of what the value that was delivered from Hunter Biden to Burisma?

A: I didn’t say majority, but I wouldn’t speculate on percentages. But I do think that was an element of it.

Mr. Biggs: When you say “Biden family” – sorry to cut in here. I just want to get a clarification.

You aren’t talking about Dr. Jill or anybody else. You’re talking about Joe Biden. Is that fair to say?

A: Yeah, that’s fair to say. Listen, I think it’s – I don’t think about it as, you know, Joe directly, but it’s fair. That’s fair to say. Obviously, that brought the most value to the brand.³⁷

On April 16, 2015, Hunter Biden, Devon Archer, and Vice President Joe Biden attended a private dinner at Café Milano in Washington, D.C. with Vadym Pozharsky (a Burisma executive) and others.³⁸

Additional information about the Ukrainian payments can be found in the Third Bank Records Memorandum released by the Oversight Committee.

³⁴ Oleg Sukhov, *Powerful suspects escape justice on Lutsenko’s watch*, Kyiv Post (April 13, 2018).

³⁵ Oleg Sukhov, *Powerful suspects escape justice on Lutsenko’s watch*, Kyiv Post (April 13, 2018).

³⁶ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 105.

³⁷ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 29-30.

³⁸ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 66.

(iii) *FBI FD-1023 Form*

A June 30, 2020 FBI FD-1023 form subpoenaed by the Oversight Committee alleges that President Biden directly participated in a bribery scheme involving Burisma. The confidential human source (CHS) who provided its contents has been developed and trusted by the FBI since the Obama-Biden Administration and was paid significant money for the information he or she provided.

The FD-1023 form provides a detailed description of two in-person meetings and telephone calls between the CHS and Burisma executives and/or then-president of Burisma, Mykola Zlochevsky over the course of several years. The first meeting described in the FD-1023 form allegedly occurred in late 2015 or 2016. During that meeting with Burisma employee Vadym Pozharsky and others, Pozharsky stated that members of the Burisma board of directors included former Polish President Aleksander Kwasniewski and Hunter Biden. Pozharsky allegedly said Hunter Biden was hired to “protect us, through his dad, from all kinds of problems[.]”³⁹ He also allegedly indicated that Hunter Biden “was not smart” and Burisma therefore wanted to get additional counsel to advise on whether Burisma should purchase a United States oil and gas business.⁴⁰

In 2016, the FD-1023 form details that the CHS traveled to Vienna, Austria, and met with Zlochevsky.⁴¹ During that meeting, the CHS advised against an initial public offering for Burisma in the United States due to an ongoing Ukrainian corruption investigation focused on Burisma, led by then-Prosecutor General Viktor Shokin. Zlochevsky replied something to the effect of, “Don’t worry Hunter will take care of all of those issues through his dad.”⁴² During this conversation, Zlochevsky allegedly told the CHS he had paid \$5 million to two Bidens and that both Hunter Biden and Joe Biden had told Zlochevsky to hire Hunter Biden to the board of directors.⁴³ The CHS understood the conversation to mean Zlochevsky “already had paid the Bidens, presumably to ‘deal with Shokin.’”⁴⁴

In 2016 or 2017, the CHS again spoke by phone with Zlochevsky. Zlochevsky stated he was not happy about the outcome of the 2016 U.S. presidential election because of his association with the Bidens. Zlochevsky stated “he didn’t want to pay the Bidens and he was ‘pushed to pay’ them.”⁴⁵ Zlochevsky stated he had “many text messages and ‘recordings’ that show he was coerced to make such payments[.]”⁴⁶

In 2019, the CHS again spoke with Zlochevsky over the phone.⁴⁷ The CHS stated Zlochevsky could face difficulty explaining suspicious wire transfers “that may evidence any (illicit) payments to the Bidens.”⁴⁸ Zlochevsky stated that he did not directly transfer funds to

³⁹ FBI Form FD-1023 (dated June 30, 2020), at 1.

⁴⁰ *Id.*

⁴¹ FBI Form FD-1023 (dated June 30, 2020), at 1-2.

⁴² FBI Form FD-1023 (dated June 30, 2020), at 2.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ FBI Form FD-1023 (dated June 30, 2020), at 3.

⁴⁸ *Id.* (Parenthetical in original).

the “Big Guy,” which the CHS understood to mean Joe Biden, but used a series of transactions that would take investigators years to trace.⁴⁹

(iv) *Payment from Russia*

On December 6, 2013, a bank account for a company called Rosemont Seneca Thornton was opened and listed Devon Archer and Rosemont Seneca Partners as beneficiaries of the account.⁵⁰ Hunter Biden, through his stake in Rosemont Seneca Partners, was a beneficiary of funds deposited in the Rosemont Seneca Thornton bank account. On February 13, 2014, Rosemont Seneca Bohai, LLC (Rosemont Seneca Bohai) was opened in Delaware.⁵¹ Devon Archer confirmed to the Committee that he and Hunter Biden were 50-50 owners of Rosemont Seneca Bohai.⁵²

The next day, on February 14, 2014, the Russian oligarch Yelena Baturina—the wealthiest woman in Russia at the time,⁵³ and then married to the former Mayor of Moscow—wired the Rosemont Seneca Thornton bank account \$3.5 million.⁵⁴ On March 11, 2014, Rosemont Seneca Thornton transferred \$2,752,711 to a Rosemont Seneca Bohai account.⁵⁵ In early February 2014—around the time of Baturina’s transfer of \$3.5 million into the Rosemont Seneca Thornton bank account—Devon Archer, Hunter Biden, and Vice President Biden had dinner with Yelena Baturina and others at Café Milano in Washington, D.C.⁵⁶ There is no evidence that Hunter Biden performed any legitimate service in exchange for the money that Baturina sent to companies affiliated with him.

Following Russia’s invasion of Ukraine in 2022, the Biden Administration placed several Russian oligarchs on the public sanctions list. Notably, Yelena Baturina was not on the list.⁵⁷

Additional information about the Russian payment can be found in the Third Bank Records Memorandum released by the Oversight Committee.

⁴⁹ *Id.*

⁵⁰ Memorandum (August 9, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Third Bank Records Memorandum from the Oversight Committee’s Investigation into the Biden Family’s Influence Peddling and Business Schemes, at 6.

⁵¹ OpenCorporates.com, Rosemont Seneca Bohai, LLC, https://opencorporates.com/companies/us_de/5481769 (last accessed Aug. 8, 2023).

⁵² Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 64.

⁵³ *Владелица Wildberries стала богатейшей россиянкой по версии Forbes*, Forbes ru (Feb. 20, 2020), <https://www.forbes.ru/milliardery/393387-vladelica-wildberries-stala-bogateyshey-rossiyankoy-po-versii-forbes>.

⁵⁴ Memorandum (August 9, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Third Bank Records Memorandum from the Oversight Committee’s Investigation into the Biden Family’s Influence Peddling and Business Schemes, at 8.

⁵⁵ Memorandum (August 9, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Third Bank Records Memorandum from the Oversight Committee’s Investigation into the Biden Family’s Influence Peddling and Business Schemes, at 8.

⁵⁶ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 46.

⁵⁷ John Hyatt, *The Russian Oligarch Billionaires Who Haven’t Been Sanctioned*, Forbes (April 7, 2022).

(v) *\$142,300 Sportscar from Kazakhstan*

On February 5, 2014, an email indicates Hunter Biden met Kazakhstani oligarch Kenes Rakishev at the Hay Adams Hotel in Washington, D.C.⁵⁸ Rakishev was a Kazakhstani oligarch and director of Kazakhstan's state-owned oil company KazMunayGas.⁵⁹ Rakishev maintained ties to Karim Massimov,⁶⁰ who became the prime minister on April 2, 2014.⁶¹ In email correspondence with Biden business associate Devon Archer surrounding the meeting, Rakishev requested that Secretary of State John Kerry visit Kazakhstan.⁶² Devon Archer replied, "If we have some business started as planned I will ensure its [sic] planned soonest."⁶³ The Oversight Committee continues to investigate the details of Secretary Kerry's eventual visit to Kazakhstan in November 2015.⁶⁴

On April 22, 2014, Rakishev used his Singaporean entity, Novatus Holdings, to wire the Rosemont Seneca Bohai bank account \$142,300.⁶⁵ The next day, the exact same amount was wired out to a car dealership in New Jersey for an expensive sportscar for Hunter Biden. After receiving the payment for the sportscar, in May and June of 2014, Hunter Biden and Devon Archer represented Burisma on a trip to Kazakhstan to evaluate a deal between Burisma and KazMunayGas.⁶⁶

In early 2014, Devon Archer, Hunter Biden, and Vice President Biden had dinner with Kenes Rakishev and Karim Massimov and others at Café Milano in Washington, D.C.⁶⁷ Massimov would also attend the April 16, 2015, dinner with Hunter Biden, Devon Archer, Vice President Biden, and others.⁶⁸

Additional information about the Kazakhstani payment can be found in the Third Bank Records Memorandum released by the Oversight Committee.

C. Biden Influence Peddling in Romania

On May 21, 2014, then Vice President Biden visited Romania and delivered a speech addressed to the Romanian Prime Minister, judges, prosecutors, and leaders of the parliament.⁶⁹ During his speech, Vice President Biden stated the following:

⁵⁸ Email from Kenes Rakishev to Hunter Biden and Devon Archer dated February 5, 2014.

⁵⁹ *Ракисhev Кенес Хамитович*, <https://kapital.kz/dossier/rakishev-kenes>.

⁶⁰ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 63.

⁶¹ Raushan Nurshayeva, *Masimov returns as Kazakh PM to face economic crisis*, Reuters (Apr. 2, 2014), <https://www.reuters.com/article/us-kazakhstan-government/masimov-returns-as-kazakh-pm-to-face-economic-crisis-idUSBREA311AI20140402>.

⁶² Email from Kenes Rakishev to Hunter Biden and Devon Archer dated February 5, 2014.

⁶³ Email from Devon Archer to Kenes Rakishev, copying Hunter Biden dated February 5, 2014.

⁶⁴ *See, e.g.,* Matt Spetalnick, *Kerry courts Kazakh leader as U.S. eyes stronger Central Asia ties*, Reuters (Nov. 2, 2015).

⁶⁵ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 61-62.

⁶⁶ Email from Devon Archer to Hunter Biden and Vadym Pozharsky dated May 7, 2014.

⁶⁷ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 46.

⁶⁸ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 45.

⁶⁹ Remarks by vice President Joe Biden to Romanian Civil Society Groups and Students (Cotroceni Palace, Bucharest, Romania), The White House – Office of the Vice President (May 21, 2014), *available at*

Corruption is a cancer, a cancer that eats away at a citizen's faith in democracy, diminishes the instinct for innovation and creativity; already-tight national budgets, crowding out important national investments. It wastes the talent of entire generations. It scares away investments and jobs. And most importantly it denies the people their dignity. It saps the collective strength and resolve of a nation. Corruption is just another form of tyranny.

*And corruption can represent a clear and present danger not only to a nation's economy, but to its very national security.*⁷⁰

In 2014 and 2015, one of the most high-profile corruption prosecutions in Romania revolved around Gabriel Popoviciu.⁷¹ On September 28, 2015, Vice President Biden welcomed Romanian President Klaus Iohannis to the White House.⁷² During the meeting, Vice President Biden discussed anti-corruption issues and promoting the rule of law to strengthen Romania's national security.⁷³ Within approximately five weeks of this meeting, Bladon Enterprises Limited (Bladon Enterprises) began making deposits into the bank account of Robinson Walker, LLC.⁷⁴ Robinson Walker, LLC was formed by longtime Biden business associate John "Rob" Walker. Bladon Enterprises is reported to be Gabriel Popoviciu's company used to conduct business in Romania.⁷⁵

From November 2015 to May 2017, Bladon Enterprises paid Robinson Walker, LLC over \$3 million.⁷⁶ Biden family accounts then received approximately \$1.038 million from the Robinson Walker, LLC account after the Bladon Enterprises deposits.⁷⁷ The recipients of the money from the Bladon Enterprises deposits included EEIG (James Gilliar), Hunter Biden, Hallie Biden, Owasco, P.C., and an unknown Biden bank account.⁷⁸ These payments appear to be separate from any legal fees Hunter Biden received through the law firm, Boies Schiller, as

<https://obamawhitehouse.archives.gov/the-press-office/2014/05/21/remarks-vice-president-joe-biden-romanian-civil-society-groups-and-stude>.

⁷⁰ *Id.* (emphasis added).

⁷¹ Laura Strickler & Rich Schapiro, *Hunter Biden's legal work in Romania raises new questions about his overseas dealings*, NBC News (Oct. 24, 2019).

⁷² The White House, Office of the Vice President, Readout of the Vice President's Meeting with Romanian President Klaus Iohannis (Sept. 28, 2015).

⁷³ The White House, Office of the Vice President, Readout of the Vice President's Meeting with Romanian President Klaus Iohannis (Sept. 28, 2015).

⁷⁴ Memorandum (May 10, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Second Bank Records Memorandum from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes, at 12.

⁷⁵ *Romanian investor develops large residential complex in office area* (Oct. 6, 2016), available at <https://www.romania-insider.com/romanian-investor-develops-large-residential-complex-office-area>.

⁷⁶ Memorandum (May 10, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Second Bank Records Memorandum from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes, at 12.

⁷⁷ Memorandum (May 10, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Second Bank Records Memorandum from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes, at 12.

⁷⁸ Memorandum (May 10, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Second Bank Records Memorandum from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes, at 12.

the payments were directly from Rob Walker's company. The Oversight Committee has not identified legitimate services that would warrant these lucrative payments to Biden family members.

Additional information about Romanian payments can be found in the Second Bank Records Memorandum released by the Oversight Committee.

D. Joe Biden and His Family Have Had Financial Dealings with Concerning Chinese Nationals, and Joe Biden Has Made False Statements About Those Entanglements

On October 22, 2020, President Biden (then a candidate) answered a question about whether there was anything inappropriate or unethical about his son's business dealings in Ukraine or China. President Biden denied that his son or anybody else from his family had received money from China and stated:

My son has not made money in terms of this thing about, what are you talking about, China. I have not had—the only guy who made money from China is this guy [Donald Trump]. He's the only one. Nobody else has made money from China.⁷⁹

Evidence shows this was not true. In fact, the evidence demonstrates Joe Biden knew his statement was false. Evidence indicates President Biden has participated in his family's dealings with Chinese entities. All of this raises questions about why President Biden concealed his family's involvement with certain Chinese nationals and companies and whether any of his official acts have been influenced by these prior business interactions and/or concern that evidence regarding his family's business dealings with China could be released.

(i) *CEFC China Energy and Related Chinese Companies*

CEFC China Energy (CEFC) was a Chinese energy conglomerate that quickly rose from obscurity to becoming one of China's largest ostensibly private companies. CEFC was closely affiliated with China's Belt and Road Initiative, and its chairman, Ye Jianming, told Chinese media that CEFC "aims to serve the state's strategy."⁸⁰ By 2017, Chairman Ye had "transformed [CEFC] from a little-known fuel trader to a fast-expanding oil and finance giant with assets in Europe, the Middle East, Central Asia and Africa."⁸¹ Chairman Ye and CEFC reportedly had connections to the Chinese military.⁸² Though it was in theory a private company, CEFC "has layers of Communist Party committees, which are usually staples of state-owned enterprises."⁸³

The Bidens' introduction to CEFC began while Joe Biden was Vice President, in late 2015, when Vuk Jeremic—a Serbian politician and recipient of millions of dollars from CEFC

⁷⁹ Justin McCormack, *Biden at Last Presidential Debate: 'My son Has not Made Money' from China*, Nat'l Review (Dec. 10, 2020) (emphasis added).

⁸⁰ Ji Tianqin & Han Wei, *In Depth: Investigation Casts Shadow on Rosneft's China Investor CEFC*, Caixin Global (March 1, 2018).

⁸¹ Ji Tianqin & Han Wei, *In Depth: Investigation Casts Shadow on Rosneft's China Investor CEFC*, Caixin Global (March 1, 2018).

⁸² See, e.g., "The Belt, The Road And The Money," Transcript, NPR (Apr. 20, 2018).

⁸³ Ji Tianqin & Han Wei, *In Depth: Investigation Casts Shadow on Rosneft's China Investor CEFC*, Caixin Global (March 1, 2018).

related entities⁸⁴—invited Hunter Biden to attend a “private dinner” with Chairman Ye.⁸⁵ Principals of CEFC who engaged in business with the Bidens were the subjects of corruption arrests and prosecutions. According to the U.S. Department of Justice (DOJ or Department), Chairman Ye used CEFC to bribe and corruptly influence foreign officials. One of Chairman Ye’s agents in the United States and abroad—Patrick Ho—was convicted of international bribery and money laundering offenses because of his work for CEFC in Africa.⁸⁶ DOJ referenced part of Chairman Ye’s role in that bribery scheme in a press release:

HO also advised his boss, Ye Jianming, the then-chairman of CEFC China, to provide \$500,000 in cash to [President of Uganda Yoweri] Museveni, ostensibly as a campaign donation, even though Museveni, had already been reelected. HO intended these payments to influence [Uganda Minister of Foreign Affairs Sam] Kutesa and Museveni to use their official power to steer business advantages to CEFC China.⁸⁷

On March 1, 2017, State Energy HK Limited, a company affiliated with Chairman Ye, sent a wire to Robinson Walker, LLC for \$3 million.⁸⁸ John “Rob” Walker was a longtime Biden business associate who formed Robinson Walker, LLC in Delaware.⁸⁹ The day after receiving the \$3 million wire from China, Robinson Walker, LLC sent a wire to EEIG, a company associated with James Gilliar, in Abu Dhabi for \$1.065 million.⁹⁰ Over the next approximately three months, Robinson Walker, LLC sent 16 incremental payments totaling \$1,065,692 to various Biden family members and their corporate accounts: Hunter Biden, Hunter Biden’s professional corporation, Owasco, P.C., one of James Biden’s companies (JBBSR Inc.), Hallie Biden, and an unknown Biden account.⁹¹ The Committee can identify no legitimate services rendered by these individuals or legitimate reason for payments being made in this manner.

After the Oversight Committee revealed the payments from China, President Biden continued making false statements. On March 18, 2023, in response to a reporter’s question

⁸⁴ Memorandum (May 10, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Second Bank Records Memorandum from the Oversight Committee’s Investigation into the Biden Family’s Influence Peddling and Business Schemes, at 19 and 29.

⁸⁵ Email from Vuk Jeremic to Eric Schwerin, Dec. 1, 2015 (11:14 A.M.).

⁸⁶ U.S. Dep’t of Justice, *Patrick Ho, Former Head of Organization Backed by Chinese Energy Conglomerate, Sentenced to 3 Years in Prison for International Bribery and Money Laundering Offenses*, U.S. Attorney’s Offices (Southern District of New York), Mar. 25, 2019.

⁸⁷ *Id.*

⁸⁸ Memorandum (May 10, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Second Bank Records Memorandum from the Oversight Committee’s Investigation into the Biden Family’s Influence Peddling and Business Schemes, at 31.

⁸⁹ See Memorandum (Mar. 16, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: New Evidence Resulting from the Oversight Committee’s Investigation into the Biden Family’s Influence Peddling and Business Schemes.

⁹⁰ Memorandum (May 10, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Second Bank Records Memorandum from the Oversight Committee’s Investigation into the Biden Family’s Influence Peddling and Business Schemes, at 31.

⁹¹ Memorandum (May 10, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Second Bank Records Memorandum from the Oversight Committee’s Investigation into the Biden Family’s Influence Peddling and Business Schemes, at 31.

regarding the over \$1 million paid to the Biden family from this Chinese company, President Biden claimed, “That’s not true.”⁹²

However, President Biden not only knew of his family’s business practices in China; evidence indicates he participated in them. On December 8, 2020, the FBI and IRS conducted a recorded interview of Rob Walker. A transcript of that interview confirmed that Joe Biden met with individuals from CEFC:

FBI Agent: Okay. Did um .., did the V.P. ever show up at any CEFC meeting or anything like that.., even once he was out of office?

Walker: Yes.

FBI Agent: Okay.

Walker: It was out-of-office. Ah, we were in ah.., D.C. at the Four Seasons...

IRS Agent: Hmph hmph.

Walker: ...and ah.., we were having lunch and he.., he stopped in...

IRS Agent: Hmph hmph.

Walker: ...then he’d ah, leave.

FBI Agent: Okay.

Walker: That was it.

FBI Agent: Just said hello to everybody and then...

Walker: Yes.

FBI Agent: ...took off?

Walker: He literally sat down. I don’t even think he drank water. I think Hunter said um.., I may be tryin’ to start a company, ah, or tried to do something with these guys and could you.., and think he was like “if I’m around” and he’d show up.

FBI Agent: Okay. So I mean you definitely got the feeling that, that was orchestrated by Hunter to.., to have like a.., an appearance by his Dad at that meeting just to kind of..,

⁹² Chris Pandolfo, Biden denies \$1M in payments to family from Hunter associate, despite bank records: ‘Not true’, Fox News (Mar. 18, 2023).

Walker: Hmph hmph.

FBI Agent: ...bolster your chances at...

Walker: Hmph hmph.

FBI Agent: ...makin' a deal work out.

Walker: Sure.

FBI Agent: Okay. Um..., any other... So that was the..., ah..., Four Seasons in D.C. after he was out of office?

Walker: Yeah.

FBI Agent: Um, where... Any times when he was in office or did you hear Hunter say that he was settin' up a meeting with his dad with them while dad was still in office?

Walker: Yeah.⁹³

The President's statement that the Oversight Committee's bank records were "not true" is false and even more egregious, given evidence that he stood to profit directly from the arrangement. Originally—in early 2017—the deal with CEFC included other associates of Hunter Biden and James Biden, namely: Rob Walker, Tony Bobulinski, and James Gilliar. Bobulinski has spoken publicly about meeting with Joe Biden in 2017 about the CEFC deal.⁹⁴ On May 13, 2017, Gilliar wrote in an email to Bobulinski (copying Rob Walker and Hunter Biden): "At the moment there s [sic] a provisional agreement that the equity will be distributed as follows[:] 20 H[:] 20 RW[:] 20JG[:] 20 TB[:] 10 Jim[:] 10 held by H for the big guy?"⁹⁵ A week after Gilliar's email, Gilliar wrote Bobulinski, "Don't mention Joe being involved, it's only when u are face to face, I know u know that but they are paranoid[.]"⁹⁶

The original equity structure for the joint venture with CEFC was changed to remove Gilliar, Walker, and Bobulinski, with only Hunter Biden and James Biden remaining of the original group.⁹⁷ Joe Biden's participation in the venture appears to have continued. In one WhatsApp message dated July 30, 2017, Hunter Biden wrote to a CEFC business associate, "I am sitting here with my father and we would like to understand why the commitment made has not been fulfilled."⁹⁸ He continued:

⁹³ Transcript of recorded interview with Rob Walker, Dec. 8, 2020, at 81-82.

⁹⁴ See, e.g., Brian Flood, *Tony Bobulinski tells Tucker Carlson Joe Biden was 'chairman' of Hunter Biden's overseas business dealings*, Fox News (Oct. 4, 2022), <https://www.foxnews.com/media/tony-bobulinski-tucker-carlson-joe-biden-chairman-hunter-biden-overseas-business-dealings>.

⁹⁵ Email from James Gilliar to Tony Bobulinski, May 13, 2017 (6:48 A.M.), copying Rob Walker and Hunter Biden.

⁹⁶ Message from James Gilliar to Tony Bobulinski, May 20, 2017.

⁹⁷ Transcript of recorded interview with Rob Walker, Dec. 8, 2020, at 83.

⁹⁸ WhatsApp message, dated July 30, 2017, between Hunter Biden and Associate, provided in testimony provided by Mr. Gary Shapley to the H. Comm. on Ways & Means (May 26, 2023).

Tell the director that I would like to resolve this now before it gets out of hand. And now means tonight.... [I]f I get a call or text from anyone involved in this other than you, Zhang, or the Chairman I will make certain that between the man sitting next to me and every person he knows and my ability to forever hold a grudge that you will regret not following my direction.⁹⁹

After the CEFC associate responded, Hunter Biden said again: “I am sitting here waiting for the call with my father. I sure hope whatever it is you are doing is very very very important.”¹⁰⁰ The next day, the CEFC associate sent a message stating, “CEFC is willing to cooperate with the family.”¹⁰¹ Then, on August 3, 2017, Hunter Biden wrote “The Biden’s [sic] are the best I know at doing exactly what the Chairman wants from this partnership [sic].”¹⁰²

Bank records obtained by the Oversight Committee establish that on August 4, 2017—the day after Hunter Biden’s WhatsApp message above—CEFC Infrastructure Investment (US) (CEFC Infrastructure) wired \$100,000 to Hunter Biden’s professional corporation, Owasco, P.C. The Committee was able to trace this money to a Chinese company and Chinese national, Gongwen “Kevin” Dong.¹⁰³

On August 2, 2017, CEFC (through Hudson West V) and Hunter Biden (through Owasco, P.C.) established another company, Hudson West III, LLC.¹⁰⁴ Dong and Biden were each 50 percent owners of Hudson West III.¹⁰⁵ Bank records show between August 2017 and October 2018, Hudson West III sent over \$4 million to Hunter Biden-related companies and over \$75,000 to a James Biden company, Lion Hall Group, LLC.¹⁰⁶

The next month, on September 21, 2017, Hunter Biden wrote an email to the general manager of the House of Sweden, a building in Washington, D.C., in which he requested “keys [be] made available for new office mates: Joe Biden Jill Biden Jim Biden Gongwen Dong (Chairman Ye CEFC emissary)[.]”¹⁰⁷ Hunter Biden also requested “the office sign ton [sic]

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ WhatsApp message, dated July 31, 2017, between Hunter Biden and Associate, provided in testimony provided by Mr. Gary Shapley to the H. Comm. on Ways & Means (May 26, 2023).

¹⁰² WhatsApp message, dated August 3, 2017, between Hunter Biden and Associate, provided in testimony provided by Mr. Gary Shapley to the H. Comm. on Ways & Means (May 26, 2023).

¹⁰³ Memorandum (May 10, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Second Bank Records Memorandum from the Oversight Committee’s Investigation into the Biden Family’s Influence Peddling and Business Schemes, at 23.

¹⁰⁴ Amended and Restated Limited Liability Company Agreement of Hudson West III, LLC between Hudson West V, LLC and Owasco, P.C. (Aug. 2, 2017). Executed by Dong Gongwen, President, and R. Hunter Biden, Co-Chairman (*See* Schedule I, showing Hudson West V, LLC as 50 percent equity holder and Owasco, P.C. as 50 percent equity holder), *available at* <https://www.grassley.senate.gov/imo/media/doc/2.%20Hudson%20West%20III%20LLC%20Agreement.pdf>.

¹⁰⁵ *Id.*

¹⁰⁶ Letter from Hon. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, and Hon. Ron Johnson, Ranking Member, Perm. Subcomm. On Investigations to Hon. David Weiss, U.S. Att’y (D. Del.), U.S. Dep’t of Justice (Oct. 26, 2022), *available at* https://www.grassley.senate.gov/imo/media/doc/grassley_johnson_to_us_attorney_weiss_-_hunter_biden_investigation.pdf.

¹⁰⁷ E-mail from Hunter Biden to House of Sweden management (Sep. 21, 2017) (parenthetical in original).

reflect the following[:] The Biden Foundation Hudson West (CEFC US)[.]”¹⁰⁸ Hunter Biden then provided the personal phone number of Joe Biden, to whom Hunter Biden refers as his “partner” along with Dong and Jim Biden.¹⁰⁹ The management was told to call Joe Biden if they chose.¹¹⁰ In 2018, Chairman Ye was detained by Chinese authorities, and it was initially reported by Chinese media that his “detention in China was ordered directly by the Chinese president, Xi Jinping.”¹¹¹

All of the evidence reviewed above indicates that CEFC officials may have targeted certain Biden family members for their connections to Joe Biden. The Biden family profited from these lucrative financial arrangements, and this raises questions about whether this money, and/or concerns that Chinese sources may release additional evidence about these business relationships with the Biden family, have had any impact on official acts performed by President Biden or United States foreign policy.

Additional information about CEFC payments can be found in the First Bank Records Memorandum and the Second Bank Records Memorandum released by the Oversight Committee.

(ii) *BHR Partners and Jonathan Li*

As outlined below, President Biden became familiar with another of Hunter Biden’s business associates in China, Jonathan Li, while he was Vice President. Jonathan Li was affiliated with a Chinese government-linked private-equity fund, Bohai Capital.¹¹² On December 16, 2013, Bohai Harvest RST (Shanghai) Equity Investment Fund Management Co., Ltd. (BHR Partners) was formed, a venture between Rosemont Seneca Thornton, a Biden-affiliated business, and Chinese entities.¹¹³

On July 31, 2023, the Oversight Committee conducted a transcribed interview of Devon Archer, who discussed Vice President Biden’s interactions with Jonathan Li.¹¹⁴ In December 2013, then-Vice President Biden and Hunter Biden traveled on Air Force Two to China.¹¹⁵ Devon Archer stated Vice President Biden had coffee with Jonathan Li in Beijing:

¹⁰⁸ *Id.* (parenthetical in original).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Eric Ng & Xie Yu, *China detains CEFC’s founder Ye Jianming, wiping out US \$153 million in value of stocks*, S. China Morning Post, Mar. 1, 2018, available at <https://web.archive.org/web/20180301105430/https://www.scmp.com/business/companies/article/2135238/china-detain-cefc-founder-ye-jianming-stocks> (accessed Apr. 27, 2023).

¹¹² Adam Entous, *Will Hunter Biden Jeopardize His Father’s Campaign? Joe Biden’s son is under scrutiny for his business dealings and tumultuous personal life*, *The New Yorker* (July 1, 2019); Report (September 23, 2020), S. Comm. on Homeland Security and Governmental Affairs and U.S. Senate Committee on Finance From Maj. Comm. staff to Comm. Members. Re: Hunter Biden, Burisma, and Corruption: The Impact on U.S. Government Policy and Related Concerns, at 3.

¹¹³ National Enterprise Credit Information Publicity System Records for Bohai Huamei (Shanghai) Equity Investment Fund Management Co., Ltd.

¹¹⁴ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023).

¹¹⁵ The Vice President’s 2013 Asia Trip – Japan, China and the Republic of Korea, The White House, *available at* <https://obamawhitehouse.archives.gov/issues/foreign-policy/asia-trip-2013>.

Q: Jonathan Li –

A: Yes.

Q: – that call, was that an inbound call, an outbound call? To the extent you remember.

A: Yeah, to the extent I remember, that – I don't know, but I know there was a "hello." There was, like – you know, they ended up having coffee, I think, so he might've known him.

Q: Jonathan –

A: Jonathan Li and President Biden had coffee. So it might've been, like, after they had coffee, and he was saying hello, so there was, like, some familiarity.

Q: Where was that, that they had coffee?

A: They had coffee in Beijing.¹¹⁶

Devon Archer also stated that Vice President Biden wrote a college admission letter for Jonathan Li's daughter.¹¹⁷ The Oversight Committee has also identified an email indicating Joe Biden, after his vice presidency, wrote a recommendation letter for Jonathan Li's son to attend Brown University.¹¹⁸ Vice President Biden knew Jonathan Li, met with him, had at least one phone call with him, and wrote college recommendation letters for his children.

Additional information about BHR Partners and Jonathan Li will be released in a future Oversight Committee Bank Records Memorandum.

¹¹⁶ *Id.* at 124.

¹¹⁷ *Id.* at 125-126.

¹¹⁸ Email from Jonathan Li to Eric Schwerin copying Hunter Biden, James Bulger, and Devon Archer dated Feb. 20, 2017.

E. Obstruction of Investigation of President Biden’s Son, Including Biden Family Business Dealings, by His Own Administration

(i) *Testimony of IRS Whistleblowers*

Two whistleblowers from the IRS came forward to the Ways and Means Committee to provide protected disclosures about a sensitive, high-profile matter. That high-profile matter is an investigation into whether Hunter Biden committed tax-related crimes and other federal offenses. The investigation, which looked into Hunter Biden’s financial dealings, implicated transactions that involved foreign entities like Burisma, among others, and Hunter Biden. In addition to providing information relevant to the Oversight Committee’s investigation, the IRS whistleblowers raised grave concerns that certain people within DOJ, and potentially within the IRS, have sought to hinder, obstruct, and sabotage the investigation by David Weiss, U.S. Attorney for the District of Delaware, of the President’s son, Hunter Biden, an investigation that could implicate Joe Biden in his son’s foreign business dealings. The whistleblowers also alleged that DOJ and IRS officials have retaliated against the whistleblowers for raising these concerns to Congress. The actions by DOJ and the IRS raise concerns about whether the Biden Administration has obstructed justice and Joe Biden’s knowledge of, influence over, and/or involvement with such obstruction.

Supervisory Special Agent Gary Shapley provided this information in a transcribed interview (Shapley Interview) to the Ways and Means Committee on May 26, 2023.¹¹⁹ On June 1, 2023, an additional IRS whistleblower—the primary IRS criminal investigator on the Hunter Biden investigation, Mr. Joseph Ziegler—provided additional disclosures to the Ways and Means Committee in a separate transcribed interview (Ziegler Interview).¹²⁰ The whistleblowers made allegations of a wide range of problems with DOJ’s handling of this case. Just one of those issues includes allegations that whenever investigators sought to take an investigative step that might relate to, involve, or implicate Joe Biden, they were curtailed or prevented from taking that step. The whistleblowers provided numerous examples of the roadblocks they faced throughout the investigation. For instance, Mr. Shapley testified that in a May 3, 2021, memo he wrote: “Through interviews and review of evidence obtained, it appears there may be campaign finance criminal violations. AUSA Wolf stated on the last prosecution team meeting that she did not want any of the agents to look into the allegation.”¹²¹

Further, IRS investigators wanted to interview Hunter Biden’s adult children about payments that Hunter Biden purportedly made to them or for their benefit (e.g., clothes, tuition, etc.), which he had deducted from his taxes.¹²² However, on October 21, 2021, AUSA Wolf told investigators that they would be in “hot water” if they interviewed Hunter Biden’s adult children.¹²³ One of the whistleblowers, Special Agent Joseph Ziegler, described this restriction as “completely abnormal” because it is “part of [the] normal process” to interview people who are receiving money from the case subject.¹²⁴ Despite investigators discovering evidence that

¹¹⁹ See Transcribed interview of Gary Shapley, Internal Revenue Service (May 26, 2023).

¹²⁰ See Transcribed interview of Joseph Ziegler, Internal Revenue Service (June 1, 2023).

¹²¹ *Id.* at 22.

¹²² Ziegler Interview at 32, 129; See Reese Gorman, *Hunter Biden investigation: Agents warned against interviewing his adult children*, WASH. EXAM. (July 19, 2023).

¹²³ *Id.* at 32.

¹²⁴ *Id.* at 32.

Hunter Biden may have deducted from his taxes payments to family members for personal expenses, IRS investigators were also prohibited from interviewing other Biden family members, including Valerie Biden Owens (President Biden's sister), James Biden (President Biden's brother), Sara Biden (President Biden's sister-in-law), Hallie Biden (Beau Biden's widow), and Kathleen Buhle (Hunter Biden's ex-wife).¹²⁵

These whistleblowers provided extensive testimony, and Mr. Shapley provided several documents, that corroborate his account of events. This testimony necessitated further congressional investigation into the handling of the tax investigation of Hunter Biden by both the IRS and DOJ. The Committee on Ways and Means has conducted interviews of two additional IRS employees regarding the whistleblower allegations, and the three Committees have partnered to send numerous investigative letters requesting documents from, and interviews of, numerous Biden Administration officials.

Subsequent to the release of the two transcripts from the IRS whistleblowers, the Oversight Committee held a hearing on July 19, 2023.¹²⁶ In addition to raising serious concerns about the Biden Administration's handling of the investigation of President Biden's son, the whistleblowers' testimony corroborated the Oversight Committee's findings, including the Biden family and their associates' use of over twenty companies; their receipt of millions of dollars from countries including Ukraine, Romania, and China; and Joe Biden's participation in a meeting with CEFC.¹²⁷

(ii) *The Biden Justice Department allowed the statute of limitations to expire on certain alleged criminal conduct that could implicate President Biden.*

The Judiciary Committee has also gathered evidence that the Biden Administration has improperly influenced the course of the IRS and DOJ investigation into Hunter Biden by allowing the statute of limitations to lapse on certain charges.

According to IRS whistleblower Supervisory Special Agent Gary Shapley, the Department allowed the statute of limitations to lapse on the 2014 and 2015 tax crimes committed by Hunter Biden. Shapley testified that, up until October 7, 2022, he believed that prosecutors "were deciding whether to charge 2014 and 2015 tax violations" based on statements made by Attorney General Merrick Garland and Weiss.¹²⁸ During this time period, prosecutors and Hunter Biden's counsel entered into agreements to toll the statute of limitations for crimes pertaining to the 2014 and 2015 tax years.¹²⁹

On October 7, 2022, Weiss, in a meeting with senior managers, indicated that he was ultimately "not the deciding official on whether charges are filed."¹³⁰ Shapley later learned that the U.S. Attorney for the District of Columbia, Matthew Graves, an appointee of President

¹²⁵ *Id.* at 53, 144.

¹²⁶ *Hearing with IRS Whistleblowers About the Biden Criminal Investigation*, H. Comm. on Oversight and Accountability (July 19, 2023).

¹²⁷ *Hearing Wrap Up: IRS Whistleblowers Expose How Bidens Were Treated Differently*, H. Comm. on Oversight and Accountability (July 19, 2023).

¹²⁸ Shapley Interview at 25.

¹²⁹ *Id.* at 54.

¹³⁰ *Id.* at 28.

Biden, “would not allow [Weiss] to charge in his district.”¹³¹ As a result, Weiss went to Main Justice to request special counsel authority in the District of Columbia, which Main Justice denied.¹³² Weiss was instead told to “follow DOJ’s process.”¹³³

In November 2022, despite defense counsel’s willingness to again toll the statute of limitations again, the Department allowed the statute of limitations to lapse on the 2014 and 2015 charges.¹³⁴ As a result, no charges were ever brought.¹³⁵ The expiration of the tax charges for 2014 and 2015 is significant because during those years, Hunter Biden took on a lucrative role serving on the board of Burisma.¹³⁶ Also during that period, his father, then-Vice President Joe Biden, sought to have the Ukrainian prosecutor investigating Burisma fired.¹³⁷ That prosecutor, Viktor Shokin, “was fired after then-Vice President Joe Biden threatened to pull \$1 billion in US aid.”¹³⁸ Ultimately, the “exclusion of the 2014 and 2015 years sanitized the most substantive criminal conduct and concealed material facts” relating to Hunter Biden’s foreign income, “a scheme to evade income taxes through a partnership with a convicted felon[,]” and “potential FARA issues”—all of which implicates his father, Joe Biden.¹³⁹ Simply put, the Biden Administration’s DOJ appears to have intentionally slow-walked the investigation that potentially implicated President Biden by allowing the statute of limitations to expire.¹⁴⁰

(iii) *The Biden Justice Department afforded Hunter Biden special treatment and a lenient plea deal for which the Department could offer no comparable precedent.*

When the Department was compelled to take some prosecutorial action against Hunter Biden, it tried to push through an apparently unprecedented plea deal, which imploded in open court. In May 2023, around the time that the IRS whistleblowers initially testified to Congress about irregularities in the Department’s investigation and shortly after a meeting between Hunter Biden’s former lawyer Chris Clark, Weiss, and Associate Deputy Attorney General Bradley Weinsheimer,¹⁴¹ the Department began formally negotiating with Hunter Biden’s lawyers about potential plea and pretrial diversion agreements.¹⁴² The negotiations culminated in a plea agreement publicly announced on June 20, 2023.¹⁴³

¹³¹ *Id.*

¹³² *Id.* at 25.

¹³³ Shapley Interview at 25.

¹³⁴ *Id.* at 100.

¹³⁵ *Id.*

¹³⁶ Steven Nelson, *Ukrainian prosecutor whose ouster Biden pushed was ‘threat,’ says Devon Archer*, N.Y. POST (Aug. 4, 2023).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Shapley Interview at 25.

¹⁴⁰ *Id.* at 26.

¹⁴¹ See Betsy Woodruff Swan, *In talks with prosecutors, Hunter Biden’s lawyers vowed to put the president on the stand*, POLITICO (Aug. 19, 2023) (reporting that Clark, Weiss, and Weinsheimer met on April 26, 2023 to discuss the charges, but noting that it is “not clear what happened in the meeting, which came at a sensitive moment for the probe”).

¹⁴² Defendant’s Response to the U.S. Motion to Vacate the Court’s Briefing Order, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. Aug. 13, 2023). See also Jessica Lynch, *Hunter Biden began negotiating plea deal with DOJ right after IRS whistleblower first came forward, court docs show*, DAILY CALLER (Aug. 14, 2023).

¹⁴³ Swan, *supra* note 141.

However, according to public reporting, Clark began pressuring the Department to settle Hunter Biden's case as early as spring of 2022.¹⁴⁴ Specifically, Clark threatened investigators that they faced career "suicide" if they pursued the investigation,¹⁴⁵ asked for meetings "with people at the highest levels of the [] Department,"¹⁴⁶ and threatened to call President Biden to testify as a fact witness for the defense.¹⁴⁷ Clark even went so far as to tell prosecutors that they would be creating a "Constitutional crisis" by pitting the President against the Department he runs.¹⁴⁸

The deal reached by Weiss's team and Hunter Biden's lawyers would have had Hunter Biden plead guilty to two misdemeanor tax charges, plus a diversion agreement to dismiss a separate felony gun charge if Hunter Biden complied for two years with the conditions set forth in the agreement.¹⁴⁹ The one-of-its-kind agreement shifted a broad immunity provision from the plea agreement to the pretrial diversion agreement, benefiting Hunter Biden with the aim of preventing the District Court from being able to scrutinize and reject that immunity provision.¹⁵⁰ It also gave the District Court the sole power to determine whether Hunter Biden breached the pretrial diversion agreement—a prerequisite for the Department to file the diverted charges against him in the future and a provision benefitting Hunter Biden.¹⁵¹

On July 26, 2023, Hunter Biden appeared before Judge Maryellen Noreika of the U.S. District Court for the District of Delaware for a hearing on the plea deal.¹⁵² The plea deal fell apart when prosecutors and defense attorneys could not provide answers to routine questions about the agreement posed by Judge Noreika.¹⁵³ Judge Noreika described the Department's deal as "not standard" and "different from what I normally see."¹⁵⁴ Judge Noreika raised concerns about two provisions of the deal: (1) a provision of the pretrial diversion agreement for the gun charge that would prohibit the Department from bringing charges within the scope of the agreement unless and until Judge Noreika first determined that the diversion agreement had been breached,¹⁵⁵ and (2) a grant of immunity within the pretrial diversion agreement that would immunize Hunter Biden for not only the gun-related conduct, but also his unrelated tax crimes.¹⁵⁶

¹⁴⁴ *Id.*

¹⁴⁵ See Shapley Interview at 27 (stating that Clark told prosecutors that they would be committing "career suicide" if they filed criminal charges against Hunter Biden); Ziegler Interview at 122.

¹⁴⁶ Swan, *supra* note 141.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Josh Gerstein et al., *Hunter Biden reaches plea deal with feds to resolve tax issues, gun charge*, POLITICO (June 20, 2023).

¹⁵⁰ See Letter from Chairmen Jim Jordan, Jason Smith, and James Comer, to Merrick B. Garland, Att'y Gen., U.S. Dep't of Just. (July 31, 2023). See also Transcript of Record at 46-47, 107, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. July 26, 2023).

¹⁵¹ Transcript of Record at 95, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. July, 26, 2023).

¹⁵² See Michael S. Schmidt et al., *Inside the Collapse of Hunter Biden's Plea Deal*, N.Y. TIMES (Aug. 19, 2023) ; Swan, *supra* note 141.

¹⁵³ Schmidt, *supra* note 152; Swan, *supra* note 141.

¹⁵⁴ Transcript of Record at 10, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. July, 26, 2023).

¹⁵⁵ *Id.* at 92-93.

¹⁵⁶ *Id.* at 46-47.

When Judge Noreika asked if there was precedent for either of these provisions, prosecutors were unable to provide any.¹⁵⁷

At the conclusion of the hearing, Judge Noreika expressed discomfort with the structure of the plea and pretrial diversion agreements and the constitutionality of the provision that would prevent prosecutors from filing future charges against Hunter Biden without judicial approval.¹⁵⁸ Ultimately, Judge Noreika concluded that she could not accept the plea agreement and postponed the proceedings.¹⁵⁹ Negotiations to modify the plea agreement were abandoned before the announcement of Weiss's special counsel appointment.¹⁶⁰

(iv) *The Biden Justice Department made inconsistent and false statements to Congress about the independence of its investigations into Hunter Biden.*

The Department has made inconsistent statements to the Judiciary Committee about the independence of its investigation into Hunter Biden, raising serious concerns that political appointees of Joe Biden have obstructed the investigation.

On March 1, 2023, Attorney General Garland told the Senate Judiciary Committee that U.S. Attorney David Weiss “has full authority . . . to bring cases in other jurisdictions if he feels it’s necessary.”¹⁶¹ Then, on June 7, 2023, Weiss wrote to the Judiciary Committee, stating: “I have been granted ultimate authority over this matter, including responsibility for deciding where, when, and whether to file charges”¹⁶² On June 30, however, Weiss claimed in a second letter to the Judiciary Committee that “my charging authority is geographically limited to my home district.” He expanded:

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.¹⁶³

In transcribed interviews of two senior leaders of the FBI Baltimore Field Office, however, the Judiciary Committee learned that Weiss had to follow a “cumbersome” and

¹⁵⁷ *Id.* at 46, 103.

¹⁵⁸ *Id.* 95-98.

¹⁵⁹ *Id.*; see also, Transcript of Record at 54-55, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. July 26, 2023).

¹⁶⁰ U.S. Motion to Voluntarily Dismiss Criminal Tax Information Without Prejudice so that Tax Charges Can Be Brought in a District Where Venue Lies, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. Aug. 11, 2023).

¹⁶¹ *Oversight of the Department of Justice: Hearing Before the S. Comm. on the Judiciary*, 118th Cong. (2023) (statement of Merrick Garland, Att’y Gen., U.S. Dep’t of Justice).

¹⁶² Letter from David C. Weiss, U.S. Att’y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 7, 2023).

¹⁶³ Letter from David C. Weiss, U.S. Att’y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 30, 2023).

“bureaucratic” process to bring charges against Hunter Biden outside of Delaware.¹⁶⁴ The testimony from these two FBI witnesses buttresses the existing evidence that Weiss did not have full and sole authority over the Justice Department’s Hunter Biden investigation. In addition, Shapley testified that two U.S. Attorneys denied partnering with Weiss to bring charges against Hunter Biden. According to Shapley, in March 2022, the Justice Department’s Tax Division presented the case against Hunter Biden to the U.S. Attorney’s Office in the District of Columbia.¹⁶⁵ Although the office’s First Assistant was “optimistic” about the case and willing to “assign an AUSA to assist[,]” U.S. Attorney Matthew Graves, appointed by President Biden, “personally reviewed the report and did not support it.”¹⁶⁶ Shapley testified that he learned about Graves’s decision to not partner with Weiss in the October 7, 2022 meeting during which Weiss indicated that Graves “would not allow him to charge in his district.”¹⁶⁷ At that same meeting, Weiss also stated that “he has no authority to charge in California” and if he wanted to bring charges in California, “he would have to request special counsel authority in order to charge it.”¹⁶⁸ In January 2023, Shapley learned that U.S. Attorney Martin Estrada, also appointed by President Biden, refused to partner with Weiss and “had declined to bring charges in the Central District of California.”¹⁶⁹

- (v) *President Biden has made repeated statements about Hunter Biden’s innocence and his own purported lack of involvement in his son’s business dealings, prejudicing the Department’s investigation.*

President Biden, by himself and through his staff, has prejudiced the Department’s investigation by making repeated public statements about Hunter Biden’s innocence. These statements could represent attempts to use the authority of his office to influence the Department’s actions and decision-making in the criminal investigation of his son, an investigation which could implicate the President himself.

Since becoming president, President Biden has continued to use his office to promote his and Hunter Biden’s innocence. On October 11, 2022, a reporter asked President Biden about potential charges against Hunter.¹⁷⁰ While acknowledging that Hunter Biden lied on his application to purchase a gun, President Biden stated, “I’m confident that he is—what he says and does are consistent with what happens.”¹⁷¹ President Biden then reiterated that he has “great confidence in [his] son.”¹⁷² In May 2023, President Biden again defended his son, stating, “[M]y

¹⁶⁴ Transcribed Interview of Thomas Sobocinski at 44, 68, 103 (Sept. 7, 2023).

¹⁶⁵ Shapley Interview at 24.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 28.

¹⁶⁸ *Id.* at 102.

¹⁶⁹ *Id.* at 31. In testimony to the Judiciary Committee on September 20, 2023, Attorney General Garland stated that Weiss had full authority over the investigation because Garland “promised” Weiss that he would have full authority. In particular, Garland testified that Weiss “had the authority because I promised that he would have the authority.” This statement—that Weiss had full authority because he *would* have full authority if he sought it—appears to be self-contradictory and inconsistent with Garland’s prior statement in March 2023 that Weiss *had* full authority at the time of the statement.

¹⁷⁰ Kevin Liptak & Evan Perez, *Biden addresses possible criminal charges against Hunter Biden and says he’s ‘proud’ of son’s fight against drug addiction*, CNN (Oct. 12, 2022).

¹⁷¹ *Id.*

¹⁷² *Id.*

son has done nothing wrong.”¹⁷³ He added, “I trust him. I have faith in him.”¹⁷⁴

In August 2023, a reporter brought up testimony that President Biden was “on speakerphone” with Hunter Biden’s former business associates “talking business,” potentially implicating President Biden in these crimes.¹⁷⁵ President Biden shot back, “I never talked business with anybody. I knew you’d have a lousy question.”¹⁷⁶ When the reporter asked President Biden to explain why the question was lousy, he responded, “Because it’s not true.”¹⁷⁷

Senior employees of the Executive Office of the President have also publicly commented on Hunter Biden’s innocence and President Biden’s purported lack of involvement in his son’s foreign business dealings. For example, former White House Chief of Staff Ron Klain stated, “Of course the president is confident that his son didn’t break the law” and that President Biden “is confident that his family did the right thing.”¹⁷⁸ Klain added, “[t]hese are actions by Hunter and his brother. They’re private matters. They don’t involve the president. And they certainly are something that no one at the White House is involved in.”¹⁷⁹ On April 5, 2022, then-White House Press Secretary Jen Psaki agreed with a reporter’s question that the President has “never spoke[n] to his son about his overseas business dealings.”¹⁸⁰ On July 24, 2023, in an exchange with a reporter, White House Press Secretary Karine Jean-Pierre stated that President Biden “was never in business with his son.”¹⁸¹ Two days later, Jean-Pierre again reiterated at a press briefing, that “nothing has changed,” again denying that President Biden had any involvement with his son’s foreign business dealings.¹⁸² Yet these statements seem flatly inconsistent with evidence that the Committee has gathered thus far.

IV. Scope of Impeachment Inquiry

The Committees’ inquiry into possible impeachable offenses committed by President Biden requires pursuing investigative leads generated by the Committees in the course of their oversight work to date. In addition to the thousands of documents the Committees have already reviewed and many interviews that the Committees have already conducted, the Committees will obtain additional evidence. Because the impeachment inquiry will go where that evidence leads, the investigation could head in directions that the Committees do not currently foresee. However, given the evidence gathered to date, the impeachment inquiry will initially focus on the following questions.

First, did Joe Biden, as Vice President and/or President, take any official action or effect any change in government policy because of money or other things of value provided to

¹⁷³ Katherine Doyle, *Biden defends son Hunter ahead of possible federal tax, gun charges*, NBC News (May 5, 2023).

¹⁷⁴ *Id.*

¹⁷⁵ Alexander Hall, *Biden scorched for response to question about talking to Hunter’s business associates: ‘Pathological liar’*, FOX NEWS (Aug. 10, 2023).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Press Briefing by Press Secretary Jen Psaki, April 5, 2022*, THE WHITE HOUSE (April 5, 2022).

¹⁸¹ *Press Briefing by Press Secretary Karine Jean-Pierre*, THE WHITE HOUSE (July 24, 2023).

¹⁸² *Press Briefing by Press Secretary Karine Jean-Pierre and National Security Council Coordinator for Strategic Communications John Kirby*, THE WHITE HOUSE (July 26, 2023).

his family or him from foreign interests? The Committees have uncovered that payments: (1) went to members of Joe Biden's family, and (2) occurred or began during Joe Biden's Vice Presidency; and (3) originated from certain countries in which then-Vice President Biden played an official role on behalf of the Obama-Biden Administration. Moreover, this money reached the Biden family through a layered and obfuscated payment structure, which usually involved intermediaries and incremental distributions of funds.¹⁸³ In certain countries, during or shortly after then-Vice President Biden delivered speeches and messages on behalf of the Obama-Biden Administration about fighting corruption (e.g., Romania, Ukraine), his son engaged in business deals with individuals (e.g., Gabriel Popoviciu, Mykola Zlochevsky) who were under investigation for corruption by those countries.¹⁸⁴ The Committees will investigate whether the foreign money paid to the Biden family had any impact on Joe Biden's conduct as President or Vice President, including the bribery allegations set forth in the FBI FD-1023 form. The Committees will also investigate whether any of this foreign money reached Joe Biden directly or was used to directly benefit him, such as by paying his bills.

Second, did Joe Biden, as Vice President and/or President, abuse his office of public trust by providing foreign interests with access to him and his office in exchange for payments to his family or him? During his Vice Presidency, Joe Biden spoke, met, and socialized with his son's foreign business associates. On at least two occasions—2014 and 2015—Joe Biden attended small, private dinners in Washington, D.C. with foreign individuals who had paid or would pay his son millions of dollars.¹⁸⁵ In 2014, one of the individuals who attended the dinner was Yelena Baturina—a Russian oligarch and the wealthiest woman in Russia—who around the timeframe of the dinner wired \$3.5 million to Rosemont Seneca Thornton.¹⁸⁶ In 2015, one of the individuals who attended the dinner with the Vice President—Vadym Pozharsky—was an executive of Burisma, the Ukrainian company that paid Hunter Biden \$1 million per year and whose president—Mykola Zlochevsky—was under investigation for corruption. In the spring of 2015, Hunter Biden and his business associates attended a breakfast at the Naval Observatory, where the discussion focused on who would be the next Secretary General of the United Nations; one of the participants was a lobbyist for a Kazakhstani individual who was seeking the position.¹⁸⁷ The Committees will investigate whether these foreign interests were given access to Joe Biden as a result of payments made to his family or him.

Third, did Joe Biden, as Vice President and/or President, abuse his office of public trust by knowingly participating in a scheme to enrich himself or his family by giving foreign interests the impression that they would receive access to him and his office in exchange for payments to his family or him? As reviewed above, Joe Biden called into business meetings

¹⁸³ See, Memorandum (May 10, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Second Bank Records Memorandum from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes; see also, Memorandum (August 9, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Third Bank Records Memorandum from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes.

¹⁸⁴ *Id.*

¹⁸⁵ See, Memorandum (August 9, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Third Bank Records Memorandum from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes.

¹⁸⁶ Memorandum (August 9, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Third Bank Records Memorandum from the Oversight Committee's Investigation into the Biden Family's Influence Peddling and Business Schemes.

¹⁸⁷ Transcribed interview of Devon Archer, H. Comm. on Oversight & Accountability (July 31, 2023), at 78-79.

held by his son and spoke to the attendees on speakerphone. He also attended dinners with Hunter Biden and his son's foreign business associates. The evidence suggests that Joe Biden knew or must have known that these interactions would give his son's foreign business associates the appearance that they would have access to him and his office if they were to make substantial payments to his son. And if this is true, then Joe Biden was using his office to enrich his family, even if he ended up not providing his son's foreign business associates with such access. The Committees will therefore investigate whether Joe Biden engaged in a scheme with his son to secure foreign money by giving foreign business interests the impression that they would be provided with access to Biden and his office if they made payments to his son.

Fourth, did Joe Biden abuse his power as President to impede, obstruct, or otherwise hinder investigations (including Congressional investigations)¹⁸⁸ or the prosecution of Hunter Biden? To answer this question, the Committees will need to obtain information regarding the federal criminal investigation of Hunter Biden, such as the failure by the Department of Justice to bring felony tax charges against Hunter Biden for tax years 2014 and 2015, despite IRS investigators' disclosures to Congress that the U.S. Attorney's Office in Delaware had ample evidence to support those charges. The Committees will also need to procure information regarding possible retaliation against those investigators. The inquiry will also review the understanding that was eventually struck by Hunter Biden's legal team and federal prosecutors (including the plea agreement and pretrial diversion agreement)¹⁸⁹ after the IRS whistleblowers' disclosures to Congress and before that understanding being questioned by a federal judge.¹⁹⁰ And it will review whether any political appointees of Joe Biden obstructed the criminal investigation of Hunter Biden and whether Joe Biden or anyone at the White House had any involvement in that obstruction directly or indirectly, such as through the issuance of public statements.

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Necessarily, the impeachment inquiry will span the time of Joe Biden's Vice Presidency to the present, including his time out of office. The impeachment inquiry will focus on whether the President has engaged in corruption, bribery, and influence peddling during his time as Vice President and President. The impeachment inquiry will simultaneously investigate whether actions have been taken by the Biden Administration to obstruct or hinder accountability for the same potential corruption, bribery, and influence peddling. Due to the existing evidence of self-dealing and personal and familial enrichment by Joe Biden through the abuse of his official roles, the impeachment inquiry will require access to records of not only President Biden but the

¹⁸⁸ For example, the Oversight Committee has requested information regarding the classified materials discovered in the President's home—where his son has resided during the time period relevant to this investigation—and personal office, but the White House has provided no information to the Committee regarding the contents of or its full approach towards those documents. The refusal to cooperate is despite growing evidence accumulated by the Oversight Committee that the White House has not been forthcoming regarding the classified materials discovered in 2022 and that such actions represent potentially a serious violation of federal law for which a former president has faced federal indictment. *See* Letter from Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability to Stuart Delery, White House Counsel (Jan. 10, 2023); *see also* Letter from Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability to Ron Klain, White House Chief of Staff (Jan. 15, 2023).

¹⁸⁹ Betsy Woodruff Swan, *Read the proposed Hunter Biden plea agreement*, POLITICO (July 26, 2023), <https://www.politico.com/news/2023/07/26/proposed-hunter-biden-plea-agreement-00108426>.

¹⁹⁰ Betsy Woodruff Swan, *Read the proposed Hunter Biden plea agreement*, POLITICO (July 26, 2023), <https://www.politico.com/news/2023/07/26/proposed-hunter-biden-plea-agreement-00108426>.

people and entities in his proximity throughout the relevant time period, including those of his family members and Obama-Biden and Biden-Harris Administration officials.

Because of the nature of the Biden family's business practices, the Committees anticipate the impeachment inquiry will require access to a variety of sources of information. In addition to bank records and other financial documents the Committees will obtain through subpoena, if necessary, the Committees anticipate the impeachment inquiry will require the production of documents by the United States Departments of State, Justice, Treasury, and Homeland Security, the National Archives, and other government agencies, as well as certain documents from state governments and international sources. The Committee will also conduct depositions or transcribed interviews of people with firsthand knowledge of the Biden family's business practices and finances, in addition to former and current Administration officials. When possible, the Committees will request that this information be provided voluntarily, but the Committees anticipate—based on statements made to the Committees during their regular oversight work—that certain individuals will require subpoenas to appear or cooperate with the Committees' impeachment inquiry in a timely manner. The Committees will use all of the tools at their disposal to conduct a thorough and needed investigation and fulfill the constitutional responsibility of determining whether articles of impeachment against President Biden should be drafted and referred to the full House.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit G



**THE JUSTICE DEPARTMENT'S DEVIATIONS FROM STANDARD PROCESSES IN
ITS INVESTIGATION OF HUNTER BIDEN**

Interim Staff Report of the

Committee on the Judiciary,
Committee on Ways and Means, and
Committee on Oversight and Accountability

U.S. House of Representatives

December 5, 2023

EXECUTIVE SUMMARY

“Corruption is a cancer, a cancer that eats away at a citizen’s faith in democracy It saps the collective strength and resolve of a nation. Corruption is just another form of tyranny.”

—Vice President Joe Biden, May 21, 2014

In the spring of 2023, two brave IRS whistleblowers stepped forward to notify Congress of how the Justice Department had impeded, delayed, and obstructed the criminal investigation of the President’s son, Hunter Biden. The whistleblowers, who came forward only after IRS leadership failed to address their concerns, noted several deviations by Justice Department officials “from the normal process that provided preferential treatment, in this case to Hunter Biden.”¹ The whistleblowers exposed how the Justice Department allowed the statute of limitations on certain charges against Hunter Biden to lapse, prohibited line investigators from referring to or asking about President Biden during witness interviews, withheld evidence from line investigators, excluded the investigative team from meetings with defense counsel, and tipped off defense counsel about pending search warrants.²

On September 12, 2023, on the basis of testimony from these whistleblower and other evidence gathered to that point, the Speaker of the House directed the Committees to conduct an inquiry to determine whether sufficient grounds existed for the impeachment of President Biden.³ On September 27, 2023, pursuant to the Speaker’s directive, the Committees released a memorandum laying out what the Committees were investigating, including: (1) foreign money received by the Biden family; (2) President Joe Biden’s involvement in his family’s foreign business entanglements; and (3) steps taken by the Biden Administration to slow, hamper, or otherwise impede the criminal investigation of the President’s son, Hunter Biden, which involves funds received by the Biden family from foreign sources.⁴

The third prong of the impeachment inquiry encompasses oversight, initiated by the Committees following the whistleblowers’ revelations, into the Biden Justice Department’s purported commitment to impartial justice. As part of this aspect of the inquiry, as it relates to the criminal investigation of Hunter Biden and the potential obstruction of that investigation, the Committees have so far obtained hundreds of pages of documents from the whistleblowers and conducted transcribed interviews with ten officials from the Justice Department, FBI, and IRS. Those officials are:

- Special Counsel and U.S. Attorney for the District of Delaware David Weiss,
- U.S. Attorney for the District of Columbia Matthew Graves,

¹ Transcribed Interview of Gary Shapley, Supervisory Special Agent, Internal Revenue Serv., at 10 (May 26, 2023) [hereinafter Shapley Interview].

² *Id.*; Transcribed Interview of Joseph Ziegler, Special Agent, Internal Revenue Serv. (June 1, 2023) [hereinafter Ziegler Interview].

³ Press Release, Rep. Kevin McCarthy, Speaker of the H. of Reps., Speaker McCarthy Opens an Impeachment Inquiry (Sept. 12, 2023).

⁴ Memorandum from Chairmen Jim Jordan, James Comer, and Jason Smith, to Members of the H. Comm. on the Judiciary, H. Comm. on Oversight & Accountability, and H. Comm. on Ways & Means (Sept. 27, 2023).

- U.S. Attorney for the Central District of California E. Martin Estrada,
- Former U.S Attorney for the Western District of Pennsylvania Scott Brady,
- Acting Deputy Assistant Attorney General for Criminal Matters at the Justice Department's Tax Division Stuart Goldberg,
- FBI Special Agent in Charge Thomas Sobocinski,
- FBI Assistant Special Agent in Charge Ryeshia Holley,
- Former FBI Supervisory Special Agent Joe Gordon,
- IRS Director of Field Operations Michael Batdorf, and
- IRS Special Agent in Charge Darrell Waldon

The testimony and documents received by the Committees to date corroborates many of the allegations made by the IRS whistleblowers. For example:

- ***Testimony demonstrated that the Justice Department and FBI bureaucrats afforded special treatment to Joe Biden's adult son Hunter.*** Several witnesses acknowledged the delicate approach used during the Hunter Biden case, describing the investigation as "sensitive" or "significant." Evidence shows Department officials slow-walked the investigation, informed defense counsel of future investigative actions, prevented line investigators from taking otherwise ordinary investigative steps, and even allowed the statute of limitations to expire on the most serious potential charges. These unusual—and oftentimes in the view of witnesses, unprecedented—tactics conflicted with standard operating procedures and ultimately had the effect of benefiting Hunter Biden.
- ***Biden Justice Department officials explained to the Committees how U.S. Attorney Weiss did not have "ultimate authority" over the Hunter Biden case, contrary to his assertions to Congress.*** Instead, Biden Administration political appointees exercised significant oversight and control over the investigation. Witnesses described how Weiss had to seek (1) agreement from other U.S. Attorneys to bring cases in a district geographically distinct from his own and (2) approval from the Biden Justice Department's Tax Division to bring specific charges or take investigative actions against Hunter Biden.
- ***After the whistleblowers came forward, the Biden Justice Department attempted to cover-up Hunter Biden's wrongdoing, as well as its own.*** There is no question that without the brave IRS whistleblowers, it is likely that the Biden Justice Department would have never acted on Hunter Biden's misconduct. When forced to act, the Biden Justice Department worked closely with Hunter Biden's counsel to craft an

unprecedented plea deal that was so biased in the direction of Hunter Biden it fell apart in open court. When a federal judge rejected the Department's attempt to push through a sweetheart plea deal and quietly end the five-year investigation of Hunter Biden, Attorney General Garland appointed Weiss as special counsel and refused to answer questions about the case on the basis of the existence of an "ongoing investigation." Using the "ongoing investigation" as a veil to shield its misconduct, the Biden Justice Department unilaterally limited the scope of witness testimony and document productions to Congress, severely curtailing the Committees' ability to gather information.

Even still, despite these troubling findings, there is more information that the Justice Department is keeping from the Committees. The Justice Department has still not fully complied with requests for relevant documents, and it has impeded the Committees' investigation by baselessly preventing two Tax Division officials—Senior Litigation Counsel Mark Daly and Trial Attorney Jack Morgan—from testifying, despite subpoenas compelling their testimony. These documents and this testimony are necessary for the Committees to complete our inquiry.

The Department's blatant disregard for the Committees' constitutionally prescribed oversight responsibilities is yet another stain that the Biden Administration has placed on the Justice Department's once-venerated reputation. Although the Committees' investigation is far from complete, this interim report details the findings to date and summarizes some of the evidence uncovered in the impeachment inquiry. The Committees will continue to gather evidence to determine whether sufficient grounds exist to draft articles of impeachment against President Biden for consideration by the full House of Representatives.

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BACKGROUND

In November 2018, the Internal Revenue Service (IRS) opened an investigation into Hunter Biden for potential tax crimes after discovering bank reports showing that “Hunter Biden was living lavishly through his corporate bank account,” along with public reporting about Hunter Biden’s substantial tax debt.⁵ The IRS’s investigation was soon followed by an investigation opened out of the Federal Bureau of Investigation (FBI) Wilmington Resident Agency, a sub-office of the FBI’s Baltimore Field Office, in February 2019.⁶ Two months later, in April 2019, FBI investigators learned of the IRS’s investigation of Hunter Biden, and the Justice Department merged the two investigations later that month.⁷ In October 2019, the FBI learned of a laptop and external hard drive previously owned by Hunter Biden that contained evidence of Hunter Biden’s criminal conduct,⁸ including drug use, solicitation of prostitutes, and influence-peddling.⁹ In November 2019, the FBI verified the authenticity of the laptop and hard drive and on December 9, 2019, the FBI seized the devices.¹⁰ After taking possession of the devices, the FBI notified the IRS that the devices contained evidence of Hunter Biden’s tax crimes,¹¹ though prosecutors withheld the contents of the devices from IRS case agents working on the Hunter Biden investigation.¹²

In April 2023, the Committees became aware of serious whistleblower allegations from two IRS agents who worked on the Justice Department’s criminal investigation of Hunter Biden.¹³ In particular, a lawyer for one of the whistleblowers informed the Committees that his client wanted to make protected disclosures to Congress that:

(1) contradict sworn testimony to Congress by a senior political appointee, (2) involve failure to mitigate clear conflicts of interest in the ultimate disposition of the case, and (3) detail examples of preferential treatment and politics improperly infecting decisions and protocols that would normally be followed by career law enforcement professionals in similar circumstances if the subject were not politically connected.¹⁴

⁵ Ziegler Interview at 17. *See also* Shapley Interview at 12.

⁶ Transcribed Interview of Joe Gordon, Ret. Supervisory Special Agent, Fed. Bureau of Investigation, at 63 (July 17, 2023) [hereinafter Gordon Interview].

⁷ *Id.* at 29, 64. *See also* Letter from Dean Zerbe to H. Comm. on Ways & Means (June 19, 2023) (explaining that although Ziegler initially testified that Attorney General Bill Barr directed that the two investigations be merged, he later realized that he was mistaken and that he was unaware as to who at the Justice Department directed that the investigations be merged).

⁸ Shapley Interview at 12; Shapley Interview, Ex. 6.

⁹ Victor Nava & Miranda Devine, *Delaware ‘laptop from hell’ repairman John Paul Mac Isaac deposed by Hunter Biden lawyers for 7 hours*, N.Y. POST (June 2, 2023).

¹⁰ Shapley Interview at 12; Shapley Interview, Ex. 6.

¹¹ Shapley Interview at 12; Shapley Interview, Ex. 6.

¹² Shapley Interview at 16; Shapley Interview, Ex. 6.

¹³ *See* Letter from Mark D. Lytle to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. (Apr. 19, 2023); Letter from Tristan Leavitt & Mark D. Lytle to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. (May 15, 2023).

¹⁴ Letter from Mark D. Lytle to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. (Apr. 19, 2023).

On May 26, 2023, IRS Supervisory Special Agent Gary Shapley bravely stepped forward, at great personal and professional risk, and testified before the Committee on Ways and Means about the preferential treatment that the Justice Department afforded to Hunter Biden throughout the course of its almost-five-year investigation.¹⁵ Six days later, on June 1, 2023, the IRS case agent who initially opened the investigation, Special Agent Joseph Ziegler, also testified before the Ways and Means Committee, similarly doing so at great personal and professional risk.¹⁶ On July 19, 2023, both Supervisory Special Agent Shapley and Special Agent Ziegler publicly testified at a hearing of the Committee on Oversight and Accountability about the preferential treatment they witnessed firsthand in the investigation concerning Hunter Biden.¹⁷

Both whistleblowers are seasoned IRS agents with years of experience dealing with high-profile and complex tax cases. Both have received numerous awards and commendations for the high quality of their work.¹⁸ Supervisory Special Agent Shapley, a 14-year veteran of the IRS, leads an elite team of a dozen agents who specialize in international tax and financial crimes.¹⁹ Special Agent Ziegler, a self-described Democrat,²⁰ is a 13-year veteran of the IRS who currently serves as an agent on Shapley's team.²¹ Until May 15, 2023, when the Justice Department ordered their removal from the case, Shapley served as the IRS supervisor over the Hunter Biden investigation,²² with Ziegler serving as the lead IRS case agent.²³

The whistleblowers' testimony to Congress noted several deviations by Department officials "from the normal process that provided preferential treatment, in this case to Hunter Biden,"²⁴ including: allowing the statute of limitations to lapse; requesting IRS and FBI management-level investigative communications; prohibiting investigators from asking about the "big guy" or "dad," both of which refer to Joe Biden,²⁵ during witness interviews; excluding the investigative team from meetings with defense counsel; and notifying defense counsel of pending search warrants.²⁶ Additionally, both whistleblowers testified about the investigators' failed attempt to interview Hunter Biden due to FBI headquarters giving the Biden transition team and Secret Service a heads-up of a surprise encounter.²⁷ By September 2022, Biden Justice Department prosecutors continued hindering the investigators' efforts by prohibiting any overt investigative actions until after the midterm elections, even though the Department's Public

¹⁵ Shapley Interview.

¹⁶ Ziegler Interview.

¹⁷ *Hearing with IRS Whistleblowers About the Biden Criminal Investigation: Before the H. Comm. on Oversight and Accountability*, 118th Cong. (July 19, 2023).

¹⁸ Shapley Interview at 8-9; Ziegler Interview at 11-12.

¹⁹ Shapley Interview at 8-9, 12.

²⁰ Ziegler Interview at 10.

²¹ Shapley Interview at 12.

²² *Id.*

²³ Ziegler Interview at 10.

²⁴ Shapley Interview at 10.

²⁵ *See id.* at 119 ("There were multiple times where Lesley Wolf said that she didn't want to ask questions about dad. And dad was kind of how we referred to him. We referred to Hunter Biden's father, you know, as dad."); Michael Goodwin, *Hunter biz partner confirms email, details Joe Biden's push to make millions from China: Goodwin*, N.Y. POST (Oct. 22, 2020) (quoting Hunter Biden's former business partner Tony Bobulinski as stating, "The reference to 'the Big Guy' in the much publicized May 13, 2017 email is in fact a reference to Joe Biden.").

²⁶ *See generally* Shapley Interview; Ziegler Interview.

²⁷ Shapley Interview at 19; Ziegler Interview at 119.

Integrity Section gave the prosecution team guidance to the contrary.²⁸ These major deviations from departmental process came to a boiling point on October 7, 2022, when Shapley attended a meeting at the Delaware U.S. Attorney’s Office (USAO) during which Weiss stated that he was not the deciding official on whether charges were filed against Hunter Biden.²⁹ Weiss’s confession at that meeting revealed that the Biden Administration was in fact controlling the investigation of the President’s son, despite Attorney General Garland’s sworn congressional testimony to the contrary.³⁰ Shapley described this meeting as a “red-line” for him, testifying that he then expressed several concerns directly to Weiss about how the Hunter Biden investigation had been handled.³¹

Shapley’s and Ziegler’s testimony provided *prima facie* evidence of several serious deficiencies in the Justice Department’s investigation and its commitment to impartial justice, as well as calling into question the truthfulness of statements made to Congress by senior Justice Department officials. Following their testimony, and to inform the Committees’ oversight of the Justice Department, the Committees requested transcribed interviews with eleven Department employees. To date, the Committees have conducted six of the requested interviews. Throughout the process, from unilaterally limiting the scope of interviews to directing two witnesses not to even appear for compelled depositions, the Justice Department has hindered the Committees’ ability to obtain information necessary to fully examine the allegations. Even still, despite these attempts at handicapping the Committees’ investigation, the information uncovered during these transcribed interviews confirms the whistleblowers’ testimony.

President Joe Biden promised to keep politics out of the Department. Just weeks before his inauguration, then-President-elect Biden said, “[i]t’s not my Justice Department. It’s the people’s Justice Department,” and that those leading the Department will have the “independent capacity to decide who gets prosecuted and who doesn’t.”³² Likewise, during Judge Merrick Garland’s confirmation hearing in 2021 to become Attorney General, he vowed not to weaponize the Justice Department to target the Biden Administration’s political opponents. In fact, Attorney General Garland promised, “[t]he Department . . . will be under my protection for the purpose of preventing any kind of partisan or other improper motive in making any kind of investigation or prosecution. That’s my vow. That’s the only reason I’m willing to do this job.”³³ However, as the Committees’ investigative work has uncovered, under the leadership of President Biden and Attorney General Garland, the Justice Department has gone to great lengths to circumvent the justice system for President Biden’s son, Hunter Biden, who allegedly sold access to the highest levels of our nation’s government and avoided paying millions of dollars in taxes.³⁴

²⁸ Shapley Interview at 27.

²⁹ *Id.* at 28.

³⁰ See *Hearing on the Fiscal Year 2023 Justice Department Budget Request, Before the Subcomm. on Com., Just., Sci., & Related Agencies of the S. Comm. on Appropriations*, 117th Cong. (2022) (statement of Merrick Garland, Att’y Gen., U.S. Dep’t of Just.) (“[T]he Hunter Biden investigation . . . is being run by and supervised by the United States Attorney for the District of Delaware. . . . [H]e is in charge of that investigation. There will not be interference of any political or improper kind.”).

³¹ Shapley Interview at 28-29.

³² Morgan Chalfant, *Biden, Harris pledge to keep politics out of DOJ*, THE HILL (Dec. 3, 2020).

³³ Jeremy Herb, *Garland vows at confirmation hearing to keep politics out of DOJ while drawing praise*, CNN (Feb. 22, 2021).

³⁴ Editorial, *Hunter Was Selling the Biden ‘Brand’*, WALL ST. J. (July 31, 2023); Josh Christenson and Steven Nelson, *Hunter Biden ducked \$1.2M tax bill over 2017, 2018: IRS whistleblower*, N.Y. POST (June 28, 2023).

I. TESTIMONY SHOWS THAT THE JUSTICE DEPARTMENT AFFORDED PREFERENTIAL TREATMENT TO PRESIDENT BIDEN’S SON.

The fundamental mission of the Justice Department is to uphold the rule of law.³⁵ To do so, the Department has adopted values of integrity and impartiality, promising all Americans that it will enforce federal law “without prejudice or improper influence.”³⁶ The Department’s mission and its values are reflected in the Justice Manual, described as “a set of rules, regulations, [and] procedures that basically provides guidance to Department of Justice personnel.”³⁷ The Justice Manual includes a section specific to the fair and impartial enforcement of federal laws, explaining that uniform enforcement of criminal tax laws is necessary “[t]o achieve maximum deterrence” of tax crimes.³⁸

However, during their respective transcribed interviews with the Committee on Ways and Means, the IRS whistleblowers described dozens of deviations from standard investigative practice by Department officials that afforded Hunter Biden preferential treatment throughout this investigation. In particular, the whistleblowers described how the Department allowed the statute of limitations to lapse, prohibited line investigators from asking about Joe Biden in witness interviews, and notified defense counsel of pending search warrants.³⁹ The whistleblowers’ account of the preferential treatment provided to Hunter Biden has been corroborated by testimony from additional witnesses and by documents provided to the Committees. These deviations from standard investigative practice unfortunately reinforce the perception that the Biden Justice Department is operating a two-tiered system of justice.⁴⁰

A. Witnesses described how the Department deviated from standard operating procedure to afford Hunter Biden special treatment.

Witnesses and documents confirm that the Biden Justice Department has not handled Hunter Biden’s case like any other case. According to Shapley, the criminal tax investigation of the President’s son “has been handled differently than any investigation [he’s] been a part of” throughout his 14-year career at the IRS.⁴¹ Other witnesses with knowledge of the case have since corroborated Shapley’s testimony that the Justice Department treated Hunter Biden’s case differently than other criminal investigations.

During his transcribed interview, Stuart Goldberg, the Acting Deputy Assistant Attorney General for Criminal Matters within the Department’s Tax Division, confirmed whistleblower

³⁵ *About DOJ*, U.S. DEP’T OF JUST., <https://www.justice.gov/about> (last visited Nov. 26, 2023).

³⁶ *Id.*

³⁷ Transcribed Interview of David Weiss, Special Counsel & U.S. Att’y, Dist. of Del., at 63 (Nov. 7, 2023) [hereinafter Weiss Interview].

³⁸ U.S. Dep’t of Just., Just. Manual § 6-4.010 (2023).

³⁹ See generally Shapley Interview; Ziegler Interview.

⁴⁰ Cf. *Oversight of the Federal Bureau of Investigation: Hearing Before the H. Comm. on the Judiciary*, 118th Cong., at 2-3 (2023) (statement of Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary) (listing additional examples of the “double standard that exists now in our justice system”).

⁴¹ Shapley Interview at 11.

testimony that the Hunter Biden case received special treatment, as it required “closer supervision,” compared to more “run-of-the-mill cases.”⁴² Goldberg testified:

Q. Was the fact that Hunter Biden was involved here, did that require DOJ Tax’s sign-off because it’s a sensitive matter?

A. Well, without getting into the case, again trying to answer a question at a slightly higher level, there are cases that are sensitive, people—some would say sensitive, sometimes say significant cases. And those cases typically have closer supervision than other, more run-of-the-mill cases.

Q. And if there’s a target of an investigation that has some political significance attached to him or her . . . does that trigger any heightened review process within DOJ Tax?

A. So if something can be termed as sensitive pursuant to the case it might be because it’s a public official or it’s a person that has a noteworthy profile or it’s going to generate a lot of media attention, or might be congressional interest. It could be a corporation or an individual. That might mean that the case would come to my level for ultimate sign-off on the case as opposed to be[ing] handled at the chief’s level.

Q. . . . And is it fair to say that the Hunter Biden case fell into that category?

A. Yes.⁴³

In addition, Goldberg recounted an incident in which U.S. Attorney David Weiss summoned him to attend a meeting in Delaware with prosecutors and Hunter Biden’s defense counsel—something that Goldberg said he had never done before with respect to any U.S. Attorney’s Office.⁴⁴ Goldberg testified:

Q. Did you participate in any meetings in person with the Delaware U.S. Attorney’s Office?

A. Yes.

Q. How many?

A. One.

⁴² Transcribed Interview of Stuart Goldberg, Acting Deputy Assistant Att’y Gen. for Crim. Matters, U.S. Dep’t of Just., Tax Div., at 17 (Oct. 25, 2023) [hereinafter Goldberg Interview].

⁴³ *Id.*

⁴⁴ *Id.* at 25-27.

Q. And when was that?

A. January 2023.

Q. And who was in attendance?

A. The U.S. Attorney.

Q. Mr. Weiss?

A. Yes. Several assistants from his office.

Q. Was Lesley Wolf there?

A. Yes. The lawyers from the Tax Division were there.

Q. Mr. Morgan and Mr. Daly?

A. Yes. And defense counsel representing Mr. Biden.

* * *

Q. Okay. And was it customary for you to attend that type of meeting or did you only attend here because of the significance of the target and the investigation?

A. I attended because Mr. Weiss asked me to come up for the meeting.

Q. Okay. How frequently do you travel to U.S. Attorney's Offices for meetings of that sort? Was that unusual for you to—

A. For me to go to a U.S. Attorney's Office on a case?

Q. Yeah.

A. It's not something that I would commonly do.

Q. Okay. How many times have you done it . . . [i]n your current role?

A. I think it's the only time I've done it.⁴⁵

⁴⁵ *Id.*

Ziegler also explained how the Bidens were afforded special treatment due to being a politically powerful family in Delaware. Ziegler recalled one instance early in the investigation that “caused [him] pause and concern.”⁴⁶ In late 2018, Ziegler sent documentation that would refer the case to the Department’s Tax Division for further investigation up to his manager at the time, Supervisory Special Agent Matt Kutz,⁴⁷ for Kutz’s review. Upon reviewing the package of documents, Kutz told Ziegler that “a political family like this, you have to have more than just an allegation and evidence related to that allegation. In order for this case to move forward, you basically have to show a significant amount of evidence and similar wrongdoing that would basically illustrate a prosecution report.”⁴⁸ Ziegler replied that “we have to treat each taxpayer the same, it shouldn’t matter on their name.”⁴⁹ However, Kutz refused to listen to Ziegler’s concerns, causing Ziegler to lament that Kutz “was [his] manager and [he] had to do what [Kutz] said.”⁵⁰ Ultimately, Ziegler had to draft three versions of the referral package before Kutz approved it for review by the Tax Division.⁵¹

Department and IRS officials expressed obvious concerns over investigating a Biden in Delaware, ultimately leading to the Department’s sensitive approach in handling this case. Ziegler described the challenges associated with investigating the Bidens in Delaware, explaining that “Delaware was in the State in which the subject’s father lived, and the family was extremely well-known throughout the State, including . . . [to] the investigators and prosecutors on the team.”⁵² He testified:

- Q. Okay. Just a question about working with the U.S. Attorney’s Office in Delaware. It seems like the elephant in the room is that – correct me if I’m wrong, but – Joe Biden and anyone in the Biden family is royalty in Delaware. Is that not the case?
- A. It was definitely something that was overly apparent in the State, yes.
- Q. So whether the President is a Republican or a Democrat, if you are in the district of Delaware, and you are in the U.S. Attorney’s Office, and you are trying to bring a case against a family member of Joe Biden, that inherently has its challenges, doesn’t it?
- A. Yes. . . . I think he is someone that’s a big deal within that State.

⁴⁶ Ziegler Interview at 18.

⁴⁷ Shapley was assigned as supervisor of the Hunter Biden investigation in January 2020. Shapley Interview at 12.

⁴⁸ Ziegler Interview at 18-19.

⁴⁹ *Id.* at 19.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 20.

Q. Right. And so all the nonpolitically-appointed officials in the office certainly could be affected by the fact that we're dealing with Joe Biden, correct? In that office?

A. I went into it with the belief that I would hope that that wouldn't happen. But it being in the Delaware area, it very well could have happened that way.⁵³

Shapley similarly testified that an unidentified FBI case agent in Wilmington "was concerned about the consequences for him and his family" if he had to investigate the Bidens in Delaware.⁵⁴ However, when he sat for his transcribed interview, Delaware U.S. Attorney Weiss would not acknowledge any fear or worry about investigating the President's son in the Biden family's home state of Delaware. Weiss suggested that although there are only "a certain number of practitioners" in the small Delaware legal community, he was not concerned with bringing a case there against the President's son.⁵⁵ Weiss testified:

Q. Would you characterize the Delaware legal community as a small, tight-knit legal community?

A. I would characterize the Delaware community as a small community, yes, for sure.

Q. And, for the most part, all the key players who litigate in Federal court know one another?

A. I think that's fair that folks get to know one another pretty quickly, yes.

Q. . . . Did you ever have any concerns that you were responsible for bringing a case against the President's son and, yet, you're part of this close-knit community?

A. No, I didn't. No. Yes, I just – I just acknowledge that the Delaware, particularly in Federal court – you know, there is only a certain number of practitioners locally –⁵⁶

Testimony obtained by the Committees shows that Hunter Biden received numerous other special privileges throughout the course of the investigation due to his last name. For example, retired FBI Supervisory Special Agent Joe Gordon of the FBI Wilmington Resident Agency testified that FBI headquarters tipped off then-President-elect Biden's transition team of the IRS and FBI investigators' plan to interview Hunter Biden the following day. He explained:

⁵³ *Id.* at 157-58.

⁵⁴ Shapley Interview at 16.

⁵⁵ Weiss Interview at 143-45.

⁵⁶ *Id.* at 143-44.

- Q. Did you also receive information that the transition team was notified as well?
- A. I don't recall that exactly. . . . I know I was upset when I learned about it.
- Q. Why were you upset?
- A. I felt it was people that did not need to know about our intent. I believe that the Secret Service had to be notified for our safety, for lack of confusion, for deconfliction, which we would do in so many other cases, but I didn't understand why the initial notification.⁵⁷

Gordon provided further details on the irregularity of events that occurred the morning investigators were to interview Hunter Biden. Specifically, Gordon elaborated on how one of his superiors ordered them to stand down and not pursue their planned suspect interview of the President's son.⁵⁸ He stated:

- Q. What happened the next day? Did you learn any information given now that Secret Service headquarters knows? . . .
- A. So, obviously, we were on the West Coast. There were additional interviews across the country, to include the East Coast, which was 3 hours ahead. So we were up early. I was partnered with supervisor number two of the IRS. And as we got together or while we got together on that morning, I was notified by my assistant special agent in charge that we would not even be allowed to approach [Hunter Biden's] house; that the plan, as told to us, was that my information would be given to the Secret Service, to whom I don't know exactly . . . with the notification that we would like to talk to Hunter Biden; and that I was not to go near the house and to stand by.
- Q. In your career of 20 years, have you ever been told . . . that you had to wait outside of a target's home until they contacted you?
- A. Not that I recall. I mean, there have been times where we waited for maybe something else operationally to happen, but, no, not from the point of view of the target, the subject of the investigation.

⁵⁷ Gordon Interview at 33.

⁵⁸ *Id.* at 33-35.

* * *

Q. And were you able to interview Hunter Biden . . . as part of your investigation?

A. I was not.⁵⁹

During his interview, Gordon explained how the treatment of Hunter Biden's interview was vastly different from interviews of other investigative targets. He stated that it is "important" for FBI agents conducting a criminal investigation to be discreet about their intent "to go out and talk with the target of a[n] investigation," to give themselves "the best opportunity to have a conversation with somebody and not have them influenced in some way" and to prevent targets and witnesses from destroying evidence.⁶⁰ Such a common-sense tactic did not occur in Hunter Biden's case because FBI headquarters tipped off the Biden presidential transition team about investigators' plan to interview Hunter Biden.

The whistleblowers also detailed a situation—described by Shapley as "one of the major deviations [from standard operating procedure] in this case"⁶¹—in which one of the prosecutors in Weiss's office, Assistant U.S. Attorney Lesley Wolf,⁶² prohibited line investigators from looking into incriminating messages involving now-President Biden. In July 2017, Hunter Biden was negotiating a business deal with executives from CEFC China Energy, a now-defunct Chinese conglomerate with close ties to the Chinese Communist Party,⁶³ which has had multiple executives imprisoned for corruption.⁶⁴ On July 30, 2017, Hunter Biden invoked his father in a threatening message to CEFC executive Zhao Runlong (a.k.a. Raymond Zhao).⁶⁵ Hunter Biden wrote:

Z[hao]- Please have the [CEFC] director call me- not James [Biden] or Tony [Bobulinski] or Jim [Bulger]- have him call me tonight. **I am sitting here with my father and we would like to understand why the commitment made has not been fulfilled.** I am very concerned that the [CEFC] Chairman has either changed his mind

⁵⁹ *Id.*

⁶⁰ *Id.* at 25.

⁶¹ *Hearing with IRS Whistleblowers About the Biden Criminal Investigation: Before the H. Comm. on Oversight & Accountability*, 118th Cong., at 19 (2023) (statement of Gary Shapley, Supervisory Special Agent, Internal Revenue Serv.).

⁶² *Id.* at 71 (statement of Joseph Ziegler, Special Agent, Internal Revenue Serv.) (identifying Lesley Wolf as the prosecutor who prevented investigators from obtaining the relevant location data).

⁶³ *See* MAJORITY STAFF OF S. COMM. ON FIN. & S. COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFS., 116TH CONG., HUNTER BIDEN, BURISMA, AND CORRUPTION: THE IMPACT ON U.S. GOVERNMENT POLICY AND RELATED CONCERNS, at 71-75 (2020) (detailing CEFC's connections to the Chinese Communist Party).

⁶⁴ *See* Press Release, U.S. Att'y's Off. S. Dist. of N.Y., Patrick Ho, Former Head Of Organization Backed By Chinese Energy Conglomerate, Convicted Of International Bribery, Money Laundering Offenses (Dec. 5, 2018); Shu Zhang & Chen Aizhu, *China's CEFC founder Ye named in corruption case - state media*, REUTERS (Oct. 12, 2018).

⁶⁵ Jerry Dunleavy, *Hunter Biden invoking 'my father' resulted in millions flowing from CCP-linked company*, WASH. EXAM'R (June 28, 2023); Josh Christenson, *Why Hunter Biden angrily threatened his Chinese business associate*, N.Y. POST (June 26, 2023).

and broken our deal without telling me or that he is unaware of the promises and assurances that have been made have not been kept. Tell the director that I would like to resolve this now before it gets out of hand. And now means tonight. And Z[hao] if I get a call or text from anyone involved in this other than you, [CEFC Executive Director] Zhang [Jianjun] or the [CEFC] Chairman **I will make certain that between the man sitting next to me and every person he knows and my ability to forever hold a grudge that you will regret not following my direction.** All too often people mistake kindness for weakness --- and all too often I am standing over top of them saying I warned you. From this moment until whenever he reaches me. It [is] 9:45 AM here and [I] assume 9:45 PM there so his night is running out.⁶⁶

When Zhao responded that he received the message, Hunter Biden reiterated that he was “sitting here waiting for the call with [his] father.”⁶⁷

When IRS investigators discovered Hunter Biden’s message, they asked Wolf if they could obtain location data to determine from where the messages were sent to determine whether Hunter Biden was actually sitting next to his father and establish probable cause for interviewing now-President Biden.⁶⁸ Shapley explained that the message not only constituted evidence of potential tax crimes, but also raised national security and Foreign Agents Registration Act (FARA) concerns as well.⁶⁹ Despite the fact that collecting location data is what investigators “would normally do” in this scenario,⁷⁰ Wolf denied the request.⁷¹ Investigators discovered other incriminating messages Hunter Biden had sent and received,⁷² some of which suggested that now-President Biden was involved in his son’s foreign business ventures.⁷³ According to Shapley, these messages “included material [that investigators] clearly needed to follow up on,” and “made it clear [investigators] needed to search the guest house at the Bidens’ Delaware residence where Hunter Biden stayed for a time.”⁷⁴ However, once again, “prosecutors denied

⁶⁶ Shapley Interview, Ex. 11 (emphasis added).

⁶⁷ *Id.*

⁶⁸ Shapley Interview at 163. *See also Timeline of Hunter Biden Investigation*, EMPOWER OVERSIGHT (last updated Sept. 29, 2023).

⁶⁹ Shapley Interview at 164.

⁷⁰ Ziegler Interview at 105. *See also Hearing with IRS Whistleblowers About the Biden Criminal Investigation: Before the H. Comm. on Oversight & Accountability*, 118th Cong., at 50-51 (2023) (statement of Gary Shapley, Supervisory Special Agent, Internal Revenue Serv.) (“I recall [prosecutors] saying to me that, how do we know that [Joe Biden] is there . . . and then I said well, we would get the location data. So as a part of my normal investigation, that is what I would do.”); *Hearing with IRS Whistleblowers About the Biden Criminal Investigation: Before the H. Comm. on Oversight & Accountability*, 118th Cong., at 65 (2023) (statement of Joseph Ziegler, Special Agent, Internal Revenue Serv.) (“So typically, in that situation, you’d want to get location data, contemporaneous data that would show where that person is at, so that’s what we would typically look to.”).

⁷¹ Shapley Interview at 14, 163, 165; Ziegler Interview at 105-06.

⁷² *See generally* Ziegler Supplemental Production 2, Ex. 300.

⁷³ *E.g.*, Shapley Interview, Ex. 11 (listing a WhatsApp message Hunter Biden sent to another CEFC executive stating, “I can make \$5M in salary at any law firm in America. If you think this is about money it’s not. The Biden’s [sic] are the best I know at doing exactly what the Chairman wants from this partnership[]. Please let’s not quibble over peanuts.”).

⁷⁴ Shapley Interview at 14.

investigators' requests to develop a strategy to look into the messages and denied investigators' suggestion to obtain location information to see where the texts were sent from."⁷⁵

Overall, the testimony from Justice Department, FBI, and IRS officials substantiates the IRS whistleblowers' prior testimony that the Justice Department's "sensitive" treatment of Hunter Biden's case deviated from the normal investigative practices and fell well short of the Department's mission of impartial justice.

B. FBI bureaucrats impeded the investigation into Hunter Biden by slow-walking investigative action and withholding relevant information.

Witness testimony also highlights how officials in the FBI headquarters worked to slow-walk and stall the Justice Department's efforts to review the credibility of information related to Ukraine. In late 2019 or early 2020, the Justice Department set up a system to coordinate multiple Department matters related to Ukraine.⁷⁶ As part of this effort, on January 3, 2020, then-Attorney General Bill Barr and then-Deputy Attorney General Jeffrey Rosen gave then-U.S. Attorney for the Western District of Pennsylvania Scott Brady a limited assignment to vet information related to Ukraine coming into the Justice Department, and then to pass credible information along to U.S. Attorneys' Offices with relevant ongoing grand jury investigations by providing substantive briefings on their findings and recommending next steps.⁷⁷ In his transcribed interview, Brady confirmed to the Committee that "any member of the public" could provide information as part of this intake process, and that his office treated the information the same as all other information provided to the Department.⁷⁸ Brady described his assignment as "an intake and vetting process, kind of akin to a due diligence,"⁷⁹ involving assessing the credibility of information using publicly available resources and pre-existing FBI records.⁸⁰ Brady explained that his office did not have access to grand jury tools such as subpoenaing documents or witnesses.⁸¹

In his transcribed interview, Brady detailed for the Judiciary Committee the "challenging working relationship" he had with the FBI in carrying out his assignment, as well as the FBI's "reluctance . . . to really do any tasking related to [the] assignment from DAG Rosen and looking into allegations of Ukrainian corruption broadly and then specifically anything that intersected with Hunter Biden and his role in Burisma."⁸² In particular, challenges arose from FBI

⁷⁵ *Id.*

⁷⁶ Letter from Stephen E. Boyd, Assistant Att'y Gen., U.S. Dep't of Just., to Rep. Jerrold Nadler, Chairman, H. Comm. on the Judiciary (Feb. 18, 2020).

⁷⁷ Brady Interview at 10-13. *See also* Brady Interview at 35 ("My goal was for us to do our task, our job that we were given by AG Barr, DAG Rosen."); Brady Interview at 43 ("Q. Okay. So the task that you were given came ultimately from Attorney General Barr. Is that right? A. I believe so, yes.").

⁷⁸ Brady Interview at 14, 63. *See also* Letter from Stephen E. Boyd, Assistant Att'y Gen., U.S. Dep't of Just., to Rep. Jerrold Nadler, Chairman, H. Comm. on the Judiciary (Feb. 18, 2020) ("Nor do these procedures grant any individual unique access to the Department. Indeed, any member of the public who has relevant information may contact the Department and make use of its intake process for Ukraine-related matters. . . . All information provided through this process will be treated just like any other information provided to the Department.").

⁷⁹ Brady Interview at 11.

⁸⁰ *Id.* at 11-12.

⁸¹ *Id.* at 12, 15.

⁸² *Id.* at 37.

headquarters slow-walking the vetting process, which the FBI purportedly did due to the “sensitive nature” of the assignment.⁸³ Brady explained that the FBI required Baltimore Field Office special agents to obtain an unnecessary and unprecedented number of approvals from FBI headquarters to take even the most basic investigative actions.⁸⁴ For instance, while FBI agents working on the type of assessment Brady was conducting are typically required to obtain approval every 30 days to continue working on the assessment, such approval is generally given at the Supervisory Special Agent level.⁸⁵ However, in Brady’s case, FBI agents were required to obtain approval from 17 separate officials, most of whom were at FBI headquarters, every 30 days to continue working on the assessment—something Brady had never seen in his career.⁸⁶ He testified:

Q. Did you get a sense of why the FBI was reluctant to take any action? . . .

A. I don’t know why they were reluctant. I know that, because of what they deemed to be the sensitive nature, and this was sensitive, as it related to Mr. [Hunter] Biden, that there were a lot of steps of approval and a lot of eyes that had to look at things and sign off on any action that the special agents that were doing the day-to-day work and interacting with our team would take.

It was my understanding that FBI Headquarters had to sign off on every assignment, no matter how small or routine, before they could take action, which then just lengthened the amount of time . . . between us asking them to do something and them actually performing it.

Q. And, in your dealings with the FBI, was this level of signoff regular, that the special agent would have to get signoff to take any little investigative action?

A. Not in my experience. In my experience, on most investigations, even sensitive investigations, and/or public corruption investigations, it was usually contained within the field office. . . .

Even something as simple as extending the assessment that we talked about, that requires a renewal every 30 days under the FBI [Domestic Investigations and Operations Guide]. Normally that, either opening or renewal, can be . . . at the

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 38. *See generally* FED. BUREAU OF INVESTIGATION, DOMESTIC INVESTIGATIONS AND OPERATIONS GUIDE § 5.6 (2021).

⁸⁶ Brady Interview at 38.

[Supervisory Special Agent] level. In this case, it required 17 different people, including mostly at the headquarters level to sign off on it before the assessment could be extended.

And so, at different times, we were told by the special agents that they had to go pens down sometimes for 2 or 3 weeks at a time before they could re-engage and take additional steps because they were still waiting on, again, someone within the 17 chain signoff to approve.

Q. And had you ever seen a 17-person signoff required by the FBI?

A. Never in my career.⁸⁷

Brady also recounted how officials at FBI headquarters told line agents to withhold information from Brady's office. Brady explained:

Q. Were there any other . . . challenges that you experienced with the FBI?

A. Yes. There was one occasion where we were informed by members of the Pittsburgh FBI team that was conducting this investigation, this vetting process with our U.S. Attorney team in Pittsburgh, that they were told by someone at FBI Headquarters that they were not to affirmatively share information with us but that they were only to share information with us if we asked them a direct question relating to that information, which is not typically how the investigative process goes.

At one point, when we were setting up the entire vetting process, and there was a discussion with the FBI about whether—how, in their administrative process, it should be characterized, and I said: Well let's all sit together around a table and talk this out; could you please share with me your DIOG, which is the FBI's bible for their processes and procedures.

We were told that someone at FBI Headquarters, unknown to me, said: Don't share that with the U.S. Attorney's office, to which I said: I'm a presidentially appointed United States Attorney. We're on the same team, part of the Department of

⁸⁷ *Id.* at 37-38.

Justice. What do you mean you can't share your DIOG with me. They said: That's what we were told, so we can't, sir.⁸⁸

Brady testified that the prohibition on sharing information between FBI Pittsburgh and his office was out of the ordinary and resulted in unnecessary delays in the investigation. He explained:

Q. What was the normal kind of reporting process between your office and FBI Pittsburgh?

A. I mean, on a normal case, it's an iterative process, a collaborative process between agent, investigator, and [Assistant U.S. Attorney] and prosecutor. There's mutuality of information sharing. There's a certain transparency because . . . the goal is to conduct an investigation and make a determination at some point with the agency's recommendation about prosecute, not prosecute. But, even short of that . . . take investigative steps that you discuss and agree on, and you know, to move an investigation forward or to open other avenues, identify potential witnesses, subjects, targets. This was not that dynamic.

Q. And, with the FBI not following the typical investigative process at the direction of FBI headquarters, what did that mean for your assignment in vetting Ukraine-related information?

A. It just meant, as I testified earlier, there were stops and starts. It was sometimes difficult to get full information back from the FBI. Again, as I mentioned, sometimes they had to go pens down while they were awaiting approval from headquarters. There were delays when we were trying to re-interview the [confidential human source] in June of 2020. It was challenging.⁸⁹

This prohibition on information sharing with the U.S. Attorney's Office for the Western District of Pennsylvania had real consequences. Brady informed the Committee that there were "many things" relevant to his investigation that the FBI did not share with his office.⁹⁰ As an example, Brady said that he "was not aware . . . that the FBI was in possession of the Hunter Biden laptop" until it was publicly reported in October 2020.⁹¹ Brady expressed that he was "surprised" to learn this information from a media report because the laptop contained "information relating to Hunter Biden's activities on the board of Burisma in Ukraine, that might have been helpful in our assessment of the information that we were receiving about him" and

⁸⁸ *Id.* at 85.

⁸⁹ *Id.* at 85-86.

⁹⁰ *Id.* at 105.

⁹¹ *Id.*

that Brady “would have expected that be shared” with his office.⁹² Brady also noted that his whole team working on the Ukraine-related information assignment was surprised that the FBI did not inform them of the laptop.⁹³

The FBI also tried to prevent Brady from learning more about allegations that the Biden family had received bribes in connection with then-Vice President Biden’s official actions. Notably, the bribery allegations were not even discovered until Brady’s office located an FBI document memorializing a report from a confidential human source (CHS), known as an FD-1023, referencing Hunter Biden’s lucrative position on Burisma’s board that the FBI “had not . . . looked into or developed any further.”⁹⁴ Former Attorney General Bill Barr stated during a media interview that the information Brady’s office developed “had been overlooked by the FBI.”⁹⁵ Brady attempted to get the FBI to re-interview the CHS who had produced the original report to further develop information relevant to his assignment.⁹⁶ Brady told the Committee that the FBI also initially resisted his efforts to re-interview the CHS after the discovery of the FD-1023, though it eventually relented and allowed the interview to proceed.⁹⁷

The subsequent interview of the CHS—whom the FBI considered “highly credible” and had previously used in multiple investigative matters⁹⁸—resulted in the creation of another FD-1023 on June 30, 2020, this time containing information implicating then-Vice President Biden in a multimillion-dollar bribery scheme. As memorialized in this FD-1023, during a meeting in late 2015 or early 2016, an executive from the Ukrainian natural gas company Burisma told the CHS that Burisma had hired Hunter Biden to “protect us, through his dad, from all kinds of problems.”⁹⁹ In another meeting in 2016, Burisma founder and owner Mykola Zlochevsky, whom State Department officials considered to be a corrupt, “odious oligarch,”¹⁰⁰ told the CHS that “it cost 5 (million) to pay one Biden, and 5 (million) to [pay] another Biden.”¹⁰¹ The CHS said it was unclear whether Zlochevsky had already made these payments to the Bidens.¹⁰² When the CHS recommended firing Hunter Biden, Zlochevsky mentioned that he needed to keep Hunter Biden on the board of directors “so everything will be okay.”¹⁰³ The CHS then asked Zlochevsky whether Hunter Biden or Joe Biden told him he should retain Hunter Biden, to which

⁹² *Id.* See also *id.* at 157 (“Q. . . . Were you surprised that you didn't know about the existence of this laptop? A. Yes.”).

⁹³ *Id.* at 159.

⁹⁴ *Id.* at 90.

⁹⁵ *Fox News Sunday* (Fox News television broadcast June 11, 2023).

⁹⁶ Brady Interview at 91.

⁹⁷ See *id.* (describing the FBI’s “reluctance” and “resistance” to re-interviewing the CHS).

⁹⁸ *Id.* at 19-20. Brady further confirmed that the information contained the 1023 at issue did not come from Rudy Giuliani or any known sources of Russian disinformation. See *id.* at 96 (“[T]hat was already communicated to [Weiss’s] office, that the 1023 was from a credible CHS that had a history with the FBI, and that it was not derived from any of the information from Mr. Giuliani.”); *id.* at 103 (“[Attorney] General Barr’s statements are all accurate, including his statement that the information contained in the 1023 was not derived from any Giuliani-related information and are not from . . . known sources of Russian disinformation.”).

⁹⁹ FBI Form FD-1023 re Confidential Human Source’s Meetings with Burisma Executives, at 1 (June 30, 2020).

¹⁰⁰ MAJORITY STAFF OF S. COMM. ON FIN. & S. COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFS., 116TH CONG., HUNTER BIDEN, BURISMA, AND CORRUPTION: THE IMPACT ON U.S. GOVERNMENT POLICY AND RELATED CONCERNS, at 23-25 (2020).

¹⁰¹ FBI Form FD-1023 re Confidential Human Source’s Meetings with Burisma Executives, at 2 (June 30, 2020).

¹⁰² *Id.*

¹⁰³ *Id.*

Zlochevsky replied that “[t]hey both did.”¹⁰⁴ When the CHS brought up the issue of the Ukrainian Prosecutor General’s investigation of Burisma, Zlochevsky said that the investigation “will go away anyway,” and that it was “too late to change his decision” regarding how to deal with the investigation, which the CHS understood “to mean that Zlochevsky had already . . . paid the Bidens, presumably to deal with [the Prosecutor General].”¹⁰⁵ Zlochevsky later informed the CHS that “he didn’t want to pay the Bidens and he was pushed to pay them.”¹⁰⁶ During a subsequent phone call in 2019, Zlochevsky told the CHS that he did not send any funds directly to the “Big Guy”—“which CHS understood was a reference to Joe Biden”—and that it would take investigators ten years to find the records of illicit payments to now-President Biden due to the vast number of companies and bank accounts Zlochevsky controls.¹⁰⁷

The FBI’s reluctance to cooperate with Brady’s assignment added further delays to the process of vetting Ukraine-related information coming into the Justice Department.¹⁰⁸ Ultimately, Brady had no choice but to seek help from the Deputy Attorney General’s office “at least five or six times on a myriad of different issues” to get the FBI to follow the typical investigative process and stop hindering the assignment.¹⁰⁹ According to Brady, FBI orders related to “information sharing, not sharing, approvals, [and] delays” were issued from “somewhere in FBI Headquarters below the Deputy Director.”¹¹⁰ Brady explained that while the “choke point” in the information sharing was somewhere within FBI headquarters, he had no visibility into where exactly it originated.¹¹¹

Simply put, the FBI and officials in headquarters slow-walked taking necessary investigative actions and sharing relevant information that could have helped prosecutors gather evidence in the case against Hunter Biden. This lack of transparency and reluctance to take action due to sensitivities around the case ultimately benefited Hunter Biden.

C. Senior officials in the Delaware U.S. Attorney’s Office attempted to avoid learning information that could implicate President Biden in criminal activity.

The Committees have obtained information showing that the U.S. Attorney’s Office for the District of Delaware under the leadership of David Weiss also deviated from standard operating procedure to the benefit of Hunter Biden. Although Weiss was initially appointed by President Trump, he was recommended for the position by Delaware’s two Democratic senators, Tom Carper and Chris Coons.¹¹² In 2021, the Biden Administration asked Weiss to stay on as

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* (internal quotation marks omitted).

¹⁰⁶ *Id.* (internal quotation marks omitted).

¹⁰⁷ *Id.* at 3.

¹⁰⁸ Brady Interview at 38, 41, 86, 187.

¹⁰⁹ *Id.* at 39.

¹¹⁰ *Id.* at 87.

¹¹¹ *Id.* at 40.

¹¹² Josephine Peterson, *David Weiss sworn in as Delaware U.S. Attorney*, NEWS J. (Feb. 23, 2018). President Trump also appointed Judge Maryellen Noreika, who would later oversee the hearing on the sweetheart plea deal Weiss offered to Hunter Biden, despite the fact that she was a registered Democrat, because she had been recommended by Senators Carper and Coons. *See Maryellen Noreika – Nominee for the U.S. District Court for the District of Delaware*, VETTING ROOM (Feb. 5, 2018); Press Release, Sen. Chris Coons, Carper, Coons’ Judicial Candidates

U.S. Attorney.¹¹³ Weiss had previously been appointed as interim U.S. Attorney in Delaware during the Obama Administration,¹¹⁴ and had “often” worked with Hunter Biden’s brother, Beau Biden, during Beau Biden’s tenure as Attorney General of Delaware.¹¹⁵ While Weiss was registered as a Republican, Assistant U.S. Attorney Lesley Wolf, who played a central role in the Hunter Biden investigation, had donated to Democrat campaigns.¹¹⁶ In a state dominated politically by the Biden family, these facts are not insignificant.

According to former U.S. Attorney Scott Brady, it was “regularly a challenge to interact with” the U.S. Attorney’s Office for the District of Delaware.¹¹⁷ Brady testified that communication “became problematic at different points” between his office and Weiss’s office.¹¹⁸ There were times when Brady and Weiss would have to get involved directly to attempt to resolve communication issues between their offices.¹¹⁹ Brady testified:

Q. Did you have any issues developing a channel of communication initially with the Delaware U.S. Attorney’s Office?

A. Yes.

Q. And could you talk to us about that?

A. Speaking generally, from a process perspective, I think there was both a skepticism of the information that we were developing, that we had received, and skepticism and then weariness of that information. I think they were very concerned about any information sharing with our office.

It became problematic at different points, which required Mr. Weiss and me to get involved and level set, as it were, but it was regularly a challenge to interact with the investigative team from Delaware.¹²⁰

Nominated for U.S. District Court Bench: White House nominates Maryellen Noreika and Colm Connolly for bench positions (Dec. 21, 2017).

¹¹³ See Weiss Interview at 11.

¹¹⁴ *Meet the U.S. Attorney: David C. Weiss*, U.S. DEP’T OF JUST. (Feb. 5, 2020); Andrew C. McCarthy, Opinion, *Garland does the Bidens no favor by dodging a special counsel appointment*, THE HILL (Apr. 28, 2022).

¹¹⁵ Michael Kranish, *Before investigating Hunter Biden, prosecutor worked with brother Beau*, WASH. POST (Aug. 20, 2023).

¹¹⁶ Michael Ginsberg, *Meet The US Attorney Who Allegedly Covered For Hunter Biden*, DAILY CALLER (June 28, 2023).

¹¹⁷ Brady Interview at 29.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 29-30.

Brady testified that in his experience, U.S. Attorney's Offices are generally "fairly clear and transparent" with each other, "even on sensitive matters."¹²¹ He called the communication issues with Weiss's office "unusual."¹²²

Brady explained that his team merely wanted "to understand what [Weiss's team] had looked at, what they had not looked at to make sure we weren't . . . duplicating efforts, stepping on toes, doing anything that would in any way complicate their lives and their investigation."¹²³ Despite their best efforts to communicate with Weiss's team, Brady stated that the relationship between their offices became "problematic."¹²⁴ When asked why he thought the relationship deteriorated, Brady explained:

I don't want to speculate as to why, but I know that there was no information sharing back to us And, at one point, the communication between our offices was so constricted that we had to provide written questions to the investigative team in Delaware, almost in the form of interrogatories, and receive written answers back.¹²⁵

Brady further elaborated on the stilted relationship between the two offices, stating:

Q. Now, also, based on what you said, throughout the process, you said that the Delaware U.S. Attorney's Office wasn't willing to cooperate, so much so that you had to send interrogatories?

A. Yes, we had conversations, asked for communication and a flow of information, mostly one way from us to them, but also, as I testified, we wanted to make sure we weren't duplicating what they were doing. They would not engage. And so finally, after me calling Mr. Weiss and saying can you please talk to your team, this is important, this is why we want to interact with them, the response that we got back is you can submit your questions to our team in written form, which we did.

Q. And that was unusual?

A. I had never seen it before.¹²⁶

¹²¹ *Id.* at 31.

¹²² *Id.*

¹²³ *Id.* at 37.

¹²⁴ *Id.* at 29.

¹²⁵ *Id.* at 30.

¹²⁶ *Id.* at 156-57.

The “unusual” communication issues that Brady had with Weiss’s office were only magnified when Brady’s team sought to pass the information from the June 30, 2020 FD-1023, containing allegations that then-Vice President Joe Biden and Hunter Biden each received a \$5 million bribe from a Ukrainian oligarch, off to Weiss’s team—who had an existing grand jury investigation into Hunter Biden.¹²⁷ Brady recalled that he asked multiple times to brief the Delaware U.S. Attorney’s Office on details of the FD-1023.¹²⁸ Brady testified that he ultimately had to seek assistance from the Deputy Attorney General’s office to resolve the reluctance from Weiss’s office to take the briefing.¹²⁹ The intervention from the Deputy Attorney General’s office resulted in Main Justice ordering Weiss’s office to cooperate with Brady’s office and receive the briefing.¹³⁰

During his interview with the Judiciary Committee, Brady walked through paragraphs of Shapley’s supplemental disclosure statement that detailed what occurred behind the scenes prior to the briefing that Brady’s team provided to Weiss’s team about the FD-1023. Brady testified:

Q. So, looking at paragraph four on page 2 [of Shapley’s September 20, 2023 statement] as it continues onto page 2, the second full sentence, it says: The prosecution team discussed the Hunter Biden related work of the Pittsburgh USAO on several occasions, as it was a line item on the recurring prosecution team’s call agenda for a long period of time. Assistant U.S. Attorney Lesley Wolf told us the Pittsburgh USAO and U.S. Attorney Scott Brady requested to brief the Delaware USAO’s Hunter Biden’s investigative team on multiple occasions, but they were turned down by AUSA Wolf and the Delaware USAO. Is it accurate that you had requested multiple times, you or your office, to brief the Delaware U.S. Attorney’s Office?

A. Yes.

* * *

Q. And were you ever told that the Delaware U.S. Attorney’s Office did not want a briefing from your office?

A. I believe I was. I don’t remember. But I know that we had trouble scheduling it.

Q. Okay. And then, further down, it states AUSA Wolf’s comments made clear she did not want to cooperate with the

¹²⁷ *Id.* at 20-21, 95-97.

¹²⁸ *Id.* at 95.

¹²⁹ *Id.* at 97.

¹³⁰ Shapley Supplemental Production 3, Attachment 6 (“Pittsburgh read out on their investigation was ordered to be received by this prosecution team by the P[A]DAG.”).

Pittsburgh USAO, and that she had already concluded no information from that office could be credible stating her belief that it all came from Rudy Giuliani.

Were you ever made aware of Ms. Wolf's processing and decisions regarding this briefing, and why she didn't want the briefing?

- A. I was not. We did, however, make it clear that some of the information including this 1023 did not come from Mr. Giuliani.¹³¹

* * *

- Q. [Shapley's statement] states, on the October 22, 2020, prosecution team call, AUSA Wolf informed us that because the Delaware U.S. Attorney's Office had been ordered by the principal deputy attorney general at Justice Department headquarters to receive the briefing from the Pittsburgh USAO, it would be happening the next day, October 23, 2020.

Does that match your recollection of how things went down, the PADAG communication?

- A. I didn't have specific knowledge that that was what happened between the PADAG and the Delaware U.S. Attorney's Office until I saw Mr. Shapley's testimony.

- Q. Did you bring this concern that the USAO in Delaware was not wanting a briefing from you? Did you bring that concern to the PADAG?

- A. I'm sure I did.¹³²

Brady testified that ultimately his office passed the FD-1023 along to Weiss's office for "further analysis or investigation" and "made specific[] recommendations."¹³³ But, as he stated, "that was the end of our tasking."¹³⁴

The opposition expressed by the Delaware USAO to receiving credible information from Brady's office was just the starting point of their reluctance to engage on matters involving Hunter Biden. As their work continued on the investigation, Weiss's team would further deviate

¹³¹ Brady Interview at 94-96.

¹³² *Id.* at 97.

¹³³ *Id.* at 99.

¹³⁴ *Id.*

from standard investigative practices to shield Hunter Biden and the Biden family from close scrutiny.

D. The Delaware U.S. Attorney’s Office continually sought to keep the Biden name out of the investigation.

Throughout the investigation, Weiss’s team in the Delaware USAO hindered and handicapped the criminal investigation into Hunter Biden. One of the ways that Weiss’s team did this was by keeping the Biden name out of the investigation. Shapley testified that prosecutors wanted to go as far as removing Hunter Biden’s name from “electronic search warrants, 2703(d) orders, and document requests” based on what they thought would get approved.¹³⁵ Ziegler corroborated this statement, recalling an instance in which he told prosecutors on a team call that he was uncomfortable removing Hunter Biden’s name from any documents “just based on what might or might not get approved,” and that he thought doing so was “unethical.”¹³⁶

Documents produced to the Ways and Means Committee further evidence the desire of Weiss’s team to shield the Bidens from scrutiny. On August 7, 2020, Lesley Wolf, Weiss’s top prosecutor on the case, told the investigative team, “As a priority, someone needs to redraft attachment B There should be nothing about Political Figure 1 in here.”¹³⁷

EXHIBIT 202

From: Wolf, Lesley (USADE) [REDACTED]

Sent: Friday, August 07, 2020 7:41 PM

To: Wilson, Joshua J. (BA) (FBI); Hudson, Carly (USADE)

Cc: Roepcke, Susan C. (BA) (FBI); Hoffman, Michelle A. (BA) (FBI); Ziegler Joseph A; Gordon, Joseph P. (BA) (FBI)

Subject: RE: BS SW Draft

As a priority, someone needs to redraft attachment B. I am not sure what this is cut and pasted from but other than the attribution, location and identity stuff at the end, none if it is appropriate and within the scope of this warrant. Please focus on FARA evidence only. There should be nothing about Political Figure 1 in here.

Thanks.

The attachment referenced by Wolf included terms for a search warrant for records related to Hunter Biden. The warrant defined “POLITICAL FIGURE 1” as “FORMER VICE PRESIDENT JOSEPH ROBINETTE BIDEN JR.”¹³⁸

¹³⁵ Shapley Interview at 15.

¹³⁶ Ziegler Interview at 25-26.

¹³⁷ Ziegler Supplemental Production 2, Ex. 202.

¹³⁸ Ziegler Supplemental Production 2, Ex. 203.

18. POLITICAL FIGURE 1 - FORMER VICE PRESIDENT JOSEPH

ROBINETTE BIDEN JR. - VP BIDEN is currently the Democratic Party Presidential candidate for the United States and served as the 47th officeholder for the position of the Office of the Vice President of the United States (VPOTUS) in the Barack Obama Administration from January 20, 2009 to January 20, 2017. He is the father of SUBJECT 1.

Other information suggests that Justice Department prosecutors prevented investigators from taking ordinary investigative steps. During a prosecution team call on September 3, 2020, Wolf stated that there was “no way” the team could get the approval to obtain a search warrant for the Delaware guest house of then-presidential candidate Joe Biden, where Hunter Biden frequently stayed, despite acknowledging that “there was more than enough probable cause for the physical search warrant there” and “a lot of evidence in [the] investigation would be found” there.¹³⁹ Shapley understood Wolf’s claim that the search request would not be approved to be an “excuse” Wolf “hid[] behind” to not even attempt to get it approved.¹⁴⁰ Wolf continued that the question of whether to search then-candidate Joe Biden’s guest house “was whether the juice was worth the squeeze” and that “optics were a driving factor in the decision on whether to execute a search warrant.”¹⁴¹ On October 22, 2020, Wolf informed the prosecution team that U.S. Attorney Weiss agreed that there was probable cause to search the residence, but that they would not be pursuing a search warrant nonetheless.¹⁴² Shapley and Ziegler both testified that they have never heard a prosecutor say that optics were a driving factor in deciding whether to execute a search warrant.¹⁴³

In December 2020, Wolf even went so far as to alert Hunter Biden’s defense attorneys about an impending search warrant for a storage unit owned by Hunter Biden.¹⁴⁴ On December

¹³⁹ Shapley Interview at 14-15.

¹⁴⁰ *Id.* at 114.

¹⁴¹ *Id.* at 14-15.

¹⁴² Shapley Supplemental Production 3, Attachment 6.

¹⁴³ *Hearing with IRS Whistleblowers About the Biden Criminal Investigation: Before the H. Comm. on Oversight and Accountability*, 118th Cong. (July 19, 2023) (statements of Gary Shapley and Joseph Ziegler).

¹⁴⁴ Shapley Interview at 21, 114-15; Ziegler Interview at 26-27, 120.

8, 2020, Ziegler drafted an affidavit in support of the search warrant for the storage unit.¹⁴⁵ Three days later, on December 11, Ziegler and Wolf had a phone call during which they disagreed about the plan to search the storage unit, with Wolf claiming that “she was worried about what this [search] might do to the relationship with the opposing counsel moving forward,” and that she would prefer to use a different method¹⁴⁶ to obtain the documents in the storage unit.¹⁴⁷ Ziegler pointed out that Wolf’s suggestion “affords [Hunter Biden] the opportunity to ‘decide’ what to turn[]over,” and that “in any other case, this wouldn’t be the normal course of action that they might take and that [prosecutors] are deviating now.”¹⁴⁸ Shortly thereafter, Wolf decided not to pursue the search warrant for the storage unit.¹⁴⁹ On December 14, Shapley and IRS Special Agent in Charge Kelly Jackson called Weiss to discuss searching the storage unit and Weiss agreed that they could proceed with obtaining a search warrant if no one accessed the unit for 30 days.¹⁵⁰ Within an hour of the call with Weiss, however, Shapley learned that Wolf and Tax Division Senior Litigation Counsel Mark Daly had informed Hunter Biden’s defense counsel about investigators’ plan to search the storage unit, thereby “ruining [investigators’] chance to get to evidence before being destroyed, manipulated, or concealed.”¹⁵¹ Investigators were ultimately unable to search the storage unit.¹⁵²

Ziegler described Wolf’s actions in obstructing the search of the storage unit as “a defining moment for [him] in the investigation” where he realized that “the Delaware U.S. Attorney’s Office was providing preferential treatment to [Hunter Biden] and his counsel,” and was “not following the normal investigative process.”¹⁵³ Shapley similarly noted that Wolf’s actions deviated from the norm, testifying that “there’s no prosecutor [he’s] ever worked with that wouldn’t say, go get those documents.”¹⁵⁴ Shapley and Ziegler were not the only ones upset with these actions, as IRS Special Agent in Charge Kelly Jackson also expressed “frustration” with the Delaware USAO for “not allowing [the IRS] to go forth with the [search warrant].”¹⁵⁵

Other information available to the Committees shows that Justice Department prosecutors prohibited the investigative team from asking about or referencing President Biden during witness interviews,¹⁵⁶ even though President Biden was often mentioned in Hunter Biden’s communications about his business ventures.¹⁵⁷ In addition, prosecutors also delayed

¹⁴⁵ Ziegler Interview at 26.

¹⁴⁶ Ziegler redacted the method Wolf suggested for obtaining the documents in the storage unit.

¹⁴⁷ Ziegler Supplemental Production 2, Ex. 205.

¹⁴⁸ *Id.*

¹⁴⁹ Ziegler Interview at 27.

¹⁵⁰ Shapley Interview at 21.

¹⁵¹ *Id.*

¹⁵² Ziegler Supplemental Affidavit 2, at 2.

¹⁵³ *Id.*

¹⁵⁴ Shapley Interview at 115.

¹⁵⁵ Shapley Supplemental Production 3, Attachment 11.

¹⁵⁶ Shapley Interview at 18. *See also id.* at 119 (“There were multiple times where Lesley Wolf said that she didn’t want to ask questions about dad. And dad was kind of how we referred to him. We referred to Hunter Biden’s father, you know, as dad.”).

¹⁵⁷ *See, e.g.,* Michael Goodwin, *Hunter biz partner confirms email, details Joe Biden’s push to make millions from China: Goodwin*, N.Y. POST (Oct. 22, 2020) (quoting Hunter Biden’s former business partner Tony Bobulinski as stating, “The reference to ‘the Big Guy’ in the much publicized May 13, 2017 email is in fact a reference to Joe Biden. . . . Hunter Biden called his dad ‘the Big Guy’ or ‘my Chairman,’ and frequently referenced asking him for his sign-off or advice on various potential deals that we were discussing.”).

investigators from conducting planned witness interviews. In an email sent on September 9, 2021, Wolf wrote to Ziegler, “I do not think that you are going to be able to do these interviews [with alleged escorts] as planned.”¹⁵⁸ Ziegler explained that he “didn’t understand why DOJ-Tax management was needing to approve this,” and that it “was not normal process and [he] ha[s] never had a case where DOJ-Tax management weighed in on low level, general interviews and records requests.”¹⁵⁹ Ziegler’s frustrations with the Department’s constant roadblocks led him to lament that he was “sick of fighting to do what’s right.”¹⁶⁰

The next month, in October 2021, Wolf went further and prohibited investigators from interviewing Hunter Biden’s adult children.¹⁶¹ After investigators determined that Hunter Biden deducted from his taxes nondeductible payments he made to his children for personal expenses,¹⁶² Wolf told investigators they would be in “hot water” if they interviewed “the President’s grandchildren.”¹⁶³ Ziegler described Wolf’s response as “completely abnormal,” explaining that it is “a completely reasonable step” and “part of [the] normal process” for investigators to interview “people who are receiving money or receiving payments related to a case like this.”¹⁶⁴ Wolf similarly prevented investigators from interviewing other members of the Biden family who received payments from Hunter Biden that he had deducted from his taxes.¹⁶⁵

Not only were Justice Department prosecutors quick to limit or outright prohibit the use of the Biden name, they also impeded investigations into all of Hunter Biden’s alleged criminal conduct. According to testimony from Shapley, and further corroborated by documents produced to the Ways and Means Committee, Wolf stated on a May 2021 prosecution team conference call that she did not want any of the agents to look into potential campaign finance violations.¹⁶⁶ Instead, Wolf tried to explain away the need to look into the violations, citing “a need to focus on the 2014 tax year, that we cannot yet prove an allegation beyond a reasonable doubt and that she does not want to include [DOJ’s] Public Integrity unit because they would take authority away from her.”¹⁶⁷

¹⁵⁸ Ziegler Supplemental Production 2, Ex. 208. *See also* Ziegler Supplemental Affidavit 2, at 3.

¹⁵⁹ Ziegler Supplemental Affidavit 2, at 3.

¹⁶⁰ Ziegler Supplemental Production 2, Ex. 209. *See also* Ziegler Supplemental Affidavit 2, at 3.

¹⁶¹ Shapley Interview at 22; Ziegler Interview at 32, 129.

¹⁶² Ziegler Interview at 32. Shapley added that “[p]art of what [investigators] examined were charges made with Hunter Biden’s card that might conceivably have been done by his children.” Shapley Interview at 22.

¹⁶³ Shapley Interview at 22; Ziegler Interview at 32, 52.

¹⁶⁴ Ziegler Interview at 32, 130. *See also* *Hearing with IRS Whistleblowers About the Biden Criminal Investigation: Before the H. Comm. on Oversight and Accountability*, 118th Cong. (July 19, 2023) (written testimony of Joseph Ziegler, Special Agent, Internal Revenue Serv.) (stating that Wolf’s response “was abnormal and a deviation from normal procedure”).

¹⁶⁵ Ziegler Interview at 53.

¹⁶⁶ Shapley Supplemental Production 3, Attachment 14.

¹⁶⁷ Shapley Interview at 22.

Results & Challenges: *(empirical results - for example, SCIs initiated, indictments, seizures, and significant challenges/obstacles)*

At this point in time, evidence obtained to date supports a prosecution recommendation for DOE that he willfully evaded the assessment and payment of Federal income taxes due and owing. This investigation has been hampered and slowed by claims of potential election meddling. Even after the election, the day of action was delayed more than two weeks. The FBI is a participating agency and they have provided conflicting opinions on investigative decisions. FBI is actively investigating potential [REDACTED] violations. Through interviews and review of evidence obtained via [REDACTED] and search warrant, it appears there may be campaign finance criminal violations. AUSA Wolf stated on the last prosecution team meeting that she did not want any of the agents to look into the allegation. She cited a need to focus on the 2014 tax year, that we cannot yet prove the allegation beyond a reasonable doubt and that she does not want to include their Public Integrity unit because they would take authority away from her. We do not agree with her obstruction on this matter. The assigned AUSA does not like dissenting opinions. The USAO and FBI received congressional inquiries concerning this investigation and it's believed they have ignored their requests. We continue to offer resources to complete outstanding investigative tasks but the AUSA prefers to continue to delay tasks to a later date.

However, as Shapley told Congress, the line investigators “d[id] not agree with [Wolf’s] obstruction on this matter.”¹⁶⁸ IRS Director of Field Operations Michael Batdorf corroborated Shapley’s testimony, noting that his investigators expressed concerns about Wolf stonewalling their efforts to interview witnesses, which required approval from Weiss’s team.¹⁶⁹

Testimony from FBI officials further underscored the allegation that prosecutors on Weiss’s team were stonewalling the investigation and “slow-walking” the case.¹⁷⁰ Sobocinski described his frustration with the pace of the investigation multiple times, testifying that his goal was to get the case to a “resolution.”¹⁷¹ He also stated he “would have liked [the investigation] to move faster.”¹⁷² Holley likewise expressed “overall frustration” about the slow pace of the investigative process.¹⁷³ Additionally, Gordon noted that prior to their attempt to interview Hunter Biden, investigators were told they “would not even be allowed to approach [Hunter Biden’s] house” and that instead, Gordon’s name and contact information would be given to the Secret Service along with a note that investigators would like to interview Hunter Biden.¹⁷⁴ Gordon averred that this was the first time in his twenty-year career at the FBI that he had been told to wait outside a target’s home until the target contacts him.¹⁷⁵

Documents and testimony obtained by the Committees to date corroborate the whistleblowers’ account of the constant roadblocks they encountered to properly investigate the case on Hunter Biden. Overall, the evidence indicates that Weiss’s prosecutors at the Delaware

¹⁶⁸ Shapley Supplemental Production 3, Attachment 14.

¹⁶⁹ Transcribed Interview of Michael Batdorf, Dir. of Field Ops., Internal Revenue Serv., at 60-61 (Sept. 12, 2023) [hereinafter Batdorf Interview].

¹⁷⁰ See Shapley Interview at 13 (“It was apparent that DOJ was purposely slow-walking investigative actions in this matter.”); Ziegler Interview at 92 (“As far as my leadership goes, we’re trying to point out that the slow-walking and the approvals for everything, a lot of that happened at the U.S. Attorney’s Office in Delaware and DOJ Tax level.”).

¹⁷¹ E.g., Transcribed Interview of Thomas Sobocinski, Special Agent in Charge, Balt. Field Off., Fed. Bureau of Investigation, at 34 (Sept. 7, 2023) [hereinafter Sobocinski Interview].

¹⁷² *Id.* at 99.

¹⁷³ Transcribed Interview of Ryeshia Holley, Assistant Special Agent in Charge, Balt. Field Off., Fed. Bureau of Investigation, at 104 (Sept. 11, 2023) [hereinafter Holley Interview].

¹⁷⁴ Gordon Interview at 34.

¹⁷⁵ *Id.* at 34.

U.S. Attorney's Office provided special treatment to the Biden family that it would not have provided any other American in any other investigation.

E. Prosecutors in Weiss's office allowed the statute of limitations for some of Hunter Biden's most serious crimes to lapse.

As Shapley and Ziegler described in their testimony to Congress, the possible felony charges against Hunter Biden for the 2014 and 2015 tax years involved "the most substantive criminal conduct."¹⁷⁶ Those tax years involved income from Hunter Biden's position on the board of directors of Burisma Holdings, and most importantly, connected Joe Biden's actions as Vice President to his son's alleged criminal conduct.

Hunter Biden served on the board of directors of Burisma from April 2014 until April 2019.¹⁷⁷ During Hunter Biden's tenure, Burisma paid him up to \$1 million annually, though it cut his salary two months after his father left office.¹⁷⁸ While Hunter Biden served on the board, Burisma and its founder and owner, Mykola Zlochevsky, were under investigation by the Ukrainian government.¹⁷⁹ According to one Burisma executive, Burisma hired Hunter Biden specifically to "protect us, through his dad, from all kinds of problems."¹⁸⁰ Burisma executives explicitly asked Hunter Biden to help alleviate the "government pressure from Ukrainian Government investigations into Mykola, et cetera."¹⁸¹ In response, Hunter Biden "called D.C."¹⁸² The Ukrainian government soon fired the investigating Prosecutor General, Viktor Shokin, "after then-Vice President Joe Biden threatened to pull \$1 billion in U.S. aid" earmarked for Ukraine if Shokin remained in office.¹⁸³ Notably, then-Vice President Biden unilaterally decided to change U.S. policy regarding the loan during a plane ride to Ukraine.¹⁸⁴

According to evidence discovered by IRS investigators, one way in which Hunter Biden evaded paying taxes on his income from Burisma was by having it sent to the bank account of a company he co-owned with his business partner and then distributing the money to himself while falsely telling the IRS that the distribution was a nontaxable loan.¹⁸⁵ Shapley explained that this was a "textbook" affirmative scheme by Hunter Biden to avoid paying taxes.¹⁸⁶ In basic terms, as Ziegler put it, "you can't loan yourself your own money. It just doesn't make any sense."¹⁸⁷

¹⁷⁶ Shapley Interview at 25.

¹⁷⁷ Kenneth P. Vogel & Iuliia Mendel, *Biden faces conflict of interest questions that are being promoted by Trump and Allies*, N.Y. TIMES (May 1, 2019).

¹⁷⁸ Miranda Devine, *Hunter Biden's Ukraine salary was cut two months after Joe Biden left office*, N.Y. POST (May 26, 2021).

¹⁷⁹ STAFF REPORT, S. COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFS. & S. COMM. ON FIN., HUNTER BIDEN, BURISMA, AND CORRUPTION: THE IMPACT ON U.S. GOVERNMENT POLICY AND RELATED CONCERNS, at 8 (2020).

¹⁸⁰ FBI Form FD-1023 re Confidential Human Source's Meetings with Burisma Executives, at 1 (June 30, 2020).

¹⁸¹ Transcribed Interview of Devon Archer, at 34 (July 31, 2023).

¹⁸² *Id.* at 36.

¹⁸³ Steven Nelson, *Ukrainian prosecutor whose ouster Biden pushed was 'threatened,' says Devon Archer*, N.Y. POST (Aug. 4, 2023).

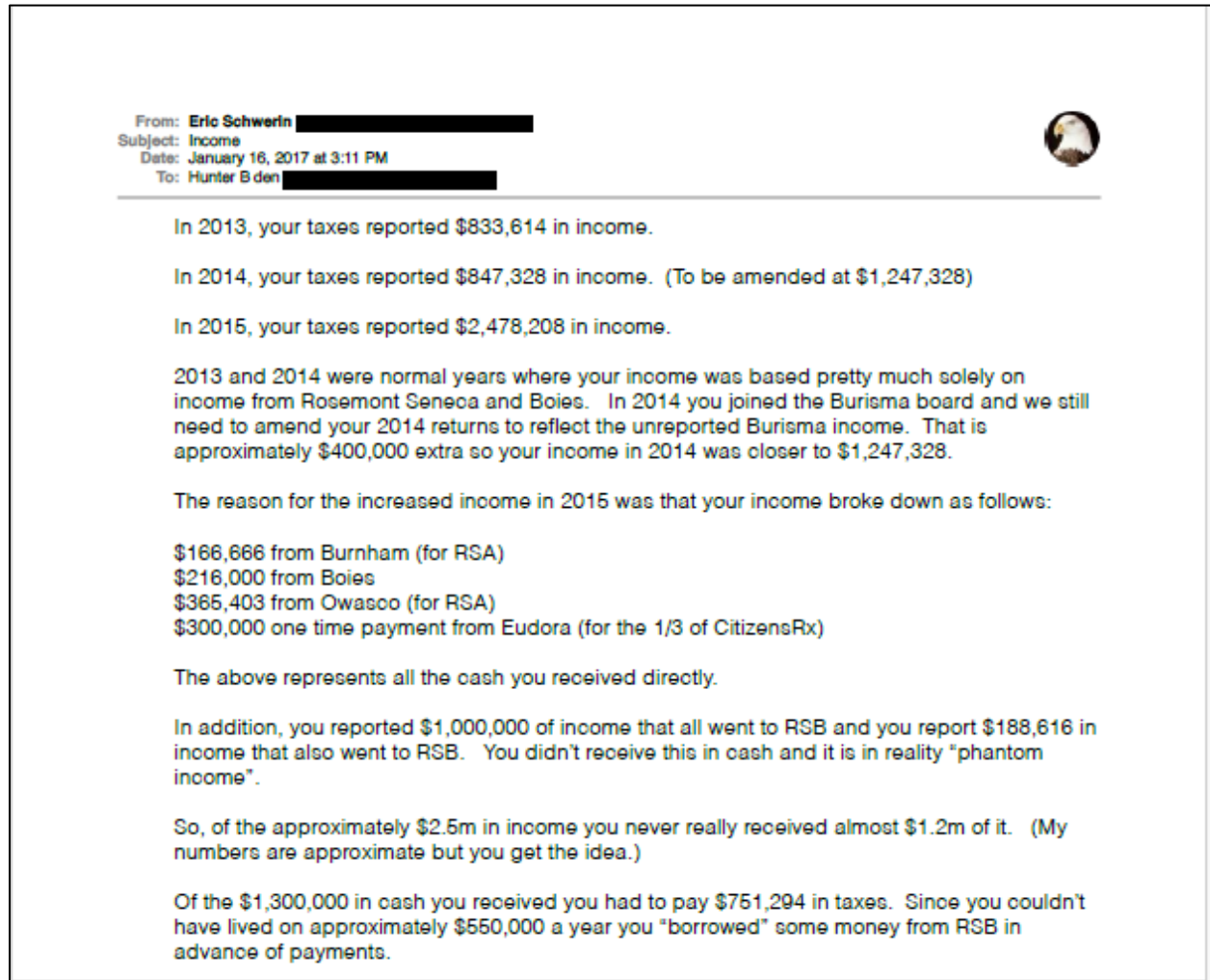
¹⁸⁴ Glenn Kessler, *Inside VP Biden's linking of a loan to a Ukraine prosecutor's ouster*, WASH. POST (Sept. 15, 2023).

¹⁸⁵ Shapley Interview at 57-59; Ziegler Interview at 64-66

¹⁸⁶ Shapley Interview at 58-59.

¹⁸⁷ Ziegler Interview at 66-67.

Notably, with respect to this particular scheme, IRS investigators could find no evidence typically needed to verify that a given payment is, in fact, a loan.¹⁸⁸ However, when Shapley informed Tax Division trial attorney Jack Morgan that there was no such evidence, Morgan replied that “this is not a typical case” due to the fact that it involved President Biden’s son.¹⁸⁹ Email correspondence between Hunter Biden and his business associate Eric Schwerin sheds additional light on this scheme.¹⁹⁰



In late 2021, Special Agent Ziegler compiled a Special Agent Report (SAR) that recommended prosecuting Hunter Biden for tax crimes related to the 2014 and 2015 tax years.¹⁹¹ Ziegler confirmed in his SAR that “AUSA Wolf has reviewed the appendices and the charges cited in this report and agrees with the prosecution recommendation of the above cited charges against [Robert Hunter Biden].”¹⁹²

¹⁸⁸ Shapley Interview at 59.

¹⁸⁹ *Id.*

¹⁹⁰ *See* Shapley Interview, Ex. 4.

¹⁹¹ *See* Shapley Interview, Ex. 2.

¹⁹² *Id.*

CONCLUSIONS AND RECOMMENDATIONS

The recommendation for prosecution is based on the facts above and [REDACTED] recommends that RHB be prosecuted under the provisions of Title 26 USC Sections 7201 and 7206 (1) for the tax years 2014, 2018 and 2019 and under the provisions of Title 26 USC Section 7203 for the tax years 2015, 2016, 2017, 2018 and 2019.

A draft of this SAR has been given to DOJ-Tax Senior Attorney Mark Daly, as well as Assistant United States Attorney Lesley Wolf. AUSA Wolf has reviewed the appendices and the charges cited in this report and agrees with the prosecution recommendation of the above cited charges against RHB.

Then prosecutors and the Biden Justice Department's Tax Division changed their recommendation. On June 15, 2022, investigators and prosecutors attended a meeting at Main Justice in Washington, D.C. where two Tax Division attorneys, Mark Daly and Jack Morgan, gave a presentation on the reasons not to charge Hunter Biden for tax crimes committed during the 2014 and 2015 tax years.¹⁹³ During his transcribed interview, Goldberg confirmed the whistleblowers' account that Tax Division attorneys indeed gave a presentation, but Department counsel who accompanied Goldberg would not allow him to discuss the substance of the presentation.¹⁹⁴

During his transcribed interview, Shapley testified that the Biden Justice Department allowed the statute of limitations to lapse on the 2014 and 2015 tax crimes.¹⁹⁵ Specifically, Shapley stated that up until a meeting he attended with Weiss on October 7, 2022, he believed, based on statements made by Attorney General Garland and Weiss, that prosecutors "were deciding whether to charge 2014 and 2015 tax violations."¹⁹⁶ During this period, Shapley explained, prosecutors and Hunter Biden's legal team entered into agreements to toll the statute of limitations for crimes pertaining to the 2014 and 2015 tax years.¹⁹⁷ However, despite the defense counsel's willingness to toll the statute of limitations on the charges again, the Biden Justice Department ultimately allowed the statute of limitations to lapse on those years in November 2022.¹⁹⁸ Shapley cited this decision as yet another example of the Biden Justice Department disregarding established norms to benefit Hunter Biden, explaining that "[l]etting a statute of limitations expire in an active criminal investigation is not normal."¹⁹⁹

In his transcribed interview, U.S. Attorney Weiss confirmed that the Biden Justice Department allowed the statute of limitations for the 2014 and 2015 tax year charges to expire.

¹⁹³ Ziegler Interview at 160, 164.

¹⁹⁴ Goldberg Interview at 30-31.

¹⁹⁵ Shapley Interview at 25-26, 54-55, 100.

¹⁹⁶ *Id.* at 25.

¹⁹⁷ *Id.* at 54.

¹⁹⁸ *Id.* at 25-26, 54-55, 100.

¹⁹⁹ *Id.* at 92.

However, Weiss refused to explain why the charges were allowed to lapse.²⁰⁰ Specifically, Weiss testified:

Q. [I]n 2014 and 2015, it's been well-established by the whistleblowers, Hunter Biden had in excess of over \$1 million in revenue coming in from Burisma that has avoided tax entirely. Do you think it's fair that he is able to avoid paying tax on that gigantic sum of money?

A. Again, that's something I can't comment on. That pertains to the ongoing litigation and our outstanding investigation. I'm just not at liberty to comment at this time, but there will come a time.

Q. Even though the statute of limitations has lapsed?

A. Yes, yes.

Q. When is the appropriate time to address why the statute of limitations was allowed to lapse?

A. I'll address it in the report, but even though the statute of limitations has lapsed and even though charges won't be filed, if there were to be an outstanding tax prosecution, there is no reason to believe that evidence pertaining to prior years, or witnesses involved in prior years, wouldn't be part of that litigation.²⁰¹

Under the guise of the “ongoing litigation and [the] outstanding investigation”—even though criminal liability cannot result from any investigation given the lapse in the statute of limitations—the Justice Department refused to explain why it failed to bring charges for the 2014 and 2015 tax years.²⁰² This prosecutorial decision is highly significant because those years included Hunter Biden's Burisma income and connected his father's official actions to his alleged criminal conduct. Ultimately, as Shapley explained, “[t]he purposeful exclusion of the 2014 and 2015 years sanitized the most substantive criminal conduct and concealed material facts” in this matter, including “a scheme to evade income taxes through a partnership with a convicted felon,” and “potential [Foreign Agents Registration Act] issues.”²⁰³

Overall, the testimony and documents the Committees have received to date show that the Justice Department—under the leadership of Attorney General Garland and President Biden—afforded kid-glove treatment to Hunter Biden. From slow-walking the investigation, to informing defense counsel of future investigative actions, to exhibiting a reluctance to take

²⁰⁰ Weiss Interview at 93-94.

²⁰¹ *Id.* at 92-94.

²⁰² *Id.* at 93.

²⁰³ Shapley Interview at 25.

investigative actions, to finally allowing the statute of limitations to expire on the most serious crimes, the Biden Justice Department used an overly delicate approach when pursuing the President's son's criminal conduct. The delicate approach used by the Department in its Hunter Biden investigation deviated from its standards and its mission to ensure impartial justice without fear or favor.

II. CONTRARY TO HIS ASSERTIONS TO CONGRESS, U.S. ATTORNEY WEISS DID NOT HAVE “ULTIMATE AUTHORITY” OVER THE HUNTER BIDEN CASE.

During their respective testimonies to the Ways and Means Committee, IRS Supervisory Special Agent Shapley and Special Agent Ziegler each described a meeting on October 7, 2022, at Main Justice during which U.S. Attorney Weiss stated he was “not the deciding official” on whether charges would be filed against Hunter Biden.²⁰⁴ Both whistleblowers were surprised upon learning this information, and Shapley even described this moment as his “red line,” after which he could no longer tolerate the Biden Justice Department’s tampering with the investigation.²⁰⁵ Shapley contemporaneously memorialized Weiss’s statement at the October 7 meeting in handwritten notes taken during the meeting,²⁰⁶ as well as an email he sent shortly after the meeting concluded to IRS Director of Field Operations Michael Batdorf and Special Agent in Charge Darrell Waldon.²⁰⁷

Despite subsequent protestations from the Biden Justice Department and U.S. Attorney Weiss to the contrary, including sworn testimony from Attorney General Garland that Weiss “has full authority to . . . bring cases in other jurisdictions if he feels it’s necessary,”²⁰⁸ and public statements that Weiss “was given complete authority to make all decisions on his own,”²⁰⁹ the Committees have received documentary and testimonial evidence from multiple sources, including career Justice Department and FBI officials and three Biden-appointed U.S. Attorneys, confirming that Weiss did not maintain “ultimate authority” over the Hunter Biden matter. Instead, witnesses described the numerous approvals that Weiss needed to obtain, including from the Biden Justice Department’s Tax Division and other U.S. Attorneys’ Offices, and the complex process he had to navigate before he could file charges against Hunter Biden outside of his own district in Delaware.

A. Weiss did not have the sole authority to bring a case against Hunter Biden in a judicial district outside of Delaware.

U.S. Attorney Weiss’s representations about his authority have shifted over time. Initially, in response to a letter addressed to Attorney General Garland, Weiss asserted to the Judiciary

²⁰⁴ *Id.* at 28; Ziegler Interview at 40.

²⁰⁵ Shapley Interview at 28, 134, 171.

²⁰⁶ See Letter from Tristan Leavitt & Mark D. Lytle, to H. Comm. on the Judiciary (Sept. 13, 2023) (attaching a copy of Shapley’s notes from the October 7 meeting); Letter from Tristan Leavitt & Mark D. Lytle, to H. Comm. on Ways & Means and S. Comm. on Fin. (Sept. 13, 2023) (same).

²⁰⁷ Email from Gary Shapley, Supervisory Special Agent, Internal Revenue Serv., to Michael Batdorf & Darrell Waldon, Internal Revenue Serv. (Oct. 7, 2022, 6:09 PM.).

²⁰⁸ *Hearing on Oversight of the Department of Justice, Before the S. Comm. on the Judiciary*, 118th Cong. (2023) (statement of Merrick Garland, Att’y Gen., U.S. Dep’t of Just.). See also *Hearing on the Fiscal Year 2023 Justice Department Budget Request, Before the Subcomm. on Com., Just., Sci., & Related Agencies of the S. Comm. on Appropriations*, 117th Cong. (2022) (statement of Merrick Garland, Att’y Gen., U.S. Dep’t of Just.) (“[T]he Hunter Biden investigation . . . is being run by and supervised by the United States Attorney for the District of Delaware. . . . [H]e is in charge of that investigation. There will not be interference of any political or improper kind.”).

²⁰⁹ *AG Garland Maintains David Weiss Had Full Authority Over Hunter Biden Case*, C-SPAN (June 23, 2023).

Committee: “I have been granted ultimate authority over this matter, including responsibility for deciding where, when, and whether to file charges”²¹⁰



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June 7, 2023

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Jordan:

Your May 25th letter to Attorney General Garland was forwarded to me, with a request that I respond on behalf of the Department.

While your letter does not specify by name the ongoing investigation that is the subject of the Committee's oversight, its content suggests your inquiry is related to an investigation in my District. If my assumption is correct, I want to make clear that, as the Attorney General has stated, **I have been granted ultimate authority over this matter, including responsibility for deciding where, when, and whether to file charges** and for making decisions necessary to preserve the integrity of the prosecution, consistent with federal law, the Principles of Federal Prosecution, and Departmental regulations.

Your letter references recently-announced staffing determinations in the matter and the Committee's concern that those decisions intersect with whistleblower protections. I agree wholeheartedly that whistleblowers play an integral role in promoting both civil servant accountability and good government practices. Federal law protects whistleblowers from retaliation, as well it should.

The information sought by the Committee concerns an open matter about which the Department is not at liberty to respond. As then-Deputy Attorney General Rod Rosenstein wrote in 2018 in response to a request for information from the Honorable Charles Grassley, Chairman of the Senate Committee on the Judiciary:

Congressional inquiries during the pendency of a matter pose an inherent threat to the integrity of the Department's law enforcement and litigation functions. Such inquiries inescapably create the risk that the public and the courts will perceive undue political and Congressional influence over law enforcement and litigation decisions. Such inquiries also often seek

Subsequently, in a June 30 letter to the Judiciary Committee, Weiss claimed that his “charging authority is geographically limited to [his] home district” and that “[i]f venue for a case lies

²¹⁰ Letter from David C. Weiss, U.S. Att’y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 7, 2023) (emphasis added).

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."²¹¹ If a fellow U.S. Attorney declined to "partner," Weiss explained, he would have had to request "Special Attorney" status, which he claimed to "have been assured that, if necessary" he would receive.²¹²


The Honorable Jim Jordan
June 30, 2023

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

At the appropriate time, I welcome the opportunity to discuss these topics with the Committee in more detail, and answer questions related to the whistleblowers' allegations consistent with the law and Department policy. It is my understanding that the Office of Legislative Affairs will work with the Committee to discuss appropriate timeline and scope.

Sincerely,


David C. Weiss
United States Attorney

cc: The Honorable Jerrold L. Nadler, Ranking Member

Finally, in a July 10 letter to Senator Lindsey Graham, Weiss acknowledged that he had "discussions" with unnamed "Departmental officials" about seeking Special Attorney status and that he "was assured" the authority would be granted.²¹³ Weiss did not detail the substance of those discussions, the timing of them, or the officials with whom he spoke.

²¹¹ Letter from David C. Weiss, U.S. Att'y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 30, 2023).

²¹² *Id.*

²¹³ Letter from David C. Weiss, U.S. Att'y, Dist. of Del., to Sen. Lindsey Graham, Ranking Member, S. Comm. on the Judiciary (July 10, 2023).



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July 10, 2023

The Honorable Lindsey O. Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Graham:

This is in response to your June 28, 2023, letter.¹

As I recently explained to the Honorable Jim Jordan,² since the whistleblowers' allegations relate to a criminal investigation that is currently being prosecuted in the United States District Court for the District of Delaware, I have a duty to protect confidential law enforcement information and deliberative communications related to the case. As I likewise indicated, I welcome the opportunity to respond to these claims in more detail at the appropriate future time, as authorized by the law and Department policy.

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

In other words, in his first letter, Weiss represented to the Judiciary Committee that he *had been* granted ultimate authority with respect to the filing of charges. But in his second letter, Weiss told the Committee that he had been assured by unnamed officials that he *would be* granted that authority in the future, if necessary, after going through a specified process, and he notably provided no explanation of who would make the determination of necessity.²¹⁴ These are

²¹⁴ Compare Letter from David C. Weiss, U.S. Att'y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 7, 2023), with Letter from David C. Weiss, U.S. Att'y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 30, 2023).

inconsistent representations, and it is not possible for both of them to be true. Weiss's shifting statements about his authority to bring charges against Hunter Biden, especially his authority to bring charges outside of Delaware, suggest an attempt to cover up the fact that improper political considerations factored into the Department's investigative and prosecutorial function.

Testimony provided to the Committee has revealed that U.S. Attorney Weiss's claims about having the "ultimate" authority to bring charges outside of Delaware are clearly false. As with all U.S. Attorneys, Weiss's jurisdiction is limited to his home district.²¹⁵ While there are several means by which a U.S. Attorney may bring charges in a different district, each method requires approval from another deciding official in the Justice Department. According to testimony received by the Committees, there appear to be five distinct ways in which a U.S. Attorney can bring charges outside of his district: (1) get the local U.S. Attorney to agree to partner on the prosecution,²¹⁶ (2) get the local U.S. Attorney to agree to prosecute the case on his or her own,²¹⁷ (3) get the local U.S. Attorney to appoint one or more Assistant U.S. Attorneys from the referring office as Special Assistant U.S. Attorneys (SAUSAs) in that district,²¹⁸ (4) be appointed as "special attorney" (also known as obtaining "515 authority" due to the fact that such authority is conferred under 28 U.S.C. § 515) by the Attorney General or his delegate,²¹⁹ or (5) be appointed as special counsel by the Attorney General.²²⁰ There is, however, no scenario in which a U.S. Attorney may unilaterally decide to bring charges in another judicial district under his or her sole authority.

Furthermore, Weiss only fulfilled one of the requirements for bringing charges outside of his district—being appointed as special counsel—on August 11, 2023,²²¹ nearly five years after his office first became involved in the case.²²² This entirely contradicts Weiss's and Attorney General Garland's earlier claims that Weiss, throughout the entirety of the investigation, had "ultimate" authority to bring charges in any judicial district he wanted.

In broad strokes, the process that Main Justice required Weiss to go through involved first seeking approval from the local U.S. Attorney, whether that involved partnering on the prosecution, taking over the prosecution, or appointing SAUSAs, and then, if the local U.S. Attorney refused, seeking appointment from senior Justice Department officials as special

²¹⁵ See 28 U.S.C. § 547.

²¹⁶ Weiss Interview at 16.

²¹⁷ Transcribed Interview of Matthew Graves, U.S. Att'y, D.C., at 102. (Oct. 3, 2023) [hereinafter Graves Interview].

²¹⁸ *Id.* at 101; Transcribed Interview of E. Martin Estrada, U.S. Att'y, C. Dist. of Cal., at 17, 42-43 (Oct. 24, 2023) [hereinafter Estrada Interview].

²¹⁹ Goldberg Interview at 71 ("If a U.S. Attorney wanted to bring a case in another district, and the U.S. Attorney there . . . didn't want to be partnered with it . . . then the U.S. Attorney would need to secure a 515 letter in order to bring that case in that district.").

²²⁰ Weiss Interview at 16-17.

²²¹ OFF. OF THE ATT'Y GEN., ORDER NO. 5730-2023, APPOINTMENT OF DAVID C. WEISS AS SPECIAL COUNSEL (2023).

²²² Weiss's office opened its investigation of Hunter Biden around February 2019. See Gordon Interview at 28, 63 (stating that Weiss's office and the FBI's Wilmington Resident Agency opened their investigation of Hunter Biden in February 2019); Email from Joseph Ziegler, Special Agent, Internal Revenue Serv., to Jessica Moran, Trial Att'y, U.S. Dep't of Just., Tax Div. (Apr. 15, 2019, 4:13 PM) ("Approx. February 2019 – My SSA advised me about the Delaware USAO [is] looking into [Hunter Biden] subsequent to the SAR.").

attorney or special counsel.²²³ Additionally, each of the witnesses the Committee interviewed seemed uncertain of how exactly this process was supposed to work and how Weiss was expected to navigate it. For instance, FBI Special Agent in Charge of the Baltimore Field Office Thomas Sobocinski described the “process [Weiss] had to work through” to bring charges outside of Delaware as “cumbersome” and “bureaucratic.”²²⁴ When asked for additional details, Sobocinski explained that he did not “know the intricacies” of the process.²²⁵

Even the U.S. Attorneys who the Judiciary Committee interviewed were confounded by the process, so much so that they contradicted one another as to what exactly Weiss needed to do to bring charges outside of Delaware. Weiss, for his part, testified that he needed to ask other U.S. Attorneys to partner on prosecuting the case,²²⁶ which he described as “common Departmental practice.”²²⁷ Conversely, the U.S. Attorney for the District of Columbia, Matthew Graves, testified that “U.S. Attorney’s Offices don’t partner with other U.S. Attorney’s Offices,”²²⁸ and described such partnerships as a “rare hybrid model” that he had “never seen” used before in his Justice Department career.²²⁹ Graves described a complicated two-track-plus-a-hybrid-model system that he believed Weiss needed to pursue before requesting special counsel or special attorney status. He testified:

Q. [W]hat are the two tracks, in your mind?

A. The two tracks, in my mind, are the AUSAs from the other jurisdiction just come in and handle everything themselves . . . or the other jurisdiction just transfers the case to us and then we prosecute it. . . . I can’t think of a situation where it’s the hybrid model that you just . . . described, where it’s two offices joining—

Q. So what was Weiss looking for here? . . . Was he track one, track two, or hybrid?

²²³ Weiss Interview at 15-16 (“[Main Justice] wanted me to proceed in the way it would typically be done, and that would involve ultimately reaching out to the U.S. Attorney in the District of Columbia. I raised the idea of 515 authority at that time because I had been handling the investigation for some period of time. And, as I said, they suggested let’s go through the typical process and reach out to D.C. and see if D.C. would be interested in joining or otherwise participating in the investigation.”); Goldberg Interview at 71 (“If a U.S. Attorney wanted to bring a case in another district, and the U.S. Attorney there . . . didn’t want to be partnered with it . . . then the U.S. Attorney would need to secure a 515 letter in order to bring that case in that district.”); Holley Interview at 10-11 (“I am aware that if [Weiss] is not able to partner with a particular district, that there are other processes he can go through . . . to move forward . . . in the investigation.”).

²²⁴ Sobocinski Interview at 44-45, 103.

²²⁵ *Id.* at 103.

²²⁶ Weiss Interview at 15-16.

²²⁷ Letter from David C. Weiss, U.S. Att’y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 30, 2023).

²²⁸ Graves Interview at 33. *See also id.* at 34 (“It’s exceedingly rare for an ongoing investigation for someone to join as a partner afterwards.”).

²²⁹ *Id.* at 106.

A. So, again, this wasn't explicitly said, but he was talking about—my recollection of the conversation was, he was immediately talking about what he needed to do and the support that he needed to complete that. So my frame of—

Q. Was it track one or track two?

A. —my frame of reference, how I'm hearing it, is, he is most focused on getting his charges brought by his people in the District. I am the one that introduces the [hybrid model] idea of, "Hey, can we maybe join up with this?" And he says, "We can discuss that."

Q. Well, why would you do that? If that's not one of the two tracks, why would you do that? And you just told us earlier that U.S. Attorney's Offices, when they're on the receiving end, someone's coming in, they don't like that. The investigation's been going for 3 years; you've got, as I said before, two cooks in the kitchen then. Why would you offer that?

A. So the giving end, in my experience, rarely—the end that already has the case very rarely wants to do that, for all of the reasons you just articulated. . . . The end that's on the receiving end of it is looking at things differently. And I laid out some of the considerations before. Like, you know, particularly in complex matters where there's gonna be a lot of litigation, you can have authority generated in the course of those cases that you're stuck with. And if you have a bunch of people who aren't from the jurisdiction litigating those issues—and this has happened to us with Main Justice components before—that can have massive programmatic consequences for you.

Q. And 3 weeks later, you decided you didn't want to go that route.

A. Yes, that is correct.²³⁰

Witnesses were also seemingly confused about the various means by which the Justice Department could appoint a special counsel. Several witnesses incorrectly stated that only special attorneys are appointed under 28 U.S.C. § 515, whereas special counsels must be

²³⁰ *Id.* at 102-04.

appointed under the special counsel regulations.²³¹ For instance, Goldberg, a senior and longtime Justice Department employee, erroneously believed § 515 only conferred special attorney status:

Q. Do you know if Mr. Weiss has 515 authority now?

A. I don't know the answer to that.

Q. And 515 authority is 28 United States Code 515?

A. 515. Yes.

Q. And that's the special counsel—

A. Not special counsel.

Q. Special attorney?

A. It's special attorney. Yeah.²³²

However, like the previous five special counsels,²³³ Weiss was appointed as such under 28 U.S.C. § 515, and several other general statutes.²³⁴ Weiss could not have been appointed as special counsel pursuant to the regulations, because they require that “[t]he Special Counsel shall be selected from outside the United States Government” and Weiss, of course, is a current Justice Department employee.²³⁵ Further, although none of the statutory provisions under which Weiss was appointed use the term “special counsel,” and § 515 instead refers to a “special attorney,”

²³¹ See JARED P. COLE, CONG. RSCH. SERV., R44857, SPECIAL COUNSEL INVESTIGATIONS: HISTORY, AUTHORITY, APPOINTMENT AND REMOVAL, at 9 (2019) (“[A]n individual referred to as a ‘special counsel’ thus may be appointed under either the general statutory authority or under the specific special counsel regulations[.]”).

²³² Goldberg Interview at 71-72. See also Estrada Interview at 39 (“So I don’t know that [28 U.S.C. § 515] is a special counsel statute.”).

²³³ See OFF. OF THE ATT’Y GEN., ORDER NO. 5588-2023, APPOINTMENT OF ROBERT K. HUR AS SPECIAL COUNSEL (2023) (appointing Special Counsel Robert Hur under 28 U.S.C. §§ 509, 510, 515, and 533); OFF. OF THE ATT’Y GEN., ORDER NO. 5559-2022, APPOINTMENT OF JOHN L. SMITH AS SPECIAL COUNSEL (2022) (appointing Special Counsel Jack Smith under 28 U.S.C. §§ 509, 510, 515, and 533); OFF. OF THE ATT’Y GEN., ORDER NO. 4878-2020, APPOINTMENT OF SPECIAL COUNSEL TO INVESTIGATE MATTERS RELATED TO INTELLIGENCE ACTIVITIES AND INVESTIGATIONS ARISING OUT OF THE 2016 PRESIDENTIAL CAMPAIGNS (2020) (appointing Special Counsel John Durham under 28 U.S.C. §§ 509, 510, and 515); OFF. OF THE DEPUTY ATT’Y GEN., ORDER NO. 3915-2017, APPOINTMENT OF SPECIAL COUNSEL TO INVESTIGATE RUSSIAN INTERFERENCE WITH THE 2016 PRESIDENTIAL ELECTION AND RELATED MATTERS (2017) (appointing Special Counsel Robert Mueller under 28 U.S.C. §§ 509, 510, and 515); Letter from James B. Comey, Acting Att’y Gen., U.S. Dep’t of Just., to Patrick J. Fitzgerald, U.S. Att’y, N.D. Ill. (Dec. 30, 2003) (appointing Special Counsel Patrick Fitzgerald under 28 U.S.C. §§ 508, 509, 510, and 515).

²³⁴ OFF. OF THE ATT’Y GEN., ORDER NO. 5730-2023, APPOINTMENT OF DAVID C. WEISS AS SPECIAL COUNSEL (2023) (appointing Special Counsel David Weiss under 28 U.S.C. §§ 509, 510, 515, and 533).

²³⁵ 28 C.F.R. § 600.3(a).

courts have frequently recognized that special counsels may be appointed under these provisions.²³⁶ The Justice Department appears to recognize this fact as well.²³⁷

In sum, the evidence available to the Committees shows that Weiss was not able to bring charges outside of Delaware on his own accord until he was appointed special counsel on August 11, 2023, nearly five years after his office first began investigating Hunter Biden. Instead, Weiss was forced to pursue a cumbersome and complex bureaucratic process to seek approvals from other U.S. Attorneys and officials within Main Justice. The evidence that Weiss did not have sole authority to bring charges outside of Delaware contradicts Weiss's assertion to the Judiciary Committee that he had "ultimate" authority to bring charges wherever he chose.

B. Testimony confirms that two Biden-appointed U.S. Attorneys declined to partner with Weiss to bring cases in their districts against Hunter Biden.

Initially, in February 2022, Weiss sought to obtain special attorney status from the Department for the purpose of filing charges against Hunter Biden in D.C. and California. However, by Weiss's own admission, the Biden Justice Department did not approve his request and instead instructed him to go through the process of asking the U.S. Attorneys in D.C. and the Central District of California to partner with him on the prosecution. Weiss testified:

A. I initiated email contact with Mr. Carlin, and I subsequently had a conversation with [then-Principal Associate Deputy Attorney General] John Carlin, and I believe [Associate Deputy Attorney General] Bradley Weinsheimer was on the call.

Q. Okay. And what did they tell you about bringing the case in D.C. or different jurisdictions from yours?

A. We discussed the fact that I would—they wanted me to proceed in the way it would typically be done, and that would involve ultimately reaching out to the U.S. Attorney in the District of Columbia. I raised the idea of 515 authority at that time because I had been handling the investigation for some period of time. And, as I said, they suggested let's go through the typical process and reach out to D.C. and see if D.C. would be interested in joining or otherwise participating in the investigation.²³⁸

²³⁶ See *In re Grand Jury Investigation*, 916 F.3d 1047, 1049-50 (D.C. Cir. 2019); *United States v. Stone*, 394 F. Supp. 3d 1, 17 (D.D.C. 2019); *United States v. Concord Mgmt. & Consulting LLC*, 317 F. Supp. 3d 598, 623 (D.D.C. 2018); *United States v. Manafort*, 321 F. Supp. 3d 640, 657 (E.D. Va. 2018).

²³⁷ See Government's Response in Opposition to Motion to Dismiss at 5, *United States v. Manafort*, No. 1:17-cr-00201-ABJ (D.D.C. Apr. 2, 2018) ("These statutes—Section 515 in particular—authorize the Attorney General to appoint a Special Counsel and to define the Special Counsel's duties. In doing so, the Attorney General is not required to invoke the Special Counsel regulations (28 C.F.R. Part 600).").

²³⁸ Weiss Interview at 15-16.

* * *

Q. But [515 authority] wasn't granted, right?

A. Yes. We have been over this. It wasn't granted. They said, follow the process. I followed the process. And in completing the process—

Q. But, Mr. Weiss, when you ask for something and they don't give it to you, what is that?

A. I asked for something, and in that conversation they didn't give it to me[.]²³⁹

i. Biden-appointee and donor U.S. Attorney Matthew Graves declined to partner with Weiss to bring the 2014 and 2015 tax crimes in D.C.

In late February or early March 2022, approximately one month after the Biden Justice Department did not approve his request for special attorney authority, Weiss called U.S. Attorney for the District of Columbia Matthew Graves—a Biden appointee and donor who has worked for three Democratic presidential campaigns, including the Biden campaign²⁴⁰—to discuss charging the case in D.C.²⁴¹ In their transcribed interviews, Weiss and Graves provided the Judiciary Committee with different accounts of that conversation. According to Graves, Weiss said he was looking for administrative support and Graves brought up the idea of partnering on the prosecution.²⁴² Graves testified:

Q. Can you walk us through your recollection of how the Hunter Biden case was brought to your office?

A. Yes. To the best of my recollection, in late February or early March of 2022, then U.S. Attorney Weiss, now Special Counsel Weiss, called me directly.

Q. Okay. And what did he say?

²³⁹ *Id.* at 182.

²⁴⁰ Graves Interview at 28-29 (noting that Graves conducted work on behalf of the Biden campaign, the Kerry campaign, and the Clinton-Gore campaign).

²⁴¹ *Id.* at 16-17, 27 (stating that the call occurred in late February or early March); Weiss Interview at 19, 21, 55 (stating that the call occurred in early March).

²⁴² *See id.* at 23 (“I was the first person to raise whether they wanted a local counsel on the case.”); *id.* at 27 (“We decided that we were not going to join the investigation. And, again, the context here is, I was the one who brought it up, not them.”); *id.* at 74 (“Q. Mr. Graves, Mr. Weiss never actually asked you directly to be local counsel in the Hunter Biden case. Is that fair to say? A. That’s my recollection, that I was the first one to raise it. And that kind of informed my thinking that that was an ask from me as opposed to an ask from him.”). Graves explained that “joining the case” and “being local counsel” are “one and the same.” *Id.* at 33.

A. To my recollection, he said that he had a case where there was a component of that case that he had deemed he wanted to bring in the District of Columbia.

Q. . . . And what did you say?

A. So, at a high level, without getting into the case specifics, my recollection was generally . . . asking him whether he was just looking for the kind of normal administrative support that any U.S. Attorney would need if they were going to come and bring a case in another jurisdiction or have their people bring a case in another jurisdiction, or whether he was asking for us to join the investigation.

Q. And what was his answer?

A. To the best of my recollection, his answer was that, at a minimum, it was providing the support but we could discuss further joining or not.²⁴³

Conversely, Weiss told the Committee that he asked Graves to partner on the case,²⁴⁴ as he was instructed to do by Main Justice when they did not approve his first request for special attorney status.²⁴⁵ Weiss testified that he “reached out [to Graves] . . . and basically inquired as to whether his office would be willing to join us or participate in this case.”²⁴⁶ When asked to elaborate on what exactly he was asking Graves to partner on, Weiss explained that he “was asking [Graves] to join in the prosecution of the case,” and whether Graves was “willing to assign someone to be co-counsel in the investigation.”²⁴⁷ Weiss also expressed that he had no recollection of asking Graves for administrative support.²⁴⁸

Graves testified that after his call with Weiss, Graves stressed to his criminal division chief and principal AUSA that he needed to make a decision on partnering with Weiss’s office

²⁴³ *Id.* at 16-17.

²⁴⁴ *See* Weiss Interview at 124 (“I asked whether [Graves and Estrada] were interested in joining in or participating in the case, and they declined to do so[.]”); *id.* at 192 (“[W]hen I’m asking [Graves] about partnering . . .”); *id.* at 195 (“[W]e were giving [Graves] the opportunity to join in the investigation.”).

²⁴⁵ *Id.* at 16 (“And, as I said, they suggested let’s go through the typical process and reach out to D.C. and see if D.C. would be interested in joining or otherwise participating in the investigation.”); *id.* at 83 (“The first step was just to contact the U.S. Attorney’s Office to see if they wanted to join in the prosecution.”); *id.* at 86 (“They said to follow the process, talk to Graves, give him the opportunity to join.”). *See also* Letter from David C. Weiss, U.S. Att’y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 30, 2023) (“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.*” (emphasis added)).

²⁴⁶ Weiss Interview at 57.

²⁴⁷ *Id.* at 192-93.

²⁴⁸ *Id.* at 55 (“Q. Okay. And when you approached Mr. Graves, did you ask him to provide administrative support as you were exploring the possibility of bringing charges in the District of Columbia? A. I don’t know whether I did or not, to tell you the truth. It was one conversation, 5 or 10 minutes, and I don’t recall the particulars with respect to the need for administrative support.”).

quickly,²⁴⁹ presumably because the statute of limitations on the 2014 and 2015 charges was about to lapse.²⁵⁰ Graves's team then spent approximately three weeks analyzing the case, including unspecified case material they received from Weiss's office,²⁵¹ to recommend to Graves whether their office should partner on the prosecution.²⁵² Graves said that he did not review any of the case material himself.²⁵³ On March 19, 2022, Graves met with five or six members of his office, during which Graves decided not to partner with Weiss's office on prosecuting the case against Hunter Biden.²⁵⁴ Graves then "instructed [his] career prosecutors to convey the decision [not to partner] and the basis for the decision to [Weiss's] career prosecutors."²⁵⁵

In late March or early April, Weiss learned from his staff that Graves had decided not to partner on prosecuting the case.²⁵⁶ Instead, Graves offered to provide Weiss's office with administrative support such as securing time before a grand jury.²⁵⁷ Due to Graves's refusal to partner on the case, Weiss was unable to bring charges against Hunter Biden in D.C. unless the Biden Justice Department was willing to reconsider Weiss's request for special attorney status.²⁵⁸

ii. Biden-appointed U.S. Attorney Martin Estrada declined to partner with Weiss to bring charges in Los Angeles, citing serious crime epidemic and resource constraints.

In August 2022, according to Weiss's testimony, he asked Acting U.S. Attorney for the Central District of California Stephanie Christensen to partner with his office on prosecuting charges against Hunter Biden in the Central District of California.²⁵⁹ In late September or early October 2022, shortly after being sworn in to office, the new Biden-appointed U.S. Attorney E. Martin Estrada learned of Weiss's request to partner on the case from career attorneys in his office.²⁶⁰ Estrada also learned that career attorneys in his office had already informed Weiss's office that "they were recommending against partnering or co-counseling [o]n the charges being contemplated" and that Weiss wanted to discuss the matter with Estrada.²⁶¹ At the October 7,

²⁴⁹ Graves Interview at 20, 27, 45.

²⁵⁰ See Shapley Interview at 54 ("The statute [of limitations] was about to blow in March 2022."). Prosecutors and defense counsel later agreed to toll the statute of limitations before it expired in March 2022. Prosecutors ultimately allowed the statute of limitations to expire in November 2022, despite defense counsel offering to sign another tolling agreement. *Id.* at 26, 54.

²⁵¹ Graves Interview at 20-21, 80. See also Weiss Interview at 22 ("We provided [Graves's office] with information so that they could make an informed judgment on deciding whether to participate in the investigation. But I'm not going to get into particulars of documentation.").

²⁵² Graves Interview at 18-19.

²⁵³ *Id.* at 21, 80-81.

²⁵⁴ *Id.* at 23-24.

²⁵⁵ *Id.* at 28.

²⁵⁶ Weiss Interview at 19, 21.

²⁵⁷ Graves Interview at 17, 31.

²⁵⁸ Weiss Interview at 19-20 ("Q. Okay. And what did [Graves's decision not to partner] mean for the case proceeding? A. That meant that I would follow up with respect to the 515 authority —").

²⁵⁹ *Id.* at 102.

²⁶⁰ Estrada Interview at 14-15.

²⁶¹ *Id.* at 15. See also *id.* at 87 ("So my understanding was that, at some point shortly after I started, I was told that there was a request from the District of Delaware to co-counsel, partner on the case; that my career attorneys had recommended against doing so; that had been communicated to the District of Delaware; and the District of Delaware then, through Mr. Weiss, wanted to talk to me about it.").

2022 meeting, per Shapley's contemporaneous notes of the meeting, Weiss stated that if Estrada rejected his request to partner then he "will request approval to proceed in [California]." ²⁶²

During his transcribed interview with the Committee, Estrada provided additional details about his evaluation of Weiss's request to partner. In early October 2022, Estrada reviewed three "memoranda analyzing facts and law," which involved "the question of whether to co[-]counsel" that had been drafted by his staff, Weiss's staff, and DOJ Tax. ²⁶³ Estrada refused to disclose any additional details about the memoranda he reviewed, ²⁶⁴ other than to add that, in addition to the three memos, "there were many legal memoranda that were written and presented to [Estrada] in making this decision of whether or not to agree with the career attorneys." ²⁶⁵ Shortly after reviewing the memoranda, Estrada met with his criminal division chief, major frauds section chief, and first AUSA to discuss the facts and law of the case and Weiss's request to partner on prosecuting. ²⁶⁶ During that meeting, Estrada decided not to partner with Weiss's office. ²⁶⁷ On October 19, 2022, Estrada informed Weiss of his decision not to partner on prosecuting the case, and that he would instead provide Weiss's office with administrative support if they needed it. ²⁶⁸ This was the third occasion on which Weiss was unable to bring charges in a district other than Delaware.

Estrada explained that his decision not to partner with Weiss was due to the crime epidemic plaguing his district and his office's already-limited resources. According to Estrada, his office "was down 40 AUSAs at the time [of Weiss's request to partner], so [they] were very resource-strapped." ²⁶⁹ Estrada described the serious crime epidemic plaguing his district, stating:

We have a Fentanyl epidemic which is one of the worst in the country[.]. We've done more death-resulting cases than any other district in the country. We're on pace to do more this year than we ever had before. We've got a violent crime epidemic with firearms. We've done more Hobbs Act cases than we ever have in the past 2 years. We have a National Security Section, a division, unlike most other offices, because we're the gateway to Asia. ²⁷⁰

* * *

We also look to the practical impact of limited resources. As I mentioned, we have . . . about 20 million people in the district, yet, at the time I came in, about 140 AUSAs. That's just over one AUSA per 100,000 people in the district. At the same time, we're dealing

²⁶² Tristan Leavitt & Mark D. Lytle, to H. Comm. on Ways & Means and S. Comm. on Fin. (Sept. 13, 2023) (attaching a copy of Shapley's notes from the October 7 meeting).

²⁶³ Estrada Interview at 20, 29, 71.

²⁶⁴ *Id.* at 20, 29.

²⁶⁵ *Id.* at 29.

²⁶⁶ *Id.* at 19-21.

²⁶⁷ *Id.* at 21.

²⁶⁸ *Id.* at 22; Weiss Interview at 103.

²⁶⁹ Estrada Interview at 32.

²⁷⁰ *Id.* at 28.

with—as I said, we’re the gang capital. We, unfortunately, export MS-13, Crips gangs, Hispanic gangs, Mexican mafia to the rest of the country. Our cartels infect the rest of the country. The fraud we have here infects the rest of the country. So there were a lot of issues I needed to deal with right there and then which called for resources.²⁷¹

Weiss seemingly had another method to bring charges in California that he failed to use. According to Estrada, before his confirmation, one of the Acting U.S. Attorneys in the district had appointed Assistant U.S. Attorneys from Weiss’s office to serve as SAUSAs in the Central District of California, meaning they were authorized to bring charges and litigate in that district.²⁷² Estrada was unaware of how many SAUSAs were appointed, other than that it was more than one, and he was unaware when exactly they were appointed, explaining that he did not ask for the information “because it didn’t seem relevant” to him.²⁷³ Weiss was unable to provide any information on this topic because he could not “recall the particulars of whether SAUSAs were established and exactly what that meant[.]”²⁷⁴ It is not clear why Weiss needed to partner with Estrada when he already had Assistant U.S. Attorneys from his office who were able, as SAUSAs, to bring charges and prosecute the case in Estrada’s district.

Weiss and Estrada remained in contact with each other about the case even after Weiss was appointed as special counsel. Estrada informed the Committee that he had a call with Weiss about the case on September 19, 2023, though he refused to discuss the call other than to say it “did not involve the question of whether to co[-]counsel on contemplated charges against Hunter Biden[.]”²⁷⁵ Weiss similarly acknowledged the call’s existence without providing further detail.²⁷⁶

After both U.S. Attorney Graves in D.C. and U.S. Attorney Estrada in California declined to partner on prosecuting the case against Hunter Biden,²⁷⁷ it appears that Weiss did not make any further attempt to prosecute in those districts until he received special counsel status. Weiss did not attempt to bring charges in those districts despite assurances he said he received from Main Justice that he would receive special attorney status if necessary.

²⁷¹ *Id.* at 34.

²⁷² *Id.* at 17-18, 23.

²⁷³ *Id.* at 18.

²⁷⁴ Weiss Interview at 102.

²⁷⁵ Estrada Interview at 26.

²⁷⁶ Weiss Interview at 149 (“Q. Mr. Estrada testified that there was another conversation in September of 2023. Do you remember that one? A. Yeah, I don’t want to get into the particulars of any further conversations. I mean, the first one . . . spoke to my authority. The second one, I just – it would not be appropriate for me to comment on.”).

²⁷⁷ See Goldberg Interview at 76 (“Q. . . . [Weiss] had taken the case to two separate United States Attorneys. He took it to the U.S. Attorney for the district of D.C., and he took it to the U.S. Attorney for the Central District of California, and both U.S. Attorneys declined to partner, correct? A. That’s my understanding, that they did not want to partner on the case.”).

C. The Department's Tax Division had to approve any tax charges U.S. Attorney Weiss wanted to pursue.

In addition to being geographically limited in where he could bring charges against Hunter Biden, Weiss also needed approval from the Biden Justice Department's Tax Division to bring tax-related charges against Hunter Biden. As IRS whistleblower Shapley wrote in his contemporaneous notes from the October 2022 prosecution team meeting, Weiss stated he "[n]eeds DOJ Tax approval first – stated that DOJ Tax will give 'discretion' (We explained what that means and why that was problematic)."²⁷⁸ The Justice Manual, which sets forth the standards by which the Justice Department conducts its prosecutions, supports this understanding. It states that "[t]he *final* authority for the prosecution or declination of all criminal matters arising under the internal revenue laws rests with the Assistant Attorney General, Tax Division."²⁷⁹ It is difficult to reconcile this provision with Weiss's claim that he had "ultimate" authority over the Department's Hunter Biden case, including what charges to bring. Indeed, none of the witnesses the Committee interviewed were able to reconcile this discrepancy.²⁸⁰

The Justice Manual further specifies that "only after the Tax Division has authorized the prosecution of individuals and entities for criminal tax violations may a United States Attorney's Office seek an indictment or file any tax charges."²⁸¹ Similarly, with regard to opening a tax investigation, the Justice Manual provides that "[o]nly after the Tax Division has authorized a grand jury investigation may a United States Attorney's Office issue subpoenas and undertake other investigative actions."²⁸² Thus, even if Weiss had been afforded special attorney authority, he still needed approval from the Tax Division before bringing tax charges.²⁸³ According to U.S. Attorney Graves, the Tax Division is afforded this responsibility because "the Tax Code is one of the most complicated criminal regimes that we have. . . . And you want a centralized group that is very much steeped in these issues and able to make sure that tax prosecutions across the country are being implemented uniformly."²⁸⁴

Witnesses repeatedly confirmed to the Judiciary Committee that the Tax Division first had to approve opening a grand jury investigation of Hunter Biden's alleged tax crimes, and then also had to approve all tax charges that U.S. Attorney Weiss wanted to pursue. Stuart Goldberg, Acting Deputy Assistant Attorney General for Criminal Matters in the Tax Division, who has worked at the Justice Department since 1988, testified that the Tax Division must approve

²⁷⁸ Email from Gary Shapley, Supervisory Special Agent, Internal Revenue Serv., to Michael Batdorf & Darrell Waldon, Internal Revenue Serv. (Oct. 7, 2022, 6:09 PM).

²⁷⁹ U.S. Dep't of Just., Just. Manual § 6-4.218 (2023).

²⁸⁰ See, e.g., Estrada Interview at 39 ("Q. Okay. But, if the Justice Manual says that the Assistant Attorney General for the Tax Division has the final authority, how do you reconcile that with Mr. Weiss' statement that he had ultimate authority? A. I'm not going to attempt to reconcile anything.").

²⁸¹ U.S. Dep't of Just., Just. Manual § 6-1.110 (2023) (emphasis in original). See also *id.* § 6-4.200 ("The Tax Division must approve any and all criminal charges that a United States Attorney's Office intends to bring against a defendant for conduct arising under the internal revenue laws, regardless of which criminal statute(s) the United States Attorney's Office proposes to use in charging the defendant.").

²⁸² *Id.* § 6-1.110 (emphasis in original). See also *id.* § 6-4.120 ("[T]he Tax Division must first approve and authorize the United States Attorney's Office's use of a grand jury to investigate criminal tax violations.").

²⁸³ Goldberg Interview at 74; Graves Interview at 94.

²⁸⁴ Graves Interview at 49.

criminal tax charges, with very limited exceptions (which are not relevant to the Hunter Biden case²⁸⁵) before a U.S. Attorney may file such charges.²⁸⁶ The role of U.S. Attorneys, including Weiss, in regard to charging decisions is limited to merely recommending charges.²⁸⁷ Goldberg stated:

Q. Can you explain the role of the Tax Division in approving criminal investigations?

A. So there are various approval functions that the Tax Division has that might come up in the course of a particular case. Some of those deal with whether or not a grand jury investigation can be opened, whether or not a prosecution can be brought generally. There are investigative steps that are reserved for the Tax Division, and somebody in my position would have to sign off on things like attorney subpoenas, for instance. That's overall what it looks like.

Q. According to the Department of Justice, the Justice Manual, only after the Tax Division has authorized a grand jury investigation may a United States Attorney's Office issue subpoenas and undertake other investigative actions. Is that consistent with your understanding?

A. In terms of directly working a tax case. Sometimes there are overlapping Title 18 charges where they might be able to collect information that's useful. But, yes, before they issue a tax-related subpoena [they] should have a grand jury authorization.

Q. And isn't it also true that under the Justice Manual DOJ Tax's approval is required before the U.S. Attorney's Office may bring charges for felony cases?

A. Yes, that is true, though there are a very small number of cases, I think, that under the regulations—I think there are a small number of cases, excise tax cases and things like that, where I think it's possible for a U.S. Attorney's Office to get

²⁸⁵ The criminal tax matters for which Tax Division approval is not required before a U.S. Attorney may file charges include excise taxes, multiple filings of false and fictitious returns claiming refunds, trust fund matters, "ten percenters" matters, and IRS form 8300 returns. *See* U.S. Dep't of Just., Just. Manual § 6-4.243 (2023).

²⁸⁶ *See* Goldberg Interview at 74 ("Q. Okay. So if felony tax charges are going to be brought, the Tax Division has to sign off? Has to okay it? A. In a typical case, yes, we would have to okay that.").

²⁸⁷ *See id.* at 75 ("My understanding is that if you're a U.S. Attorney who is leading a prosecution, that you can make recommendations on your case, but . . . if you want to bring a tax case, you need to get Tax Division authority."); *id.* at 82 ("[Weiss] was in a position where he was going to make a recommendation . . . regarding the prosecution[.]"); *id.* at 84 ("[Weiss] was going to be making a recommendation on the case.").

a direct referral and actually bring the case. But those are small and unusual.²⁸⁸

Weiss similarly agreed that Tax Division sign-off was required for charges and investigative steps. He testified:

- Q. Okay. So, under the [Justice] manual, the final authority for the prosecution or declination of all criminal matters arising under the Internal Revenue laws rest[s] with the Tax Division, correct?
- A. I am aware that Tax Division approves the charging of [T]itle 26 offenses. . . .
- Q. Okay. But, if you're working a tax case, there's specific investigative steps that need the okay or approval of the Tax Division before you can initiate, correct?
- A. That's my understanding.²⁸⁹

U.S. Attorney Matthew Graves also understood that the Tax Division played a central approval function in tax cases. He stated:

- Q. [I]t is fair to say, in Federal criminal tax cases, approval from DOJ Tax is required before a U.S. Attorney's office may issue subpoenas or undertake other investigative actions?
- A. There are various steps along the investigative process that have to be approved by the Tax Division in connection with the prosecution or investigation of tax charges.
- Q. Okay. And so, if a U.S. Attorney, whether it's yourself or Mr. Weiss, wanted to bring tax charges against an individual, it would require the approval of the Tax Division, correct?
- A. That is correct.²⁹⁰

U.S. Attorney Estrada was also aware of the required Tax Division authorization before bringing tax-related charges. He testified that "for certain tax charges, you need authorization from the

²⁸⁸ *Id.* at 8-9.

²⁸⁹ Weiss Interview at 29-30. *See also id.* at 168 ("Q. But, as we've discussed, under the Justice Manual, DOJ Tax has to approve felony charges, right? A. DOJ Tax . . . is required to approve Title 26 charges.").

²⁹⁰ Graves Interview at 11-12. *See also id.* at 94 ("Q. Because before getting special counsel authority, for Mr. Weiss to bring some of these charges, he would've needed, as we discussed this morning, the approval of the Tax Division. A. So, again, I don't know the specifics of this case. The way the Justice Manual is set up, certainly Tax Division approval would be required.").

Tax Division to bring those charges and then also to dismiss those charges . . . if you choose to dismiss them.”²⁹¹

IRS Director of Field Operations Michael Batdorf provided the same information when interviewed by the Committee on Ways and Means. He explained:

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

A. It was my view that—well, DOJ Tax had not authorized any charges at that time. So DOJ Tax would have to authorize charges prior to David Weiss recommending an indictment or prosecution.²⁹²

* * *

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

A. You need DOJ Tax approval.

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

A. No. Not—to the best of my knowledge, no.²⁹³

The Tax Division may also decline tax charges that a U.S. Attorney wants to bring in a jurisdiction.²⁹⁴ Weiss explained that if the Tax Division refused to authorize charges, he “could have appealed to the Deputy Attorney General or the Attorney General.”²⁹⁵ However, Weiss did not have the authority to unilaterally overrule the Tax Division’s charging decisions with respect to tax-related charges.

Witnesses were unable to reconcile the Justice Manual requirements that the Tax Division approve tax charges before a U.S. Attorney may file them with Weiss’s claim that he had “ultimate authority . . . for deciding where, when and whether to file charges” in this case.²⁹⁶ For instance, Goldberg attempted to reconcile the matter by saying Weiss didn’t really mean “ultimate” (i.e., final or utmost) authority when he used the term “ultimate authority,” but instead

²⁹¹ Estrada Interview at 38.

²⁹² Batdorf Interview at 22-23.

²⁹³ *Id.* at 39.

²⁹⁴ Goldberg Interview at 13.

²⁹⁵ Weiss Interview at 30-31.

²⁹⁶ Letter from David C. Weiss, U.S. Att’y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 30, 2023).

meant that he only had authority “subject to limitations that are placed on departmental prosecutors.”²⁹⁷ However, Goldberg’s attempt at reconciling this discrepancy acknowledged that Weiss was not the final decisionmaker on this case and that he indeed required approval from Justice Department officials, per the Justice Manual provisions and associated federal regulations,²⁹⁸ which contradicts Attorney General Garland’s broad statements about the scope of Weiss’s “complete” authority to “make all decisions on his own.”²⁹⁹

U.S. Attorney Weiss similarly attempted to reconcile the Justice Manual provisions with his statements about his authority. He stated:

- Q. But, as we’ve discussed, under the Justice Manual, DOJ Tax has to approve felony charges, right?
- A. DOJ Tax has approval—is required to approve Title 26 charges. Yes, we have discussed that. And I welcomed DOJ Tax’s input in this case. Never felt that I had an issue in that regard.
- Q. Right. But whether you had Special Counsel authority or 515 authority, no matter what kind of authority you had, you still had to have DOJ Tax’s approval for tax charges.
- A. You’re still consulting with DOJ Tax . . . absolutely.
- Q. Okay. So, when Mr. Shapley writes, “Needs DOJ Tax approval first,” I mean, that is consistent with the facts of life, correct?
- A. I’m not—look, I’m not challenging the DOJ Tax. And I believe I would’ve said, as I’ve said here today, I’m not operating in a vacuum. There are processes here. And others need to be involved.³⁰⁰

The fact that DOJ policy required Weiss to obtain approval from the Tax Division before opening a grand jury investigation, and then get further approval before filing charges, undermines Weiss’s plain-language assertion that he had ultimate authority over this case. Ultimately, contrary to Attorney General Garland’s assurances, Biden Administration political appointees exercised significant oversight and control over the Hunter Biden investigation.

²⁹⁷ Goldberg Interview at 83.

²⁹⁸ See 28 C.F.R. § 0.70 (“The following functions are assigned to and shall be conducted, handled, or supervised by, the Assistant Attorney General, Tax Division: . . . [c]riminal proceedings arising under the internal revenue laws[.]”). See also Goldberg Interview at 61 (“There’s a regulation, 28 CFR 0.70, which specifically says that Tax Division has authority over matters arising under the Internal Revenue laws.”).

²⁹⁹ See, e.g., *AG Garland Maintains David Weiss Had Full Authority Over Hunter Biden Case*, C-SPAN (June 23, 2023) (“I don’t know how it would be possible for anybody to block [Weiss] from bringing a prosecution, given that he has this authority. . . . [H]e was given complete authority to make all decisions on his own.”).

³⁰⁰ Weiss Interview at 168.

During his transcribed interview, Weiss defended his assertions about having “ultimate” authority over the Hunter Biden investigation as U.S. Attorney because, in his words, he was “the decisionmaker in this case,”³⁰¹ and he “didn’t need anybody’s permission” to make decisions.”³⁰² Weiss conceded that he does not “make these decisions in a vacuum” as he is “bound by Federal law, the principles of Federal prosecution, and DOJ guidelines,” and that “[a]s a result, there are processes that [he] must adhere to in making investigative and charging decisions.”³⁰³ Weiss contended, however, that “[t]hese processes did not interfere with [his] decisionmaking authority” as he was not “blocked or otherwise prevented from pursuing charges or taking the steps necessary in the investigation by other U.S. Attorneys, the Tax Division, or anyone else in the Department of Justice.”³⁰⁴

Weiss’s attempts to explain away his statements strain credulity and ignore the fact that on three separate occasions he was indeed blocked from bringing charges against Hunter Biden.³⁰⁵ First, in February 2022, Main Justice rebuffed his request for special attorney status. Second, in March 2022, U.S. Attorney Graves refused to partner on the case.³⁰⁶ And third, in October 2022, U.S. Attorney Estrada likewise refused to partner on the case.³⁰⁷ The only reason Weiss was ultimately able to file tax charges against Hunter Biden in June 2023 is because Hunter Biden waived venue to help usher through an unprecedented sweetheart plea deal.³⁰⁸ Weiss’s argument is further belied by the fact that on August 11, 2023, Attorney General Garland appointed Weiss special counsel, thereby empowering him to bring charges outside of his home district of Delaware.³⁰⁹ However, if Weiss already had “ultimate” authority to bring charges outside of his home district, the need for special counsel authority would have been redundant, and there would have been no reason for Weiss to request such authority.

³⁰¹ *Id.* at 9.

³⁰² *Id.* at 30.

³⁰³ *Id.* at 9.

³⁰⁴ *Id.*

³⁰⁵ *See id.* at 182 (“I asked for [special attorney status], and in that conversation [Main Justice] didn’t give it to me[.]”).

³⁰⁶ *See supra* Part II.B.i.

³⁰⁷ *See supra* Part II.B.ii.

³⁰⁸ Memorandum of Plea Agreement at 1, *United States v. Biden*, No. 1:23-mj-00274-UNA (D. Del. Aug. 2, 2023); Diversion Agreement at 3, *United States v. Biden*, No. 1:23-cr-00061-MN (D. Del. Aug. 2, 2023).

³⁰⁹ OFF. OF THE ATT’Y GEN., ORDER NO. 5730-2023, APPOINTMENT OF DAVID C. WEISS AS SPECIAL COUNSEL (2023).

III. THE BIDEN ADMINISTRATION HAS SOUGHT TO INFLUENCE THE HUNTER BIDEN INVESTIGATION IN A MANNER FAVORABLE TO PRESIDENT BIDEN.

The Committees have gathered evidence that the Biden Administration has improperly influenced the course of the independent IRS and Justice Department investigation into Hunter Biden. According to the available evidence, the Biden Justice Department shut down certain lines of inquiry and allowed the statute of limitations to lapse on certain charges. After whistleblowers came forward to detail the Department's obstruction, and the Department was compelled to take some prosecutorial action, the Department tried to push through a sweetheart plea deal, which imploded in open court. The Biden Justice Department has made inconsistent statements to the Judiciary Committee about the independence of its investigation, and President Biden has prejudiced the investigation by making statements proclaiming his son's innocence. In short, evidence obtained to date details how the Biden Administration has deviated from its typical process to provide the President's son special treatment and influence the investigation in a way that is favorable to the President's family.

A. Throughout Weiss's investigation, President Biden has made statements that prejudice the Justice Department's investigation and the appearance of impartial justice.

President Biden and his White House staff have prejudiced the Department's investigation by making repeated public statements about Hunter Biden's innocence.³¹⁰ President Biden is the head of the Executive Branch, and Justice Department officials are appointed by and serve at the pleasure of the President. As such, the President's statements, as well as those from senior White House officials, risk influencing the Department's actions and its decision-making in the ongoing criminal investigation of the President's son, an investigation which has implicated the President himself.

Since becoming President, President Biden has used the bully pulpit of his office to speak about the Justice Department's investigation into his son in a manner that leaves no ambiguity that he believes the investigation to be baseless. For example, on October 11, 2022, a reporter asked President Biden about potential charges against Hunter.³¹¹ While acknowledging that Hunter Biden lied on his application to purchase a gun, President Biden stated, "I'm confident that he is—what he says and does are consistent with what happens."³¹² President Biden then reiterated that he has "great confidence in [his] son."³¹³ In May 2023, President Biden again defended his son, stating, "[M]y son has done nothing wrong."³¹⁴ He added, "I trust him. I have faith in him."³¹⁵

³¹⁰ See, e.g., Jerry Dunleavy, *Hunter Biden investigation: How president's denial of son's wrongdoing colors DOJ inquiry*, WASH. EXAM'R (May 11, 2023).

³¹¹ Kevin Liptak & Evan Perez, *Biden addresses possible criminal charges against Hunter Biden and says he's 'proud' of son's fight against drug addiction*, CNN (Oct. 12, 2022).

³¹² *Id.*

³¹³ *Id.*

³¹⁴ Katherine Doyle, *Biden defends son Hunter ahead of possible federal tax, gun charges*, NBC NEWS (May 5, 2023).

³¹⁵ *Id.*

In August 2023, a reporter brought up testimony that President Biden was “on speakerphone” with Hunter Biden’s former business associates “talking business,” potentially implicating President Biden in these crimes.³¹⁶ President Biden shot back caustically: “I never talked business with anybody. I knew you’d have a lousy question.”³¹⁷ When the reporter followed up to President Biden to explain why the question was lousy, the President shot back, “Because it’s not true.”³¹⁸

Senior White House employees have also sought to prejudice the Justice Department’s investigation by publicly commenting on Hunter Biden’s innocence and President Biden’s purported lack of involvement in his son’s foreign business dealings. For example, then-White House Chief of Staff Ron Klain stated, “Of course the president is confident that his son didn’t break the law” and that President Biden “is confident that his family did the right thing.”³¹⁹ Klain added, “[t]hese are actions by Hunter and [the President’s] brother. They’re private matters. They don’t involve the president. And they certainly are something that no one at the White House is involved in.”³²⁰ On April 5, 2022, then-White House Press Secretary Jen Psaki agreed with a reporter’s question that the President has “never spoke[n] to his son about his overseas business dealings.”³²¹ On July 24, 2023, in an exchange with a reporter, White House Press Secretary Karine Jean-Pierre stated that President Biden “was never in business with his son.”³²² Two days later, Jean-Pierre reiterated at a press briefing that “nothing has changed,” again denying that President Biden had any involvement with his son’s foreign business dealings.³²³

Despite their claims, these statements from both President Biden and his senior White House staff appear to be inconsistent with evidence that the Committees have gathered—including bank records, discussions with former business associates, interviews with investigators from the Hunter Biden criminal investigation, and government records from multiple agencies—that the President was involved in his family’s foreign business entanglements. The statements by the President and senior White House officials send a strong signal to Justice Department prosecutors, who ultimately are accountable to them President, that any investigation into Hunter Biden has no merit. At the very least, the President’s statements create the dangerous appearance that his Justice Department has failed to live up to its mission of fair and impartial administration of justice.

³¹⁶ Alexander Hall, *Biden scorched for response to question about talking to Hunter’s business associates: ‘Pathological liar’*, FOX NEWS (Aug. 10, 2023).

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ David Cohen, *Biden ‘confident’ his son didn’t break the law, White House chief of staff says*, POLITICO (Apr. 3, 2022).

³²⁰ *Id.*

³²¹ Press Briefing by Press Secretary Jen Psaki, April 5, 2022, THE WHITE HOUSE (Apr. 5, 2022).

³²² Press Briefing by Press Secretary Karine Jean-Pierre, THE WHITE HOUSE (July 24, 2023).

³²³ Press Briefing by Press Secretary Karine Jean-Pierre and National Security Council Coordinator for Strategic Communications John Kirby, THE WHITE HOUSE (July 26, 2023).

B. Without the brave IRS whistleblowers, it is likely that the Justice Department would have never acted on Hunter Biden's misconduct.

The evidence that the Committees have uncovered to date suggests that the Justice Department had no intention of aggressively investigating or acting upon allegations of potential criminal conduct by Hunter Biden until transparency forced accountability. If not for the brave whistleblowers shedding light on the Justice Department's intentional slow-walking of the investigation and deviations from standard investigative practices, it seems likely that the Justice Department would have never acted on the investigation.

In his contemporaneous handwritten notes taken at the October 7, 2022 meeting, Shapley wrote that "[i]nvestigative work essentially complete per U.S. [Attorney]."³²⁴ Additionally, in an email to his superiors sent shortly after the meeting, Shapley explained that "[n]o major investigative actions remain" with respect to the Hunter Biden investigation.³²⁵

³²⁴ Letter from Tristan Leavitt & Mark D. Lytle, to H. Comm. on Ways and Means & S. Comm. on Fin. (Sept. 13, 2023) (attaching Shapley's notes from the October 7 meeting).

³²⁵ Email from Gary Shapley, Supervisory Special Agent, Internal Revenue Serv., to Michael Batdorf & Darrell Waldon, Internal Revenue Serv. (Oct. 7, 2022, 6:09 PM).

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” (Weiss 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 your 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!

Ziegler similarly explained during his transcribed interview on June 1, 2023 that “the investigative process is 99.9 percent done[.]”³²⁶ In other words, at the time of the “red-line” meeting that ultimately led the IRS whistleblowers to shine the light on misconduct in the investigation, the only remaining decision points were whether to pursue charges against Hunter Biden.

Testimony from the FBI officials appears to further substantiate Shapley’s assertion. Throughout their testimony, neither Sobocinski nor Holley could describe any real or significant progress made in Weiss’s investigation after the October 7 meeting through the August 8, 2023

³²⁶ Ziegler Interview at 14.

special counsel announcement.³²⁷ Other than reiterating that the investigation is “ongoing,” the witnesses provided bland and ambiguous responses to the Judiciary Committee’s questions about the status of the case at the time of the October 7 meeting and what investigative steps remain.

For example, Sobocinski would not provide a clear answer about where in the process the investigation stood, instead stating vaguely that the FBI is doing everything to “bring it forward to the Justice Department.”³²⁸ Holley likewise could not articulate any progress made in the investigation after the October 7 meeting until August 2023. Although Holley generally disagreed that all investigative steps had been exhausted as of October 7, she declined to provide examples to the Committee of investigative steps undertaken after October 7.³²⁹ Holley’s and Sobocinski’s refusal to provide any update on the purported “ongoing investigation” since the October 7, 2022 meeting bolsters whistleblower testimony that 99.9 percent of the investigation had been completed as of October 2022.

The timing of the Justice Department’s actions likewise suggest that it would not have taken further action on the Hunter Biden case but for the whistleblower disclosures. Sometime after April 19, 2023, when Shapley’s attorney first notified Congress of his client’s allegations, Shapley “started to hear rumblings that DOJ was picking the case back up again.”³³⁰ This testimony is corroborated by the Department’s actions. In May 2023, around the time that the IRS whistleblowers initially testified to Congress and shortly after a meeting between Hunter Biden’s then-lawyer Chris Clark,³³¹ Weiss, and Associate Deputy Attorney General Bradley Weinsheimer,³³² the Biden Justice Department began formally negotiating with Hunter Biden’s lawyers about potential plea and pretrial diversion agreements.³³³

³²⁷ See Sobocinski Interview at 162-63; Holley Interview at 102-03.

³²⁸ Sobocinski Interview at 162.

³²⁹ Holley Interview at 102-03.

³³⁰ Shapley Interview at 32.

³³¹ On August 15, 2023, Clark filed a motion, which Judge Noreika granted two days later, to withdraw from representing Hunter Biden in this matter due to Clark’s belief that he could be called as a witness in future litigation concerning “the negotiation and drafting of the plea agreement and diversion agreement. . . .” Motion for Leave to Withdraw as Counsel for Defendant Robert Hunter Biden, *United States v. Biden*, No. 1:23-mj-00274-MN, No. 1:23-cr-00061-MN (D. Del. Aug. 15, 2023) (citing Delaware Rule of Professional Conduct 3.7(a) which provides that “a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless... disqualification of the lawyer would work substantial hardship on the client.”).

³³² See Betsy Woodruff Swan, *In talks with prosecutors, Hunter Biden’s lawyers vowed to put the president on the stand*, POLITICO (Aug. 19, 2023) (reporting that Clark, Weiss, and Weinsheimer met on April 26, 2023 to discuss the charges, but noting that it is “not clear what happened in the meeting, which came at a sensitive moment for the probe”).

³³³ Defendant’s Response to the United States’ Motion to Vacate the Court’s Briefing Order at 1, *United States v. Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. Aug. 13, 2023); see also Email from Lesley Wolf, Assistant U.S. Att’y, Dist. of Del., to Chris Clark (May 18, 2023, 10:02 PM) (on file with Committee); James Lynch, *Hunter Biden began negotiating plea deal with DOJ right after IRS whistleblower first came forward, court docs show*, DAILY CALLER (Aug. 14, 2023).

C. Hunter Biden’s attorneys are pushing the Biden Justice Department to investigate witnesses in retaliation for making protected disclosures regarding Hunter Biden’s alleged criminal conduct.

Hunter Biden’s legal team has engaged in a brazen effort to intimidate and harass the brave IRS whistleblowers who exposed irregularities in the Department’s investigation of Hunter Biden,³³⁴ and a former business associate of Hunter Biden who provided information to the FBI regarding the Bidens’ shady business practices. These tactics have even included urging the Department to prosecute the whistleblowers for their protected disclosures to Congress.³³⁵ Federal law protects whistleblowers from retaliation,³³⁶ and efforts to intimidate these whistleblowers raise serious concerns about potential felonious obstruction of the Committees’ investigation.³³⁷ The willingness of the Hunter Biden legal team to push the Biden Justice Department into investigating whistleblowers shows the extent to which Hunter Biden believes it can influence the investigation in a manner favorable to him.

On June 30, 2023, Abbe Lowell, an attorney representing Hunter Biden, wrote to the Ways and Means Committee, asserting without evidence that Shapley and Ziegler had violated federal law in making their protected whistleblower disclosures to the Committee.³³⁸ Lowell slandered the brave IRS whistleblowers as “disgruntled agents” with an “axe to grind,” and suggested—again without evidence—that these men were responsible for leaks to media outlets.³³⁹ Lowell implied that at least one of the whistleblowers, Shapley, faced “some investigation into his *own conduct*.”³⁴⁰ On June 3, 2023, on his own accord, Shapley provided the Committee on Ways and Means an affidavit that read, in part, as follows:

I was not the source for the October 6, 2022 Washington Post article, nor have I ever had any contact with [the article’s authors] Barrett or Stein. Because I am so confident of this fact, I hereby authorize the Washington Post and/or journalists Devlin Barrett, Perry Stein, or any other Washington Post reporter to release any communications directly or indirectly to or from me. In this regard, I am willing to waive any purported journalistic privilege and/or confidentiality that would have arisen had I been a source for the Washington Post.³⁴¹

Shapley went on to note that he had “never leaked confidential taxpayer information.”³⁴²

³³⁴ See Kimberley A. Strassel, *Hunter Biden’s Smear Strategy*, WALL ST. J. (July 6, 2023); Letter from Abbe Lowell, to Rep. Jason Smith, Chairman, H. Comm. on Ways and Means (June 30, 2023).

³³⁵ See Michael S. Schmidt et al., *Inside the Collapse of Hunter Biden’s Plea Deal*, N.Y. TIMES (Aug. 19, 2023).

³³⁶ See, e.g., 5 U.S.C. §§ 2302(b)(8)(C), 7211.

³³⁷ See 18 U.S.C. §§ 1505, 1512(b).

³³⁸ Letter from Abbe Lowell, to Rep. Jason Smith, Chairman, H. Comm. on Ways & Means (June 30, 2023).

³³⁹ *Id.*

³⁴⁰ *Id.* (emphasis in original).

³⁴¹ Shapley Supplemental Affidavit at 4.

³⁴² *Id.*

Hunter Biden’s lawyers have also directly urged the Justice Department—the law-enforcement component responsible to Hunter Biden’s father—to act against the whistleblowers. According to the *New York Times*, Hunter Biden’s “lawyers have contended to the Justice Department that by disclosing details about the investigation to Congress, they broke the law and should be prosecuted.”³⁴³ On October 31, 2022, Chris Clark sent a letter to U.S. Attorney Weiss falsely accusing Shapley and Ziegler of illegally leaking information about the investigation to the press and demanding they be investigated.³⁴⁴ Clark also wrote to Justice Department Inspector General Michael Horowitz (twice),³⁴⁵ Associate Deputy Attorney General Bradley Weinsheimer,³⁴⁶ and Tax Division Senior Litigation Counsel Mark Daly and Delaware Assistant U.S. Attorneys Lesley Wolf and Carly Hudson³⁴⁷ demanding that the whistleblowers be investigated. Abbe Lowell sent a similar letter to Weiss on August 14, 2023, falsely claiming that Shapley and Ziegler acted illegally when disclosing information about the Department’s wrongdoing to Congress and demanding that they be investigated.³⁴⁸ However, Shapley’s and Ziegler’s disclosures to Congress are protected under federal law,³⁴⁹ and any suggestion that they acted illegally in making these disclosures is nothing short of frivolous and a clear attempt to intimidate the whistleblowers.

Lowell’s attempted intimidation tactics did not end with the whistleblowers. On October 7, 2023, Lowell sent a letter to U.S. Attorney Graves demanding an investigation into Tony Bobulinski concerning statements that Bobulinski made about Hunter Biden.³⁵⁰ Notably, Bobulinski is Hunter Biden’s former business partner who had previously identified President Biden as the “big guy” who would take a stake in a joint company with a Chinese energy company closely linked to the Chinese Communist Party.³⁵¹ Media outlets confirmed that Hunter and James Biden, President Biden’s brother, owned entities that were paid \$4.8 million by CEFC China Energy in a 14-month period.³⁵² As Hunter Biden’s former business partner, Bobulinski has firsthand insight into the financial arrangement, including direct meetings with Hunter Biden and President Biden.³⁵³ Lowell’s demands for an investigation into Bobulinski appear to be another shallow effort to discredit and intimidate a potential witness against Hunter Biden.

³⁴³ Schmidt et al., *supra* note 335.

³⁴⁴ Letter from Chris Clark to David Weiss, U.S. Att’y, Dist. of Del., at 2, 15-17 (Oct. 31, 2022) (on file with Committee).

³⁴⁵ Letter from Chris Clark to Michael Horowitz, Inspector Gen., U.S. Dep’t of Just. (Feb. 8, 2023) (on file with Committee); Letter from Chris Clark to Michael Horowitz, Inspector Gen., U.S. Dep’t of Just. (June 29, 2023) (on file with Committee).

³⁴⁶ Letter from Chris Clark to Bradley Weinsheimer, Associate Deputy Att’y Gen, U.S. Dep’t of Just. (Apr. 21, 2023) (on file with Committee).

³⁴⁷ Letter from Chris Clark to Mark Daly, Lesley Wolf, and Carly Hudson (Apr. 21, 2023) (on file with Committee).

³⁴⁸ Letter from Abbe Lowell to David Weiss, U.S. Att’y, Dist. of Del. (Aug. 14, 2023) (on file with Committee).

³⁴⁹ See 26 U.S.C. § 6103(f)(5).

³⁵⁰ Letter from Abbe Lowell, to Matthew M. Graves, U.S. Att’y, U.S. Dep’t of Just. (Oct. 7, 2023).

³⁵¹ Michael Goodwin, *Hunter biz partner confirms email, details Joe Biden’s push to make millions from China: Goodwin*, N.Y. POST (Oct. 22, 2020) (quoting Bobulinski as stating that “[t]he reference to ‘the Big Guy’ in the much publicized May 13, 2017 email is in fact a reference to Joe Biden.”).

³⁵² Matt Viser et al., *Inside Hunter Biden’s multimillion-dollar deals with a Chinese energy company*, WASH. POST (Mar. 30, 2020).

³⁵³ See Ebony Bowden & Steven Nelson, *Hunter’s ex-partner Tony Bobulinski: Joe Biden’s a liar and here’s the proof*, N.Y. POST (Oct. 22, 2020).

Hunter Biden’s lawyers have engaged in a relentless and shameful campaign to have whistleblowers arrested for making protected disclosures to Congress. They are asking the senior Justice Department officials—officials who serve at the pleasure of the President—to prosecute witnesses for lawful disclosures that are potentially harmful to the President’s son.

D. After a multi-year investigation, Weiss offered Hunter Biden a sweetheart plea deal that fell apart under simple questioning from the judge.

After a five-year investigation, slowed-walked by Biden-appointees and beset by deviations from standard investigative practices, Weiss offered Hunter Biden a sweetheart plea deal for only two misdemeanor tax crimes and a pretrial diversion agreement for a felony firearm offense,³⁵⁴ despite prosecutors and investigators recommending charging Hunter Biden with six felonies and five misdemeanors.³⁵⁵ Further, it was revealed during the hearing on the plea deal that prosecutors and defense counsel did not share the same understanding of the scope of Hunter Biden’s immunity from additional charges.³⁵⁶ While prosecutors understood the immunity provision of the pretrial diversion agreement to only protect Hunter Biden from additional charges related to his tax returns from 2014 to 2019 and his illegal gun purchase in 2014, defense counsel interpreted the immunity provision to also shield Hunter Biden from potential charges related to his foreign business ventures, such as violating the Foreign Agents Registration Act.³⁵⁷ As the Committees have previously noted, “it is difficult to understand how the parties would not have a meeting of the minds regarding a clause of the agreement as fundamental as the scope of the immunity provision, and it raises questions about what discussions have taken place between the Department and Mr. Biden’s counsel regarding the status of those investigations.”³⁵⁸ The judge overseeing the case also inquired as to why prosecutors structured the immunity provision in such a way as to give her no authority to reject it.³⁵⁹

The timing of the public announcement of the plea deal also raises the perception it was designed to avoid public criticism of the investigation. The Biden Justice Department announced the plea deal with Hunter Biden mere days before the Ways and Means Committee disclosed the whistleblower testimony detailing how the Department “provided preferential treatment, slow-walked the investigation, [and] did nothing to avoid obvious conflicts of interest in this investigation.”³⁶⁰

According to public reporting, Hunter Biden’s attorney, Chris Clark, began pressuring the Department to settle Hunter Biden’s case as early as spring of 2022.³⁶¹ From the mid-2022 to early 2023, Clark threatened prosecutors that they faced “career suicide” if they pursued the

³⁵⁴ Carrie Johnson, *Hunter Biden agrees to plead guilty in tax case and avoid prosecution on gun charge*, NPR (June 20, 2023).

³⁵⁵ See Shapley Interview, Ex. 2.

³⁵⁶ Glenn Thrush et al., *Judge Puts Hunter Biden’s Plea Deal on Hold, Questioning Its Details*, N.Y. TIMES (July 26, 2023).

³⁵⁷ *Id.*

³⁵⁸ Letter from Chairmen Jim Jordan, Jason Smith, and Jim Comer to Merrick Garland, Att’y Gen., U.S. Dep’t of Just. (July 31, 2023).

³⁵⁹ Glenn Thrush et al., *Judge Puts Hunter Biden’s Plea Deal on Hold, Questioning Its Details*, N.Y. TIMES (July 26, 2023).

³⁶⁰ Shapley Interview at 10-11.

³⁶¹ Swan, *supra* note 332.

investigation,³⁶² demanded meetings “with people at the highest levels of the Justice Department,”³⁶³ and warned that he would call President Biden to testify as a fact witness for the defense in a potential prosecution.³⁶⁴ He claimed that a prosecution of Hunter Biden would “immediately tarnish the credibility of the Department” as “another example of naked politics influenced by a vendetta of the former President against the current President.”³⁶⁵ Clark even went so far as to tell prosecutors that they would be creating a “Constitutional crisis” by pitting the President against his own Justice Department.³⁶⁶ These threats seemingly worked on Weiss, who allowed the investigation to linger and did not pick the case back up until shortly after the whistleblower disclosures to Congress in May 2023.³⁶⁷

After negotiations with Hunter Biden’s counsel, the Biden Justice Department tried to push through an unprecedented plea deal, which imploded in open court. The negotiations culminated in a plea agreement publicly announced on June 20, 2023.³⁶⁸ The deal would have had Hunter Biden plead guilty to two misdemeanor tax charges, plus a diversion agreement to dismiss a separate felony gun charge if Hunter Biden completed a two-year period of probation.³⁶⁹ The one-of-its-kind agreement shifted a broad immunity provision from the plea agreement to the pretrial diversion agreement, benefiting Hunter Biden with the aim of preventing the District Court from being able to scrutinize and reject that immunity provision.³⁷⁰ It also gave the District Court the sole power to determine whether Hunter Biden breached the pretrial diversion agreement—a prerequisite for the Department to file the diverted charges

³⁶² Shapley Interview at 27; Ziegler Interview at 122.

³⁶³ Swan, *supra* note 332. *See also* Letter from Chris Clark to Lesley Wolf, Assistant U.S. Att’y, Dist. of Del. (Oct. 10, 2022) (on file with Committee) (requesting meetings with the Attorney General, Deputy Attorney General, Assistant Attorney General for the Criminal Division, and U.S. Attorney for the District of Delaware); Letter from Chris Clark to Mark Daly, Senior Litig. Counsel, U.S. Dep’t of Just., Tax Div. (Oct. 10, 2022) (on file with Committee) (requesting meetings with the Attorney General, the Deputy Attorney General, and the Acting Assistant Attorney General for the Tax Division); Letter from Chris Clark to Mark Daly, Senior Litig. Counsel, U.S. Dep’t of Just., Tax Div. (Jan. 31, 2023) (on file with Committee) (requesting meetings with the Attorney General, Deputy Attorney General, and Assistant Attorney General for the Criminal Division); Letter from Chris Clark to David Weiss, U.S. Att’y, Dist. of Del. (Jan. 31, 2023) (on file with Committee) (requesting meetings with the Attorney General, Deputy Attorney General, and Assistant Attorney General for the Criminal Division); Letter from Chris Clark to David Weiss, U.S. Att’y, Dist. of Del. (Feb. 3, 2023) (on file with Committee) (requesting meetings with the Office of Legal Counsel and the Office of the Solicitor General); Letter from Chris Clark to Michael Horowitz, Inspector Gen., U.S. Dep’t of Just. (Feb. 8, 2023) (on file with Committee) (requesting a meeting with the Office of the Inspector General).

³⁶⁴ Letter from Chris Clark to David Weiss, U.S. Att’y, Dist. of Del., at 16 (Oct. 31, 2022) (on file with Committee).

³⁶⁵ *Id.* at 19.

³⁶⁶ *Id.* at 16; Swan, *supra* note 332.

³⁶⁷ Defendant’s Response to the United States’ Motion to Vacate the Court’s Briefing Order at 1, *United States v. Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. Aug. 13, 2023); *see also* Email from Lesley Wolf, Assistant U.S. Att’y, Dist. of Del., to Chris Clark (May 18, 2023, 10:02 PM) (on file with Committee); James Lynch, *Hunter Biden began negotiating plea deal with DOJ right after IRS whistleblower first came forward, court docs show*, DAILY CALLER (Aug. 14, 2023).

³⁶⁸ Swan, *supra* note 332.

³⁶⁹ Josh Gerstein et al., *Hunter Biden reaches plea deal with feds to resolve tax issues, gun charge*, POLITICO (June 20, 2023).

³⁷⁰ *See* Letter from Chairmen Jim Jordan, Jason Smith, and James Comer, to Merrick B. Garland, Att’y Gen., U.S. Dep’t of Just. (July 31, 2023). *See also* Transcript of Record at 46-47, 107, *United States v. Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. July 26, 2023).

against him in the future and a provision benefiting Hunter Biden.³⁷¹

On July 26, 2023, Hunter Biden appeared before Judge Maryellen Noreika of the U.S. District Court for the District of Delaware for a hearing on the plea deal.³⁷² The plea deal fell apart when prosecutors and defense attorneys could not provide answers to routine questions about the agreement posed by Judge Noreika.³⁷³ Judge Noreika described the Department's deal as "not standard" and "different from what I normally see."³⁷⁴ The deal had an unusual structure, involving both a typical plea agreement, which is presented to the court, and a diversion agreement, which Judge Noreika noted is not.³⁷⁵ Diversion agreements are not approved by a judge, but a probation officer.³⁷⁶

Judge Noreika raised concerns about some "nonstandard terms" contained in the diversion agreement: (1) the "broad immunity" provision within the pretrial diversion agreement that would immunize Hunter Biden for not only the gun-related conduct, but also his unrelated tax crimes,³⁷⁷ and (2) the provision that "invokes the Court or involves the Court as part of that agreement" by prohibiting the government from bringing charges within the scope of the agreement unless and until Judge Noreika first determined that the diversion agreement had been breached.³⁷⁸ Judge Noreika expressed her concerns stating:

I think what I'm concerned about here is that you seem to be asking for the inclusion of the Court in this agreement, yet you're telling me that I don't have any role in it, and you're leaving provisions of the plea agreement out and putting them into an agreement that you are not asking me to sign off on. So I need you to help me understand why this isn't in the written plea agreement.³⁷⁹

Neither prosecutors from the Biden Justice Department nor Hunter Biden's counsel could provide a satisfactory explanation to Judge Noreika's concerns.

First, the government's promise of immunity, which would usually be in the plea agreement, was for unexplained reasons included in the diversion agreement—meaning Judge Noreika would have no authority over it.³⁸⁰ That immunity provision would immunize Hunter Biden for not only the felony gun charge subject to the diversion agreement, but also his unrelated and uncharged tax crimes.³⁸¹ Judge Noreika noted that she "looked through a bunch of diversion agreements that [she] ha[s] access to . . . [but] couldn't find anything that had anything

³⁷¹ Transcript of Record at 95, *United States v. Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. July 26, 2023).

³⁷² See Swan, *supra* note 332; Schmidt et al., *supra* note 335.

³⁷³ See Swan, *supra* note 332; Schmidt et al., *supra* note 335.

³⁷⁴ Transcript of Record at 10, *United States v. Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. July, 26, 2023).

³⁷⁵ *Id.*

³⁷⁶ See *id.* at 51.

³⁷⁷ *Id.* at 46-47, 83.

³⁷⁸ *Id.* at 92-93.

³⁷⁹ *Id.* at 50.

³⁸⁰ *Id.* at 41.

³⁸¹ *Id.* at 46-47.

similar to that.”³⁸² She then asked the government, “Do you have any precedent for agreeing not to prosecute crimes that have nothing to do with the case or the charges being diverted?”³⁸³ Special Assistant U.S. Attorney Leo Wise could not provide any precedent for such a provision.³⁸⁴

Second, Judge Noreika expressed separation of powers concerns pertaining to the provision of the pretrial diversion agreement for the gun charge that would prohibit the Department from bringing charges within the scope of the agreement unless and until Judge Noreika first determined that the diversion agreement had been breached.³⁸⁵ Judge Noreika stated:

Now I have reviewed the case law and I have reviewed the statute and I had understood that the decision to offer the defendant, any defendant a pretrial diversion rest squarely with the prosecutor and consistent with that, you all have told me repeatedly that’s a separate agreement, there is no place for me to sign off on it, and as I think I mentioned earlier, usually I don’t see those agreements. But you all did send it to me and as we’ve discussed, some of it seems like it could be relevant to the plea.

One provision in particular stands out to me, and that is paragraph 14. That paragraph says if the United States believes that a knowing material breach of this agreement has occurred, it may seek a determination by the United States District Judge for the District of Delaware with responsibility for the supervision of this agreement. It then goes on to say that if I do find a breach, then the government can either give the Defendant time to remedy the breach or prosecute him for the crime that is the subject of the information or any other that falls within the language of the agreement. . . . Do you have any authority that any Court has ever accepted that or said that they would do that?³⁸⁶

When neither Wise nor Clark could provide any examples of such an agreement, Judge Noreika stated her concern that the “provision makes me a gatekeeper to criminal charges and puts me in the middle of a decision as to whether to bring a charge. And we already talked about separation of powers and that choice as to whether to bring charges is . . . the executive branch, not the judicial branch, so is this even constitutional?”³⁸⁷ At that point, Clark finally admitted that the unprecedented gatekeeping provision was included for political reasons:

There was a desire because of there being as Your Honor has seen a

³⁸² *Id.* at 45.

³⁸³ *Id.* at 46.

³⁸⁴ *Id.*

³⁸⁵ *Id.* at 92-93.

³⁸⁶ *Id.* at 92-95.

³⁸⁷ *Id.* at 95.

tremendous amount of political drag with this Defendant that the normal mechanism that might take place would have the protection of the Court not in the discretion to bring a charge, but in finding a breach, and so that that wouldn't be something that would become more politicized, but rather would be something that the parties could rely on, someone we consider a neutral arbiter to determine the breach, not the charge.³⁸⁸

In other words, Hunter Biden's lawyers sought to appeal to his unique circumstances as the son of the President to assert that he should receive atypical and seemingly unprecedented treatment in this plea deal. Therefore, they came up with an apparently unprecedented and potentially unconstitutional provision that would prevent prosecutors from filing future charges against Hunter Biden without judicial approval.³⁸⁹ Judge Noreika responded:

I understand. Look, I knew why you brought it, okay, I could see why you would want that provision in here, but . . . the government, the executive branch has the discretion to bring charges. Here, the government does not have discretion to continue to pursue this charge or any other charge unless you include the Court. And that seems like it's getting outside of my lane in terms of what I am allowed to do. And thus, I have concerns about the constitutionality of this provision. That gives me concerns about the constitutionality of this agreement because there doesn't seem to be a separate severability, and that gives me concerns about whether the Defendant has the protection from prosecution that he thinks he's getting if this agreement turns out to be not worth the paper it's written on.³⁹⁰

Ultimately, Judge Noreika concluded that she could not accept the plea agreement and postponed the proceedings.³⁹¹ Subsequent negotiations between Hunter Biden's attorneys and the Justice Department to modify the plea agreement were abandoned before the announcement of Weiss's special counsel appointment.³⁹²

When asked about the failed plea deal, Weiss refused to comment on Judge Noreika's rejection of his office's plea deal for Hunter Biden. Weiss testified:

Q. Okay. On July 26th, the date of this plea agreement, Judge Noreika of U.S. District Court for the District of Delaware declined to accept the Department's plea and pretrial diversion agreements, correct?

³⁸⁸ *Id.* at 97-98.

³⁸⁹ *Id.* at 95-98.

³⁹⁰ *Id.* at 98.

³⁹¹ *Id.* at 98-99, 104-09.

³⁹² U.S. Motion to Voluntarily Dismiss Criminal Tax Information Without Prejudice so that Tax Charges Can Be Brought in a District Where Venue Lies, *United States v. Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. Aug. 11, 2023).

- A. I'm not going to comment on Judge Noreika's decision at all. I'm just not going to offer any comment in that regard.
- Q. Okay. But she declines to—I mean, I don't mean to be difficult here, but—
- A. The plea agreement did not go forward.
- Q. Okay. Because of the judge?
- A. I'm not going to comment on why, who said what, the judge's comments. We're in the matter before the judge as we speak, so I'm not going to say anything in that regard.³⁹³

After five years of investigating, the only thing Weiss had to show for the investigation was an unprecedented sweetheart plea deal, which overtly appealed to the defendant's special status as the President's son to justify special treatment from the court. This sweetheart plea deal fell apart under scrutiny from a federal judge, leading to the Attorney General's appointment of Weiss as special counsel. Accordingly, Weiss's attempted plea deal is an important part of understanding the extent to which Weiss deviated from standard investigative practices in this case in a manner favorable to Hunter Biden, and his refusal to answer the Committee's questions speak loudly about his inability to defend his actions.

E. Line investigators believe the Hunter Biden investigation is proceeding too slowly, potentially allowing the statute of limitations to lapse on additional charges.

Following the failed plea deal, Weiss requested special counsel status from Attorney General Garland.³⁹⁴ On August 11, 2023, Attorney General Garland appointed Weiss as special counsel to continue the investigation of Hunter Biden.³⁹⁵ During his announcement, Attorney General Garland stated that he was “confident that Weiss will carry out his responsibility in an even-handed and urgent matter, and in accordance with the highest traditions of this Department.”³⁹⁶ However, testimony to date, including testimony from Weiss himself, shows that this investigation has been anything but urgent.

Both IRS whistleblowers detailed the efforts that the Justice Department took to slow the case against Hunter Biden down. Shapley stated that, “[i]t was apparent that DOJ was purposely slow-walking investigative actions in this matter.”³⁹⁷ Similarly, Ziegler testified that he tried “to point out that the slow-walking and approvals for everything, a lot of that happened at the U.S.

³⁹³ Weiss Interview at 138.

³⁹⁴ Press Release, U.S. Dep't of Just., Appointment of a Special Counsel (Aug. 11, 2023).

³⁹⁵ OFF. OF THE ATT'Y GEN., ORDER NO. 5730-2023, APPOINTMENT OF DAVID C. WEISS AS SPECIAL COUNSEL (2023).

³⁹⁶ Press Release, U.S. Dep't of Just., Appointment of a Special Counsel (Aug. 11, 2023).

³⁹⁷ Shapley Interview at 13.

Attorney's Office in Delaware and DOJ Tax level."³⁹⁸ Multiple witnesses corroborated the whistleblowers' frustration.

Testimony from Sobocinski and Holley, both from the FBI's Baltimore Field Office, underscored the whistleblowers' concern that the Department was not moving at its typical pace in its investigation of Hunter Biden and instead was "slow-walking" the case.³⁹⁹ Sobocinski described his frustration with the pace of the investigation multiple times, testifying that his goal was to get the case to a "resolution."⁴⁰⁰ He also stated he "would have liked [the investigation] to move faster."⁴⁰¹ Sobocinski stated:

Q. Was this case moving slow? You said like at least—

A. Yup.

Q. —three dozen times you wanted to get this thing to resolution. And so that sort of suggests that it wasn't getting to resolution and you thought it should be moving a little faster pace.

A. I would have liked for it to move faster.⁴⁰²

Holley likewise expressed "overall frustrat[ion]" about the slow pace of the investigative process.⁴⁰³ Sobocinski and Holley's frustration not only affirms the whistleblowers' testimony regarding the pace of the investigation, but it also creates a perception that the Justice Department sought to purposefully slow down any potential prosecution of the President's son.

Weiss even acknowledged that the case "lingered."⁴⁰⁴ Without ever defending the pace of this investigation, he testified:

Q. Do you have any goal as to when you'd like to bring it to conclusion?

A. Two weeks ago. No, I say—again, I say that in jest, but no. Look, I recognize that it's never good for cases to linger, so I am interested in efficiency to the extent possible.

Q. It's been 5 years.

³⁹⁸ Ziegler Interview at 92.

³⁹⁹ See Shapley Interview at 13 ("It was apparent that DOJ was purposely slow-walking investigative actions in this matter."); Ziegler Interview at 92 ("As far as my leadership goes, we're trying to point out that the slow-walking and the approvals for everything, a lot of that happened at the U.S. Attorney's Office in Delaware and DOJ Tax level.").

⁴⁰⁰ Sobocinski Interview at 34.

⁴⁰¹ *Id.* at 99.

⁴⁰² *Id.*

⁴⁰³ Holley Interview at 104.

⁴⁰⁴ Weiss Interview at 151.

A. I understand that . . . I absolutely do.

Q. So that doesn't—you just used the term "linger." That doesn't fit the definition of "linger"?

A. I understand your question and appreciate it.⁴⁰⁵

However, despite appreciating that the investigation had "linger[ed]" for five years, Weiss refused to provide the Committee with any sort of timeline for when the investigation will be completed.⁴⁰⁶ When asked if he would need another five years, Weiss stated, "I'm not going to put a timeframe on it" but "we plan to move as efficiently as possible."⁴⁰⁷

However, Weiss testified that the investigation is being run out of the office space afforded to the special counsel team, which is separate from the USAO for the District of Delaware.⁴⁰⁸ Weiss additionally testified that, as of the date of his transcribed interview, he was still "building the [special counsel] team," although he would not say how many individuals are currently working on the investigation.⁴⁰⁹ He testified:

Q. Since you've been appointed Special Counsel, did you get more staff?

A. I don't want to get into the particulars of the staff, and I continue to work on building the team, but I'm not going to get into the particulars.

Q. Do you have separate office space?

A. I do have separate office space.

Q. Okay. And you're housed in Delaware?

A. I am housed in Delaware.

Q. Okay. So it's totally separate office as Special Counsel from the U.S. Attorney?

A. It is.⁴¹⁰

And when asked for a timeline of the investigation and its completion, Weiss testified:

⁴⁰⁵ *Id.* at 150.

⁴⁰⁶ *Id.* at 175.

⁴⁰⁷ *Id.*

⁴⁰⁸ Sobocinski Interview at 117-18.

⁴⁰⁹ Weiss Interview at 117.

⁴¹⁰ *Id.*

- Q. So wh[en] do you believe you'll be able to complete . . . the current investigation? Are you planning to do it urgently, or are you going to spend another 5 years? . . .
- A. Yeah, I'm not going to put a timeframe on it. As I said previously in response to counsel's questions, we plan to move as efficiently as possible.⁴¹¹

Despite Weiss's alleged urgency—and Attorney General Garland's statement that Weiss will work in an "urgent manner"⁴¹²—his actions say something completely different. Rather than moving forward in an urgent manner, the current pace of the investigation seems to run the risk of allowing the statute of limitations to lapse on additional charges potentially facing Hunter Biden.

F. The Biden Justice Department's unilateral scoping limitations and inadequate document productions have severely curtailed the Committees' ability to gather information.

Since the whistleblowers came forward in the spring of 2023, the Biden Justice Department refused to cooperate fully and completely with the Committees' investigation. In response to the Committees' letters seeking pertinent documents, communications, and other information, the Justice Department, time and time again, failed to substantially comply, citing the Department's "ongoing investigation."⁴¹³ The Justice Department also unilaterally and improperly limited the scope of authorized testimony for witnesses appearing before the Committees.

On February 28, 2023, the Judiciary Committee first requested documents pertaining to the Department's handling of the Hunter Biden investigation due to the potential conflict of interest inherent in an investigation into the President's son.⁴¹⁴ The Judiciary Committee sought documents to determine why Attorney General Garland had declined to appoint a special counsel in the Hunter Biden matter, despite appointing special counsels in other investigations. The Department did not respond until August 25, 2023—after Garland had belatedly appointed Weiss as special counsel—and only has produced 27 pages of documents that contained excessive redactions and were not responsive to the Committee's requests.⁴¹⁵

On May 25, 2023, the Judiciary Committee again wrote to Attorney General Garland requesting documents and information related to the Department's removal of IRS Supervisory Special Agent Shapley and his entire investigative team from the Hunter Biden investigation

⁴¹¹ *Id.* at 175.

⁴¹² Press Release, U.S. Dep't of Just., Appointment of a Special Counsel (Aug. 11, 2023).

⁴¹³ *See, e.g.*, Letter from Carlos Felipe Uriarte, Assistant Att'y Gen., U.S. Dep't of Just., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Sept. 22, 2023).

⁴¹⁴ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Merrick B. Garland, Att'y Gen., U.S. Dep't of Just. (Feb. 28, 2023).

⁴¹⁵ Letter from Carlos Felipe Uriarte, Assistant Att'y Gen., U.S. Dep't of Just., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Aug. 25, 2023).

shortly after Shapley made protected disclosures to Congress.⁴¹⁶ While Attorney Garland did not respond, Weiss wrote to the Committee instead on June 7, 2023, stating “the Department is not at liberty to respond.”⁴¹⁷ On June 22, 2023, the Judiciary Committee reiterated the request for material regarding the apparent whistleblower retaliation.⁴¹⁸ On June 30, 2023, Weiss responded, stating again that he “is not at liberty to provide the materials you seek.”⁴¹⁹

On July 31, 2023, the Committees wrote once more, requesting documents pertaining to the unusual plea and pretrial diversion agreements with Hunter Biden.⁴²⁰ The Department responded on August 14, 2023, stating that it is working to identify what information may be available for the Committees and that it “commit[s] to supplementing” its response.⁴²¹ Despite the Department’s stated commitment to supplement its response, to date, the Committees have yet to receive any documents responsive to the July 31 requests.

On August 28, 2023, the Committees wrote to Attorney General Garland regarding the widespread concerns with his appointment of Weiss as special counsel.⁴²² On September 11, 2023, the Department reproduced to the Committees a copy of the Attorney General’s order outlining the appointment of Weiss—which had previously been provided to the Committees—and refused to produce any of the other requested documents or communications.⁴²³

On September 12, 2023, the Committees wrote to Attorney General Garland regarding the brazen attempts by Hunter Biden’s legal team to intimidate and harass the whistleblowers who detailed—and now have further substantiated⁴²⁴—numerous irregularities in the Department’s investigation of Hunter Biden.⁴²⁵ To date, the Department has not responded to the Committees’ September 12 letter about Hunter Biden’s attempts to intimidate the IRS whistleblowers.

⁴¹⁶ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Merrick B. Garland, Att’y Gen., U.S. Dep’t of Just. (May 25, 2023).

⁴¹⁷ Letter from David C. Weiss, U.S. Att’y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 7, 2023).

⁴¹⁸ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to David C. Weiss, U.S. Att’y, Dist. of Del. (June 22, 2023).

⁴¹⁹ Letter from David C. Weiss, U.S. Att’y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 30, 2023).

⁴²⁰ Letter from Chairmen Jim Jordan, Jason Smith, and James Comer, to Merrick B. Garland, Att’y Gen., U.S. Dep’t of Just. (July 31, 2023).

⁴²¹ Letter from Carlos Felipe Uriarte, Assistant Att’y Gen., U.S. Dep’t of Just., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Aug. 14, 2023).

⁴²² Letter from Chairmen Jim Jordan, Jason Smith, and James Comer, to Merrick B. Garland, Att’y Gen., U.S. Dep’t of Just. (Aug. 28, 2023).

⁴²³ Letter from Carlos Felipe Uriarte, Assistant Att’y Gen., U.S. Dep’t of Just., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Sept. 11, 2023).

⁴²⁴ See Press Release, H. Comm. on Ways and Means, Bombshell: Ways and Means Releases New Documents Revealing Hunter Biden Selling Access to White House, Investigators Blocked from Pursuing Evidence Related to President Biden (Sept. 27, 2023); see also Josh Christenson, *Hunter Biden prosecutor ignored evidence for months: whistleblower documents*, N.Y. POST (Sept. 27, 2023).

⁴²⁵ Letter from Chairmen Jim Jordan, Jason Smith, and James Comer, to Merrick B. Garland, Att’y Gen., U.S. Dep’t of Just. (Sept. 12, 2023).

Although the Committees have made many requests for documents concerning the Department's handling of the Hunter Biden investigation since the beginning of the 118th Congress,⁴²⁶ the Committees agreed to proceed with witness interviews without the relevant documents as a significant accommodation to the Department. But shortly before each interview, the Department sent each witness a letter that unilaterally limited the scope of what each witness was authorized to discuss with the Judiciary Committee—limiting approved testimony to only two topics: (1) statements made by Weiss regarding his authority at an October 7, 2022 meeting, and (2) statements made by Weiss to Congress regarding his authority in investigating Hunter Biden.⁴²⁷ Notably, the Committee had never agreed to these extreme scope limitations, and had never even been consulted about whether the limitations would be acceptable.

Throughout the Committee's questioning of witnesses, the Department counsel who accompanied the witness would often not allow witnesses to answer specific and relevant questions necessary for the Committee's investigation. For example, during the transcribed interview of Stuart Goldberg, the following exchange occurred:

Q. And are you able to tell us anything about what happened with the Hunter Biden case in terms of the process?

DOJ. He is not.

Q. Do you know whether a prosecution report was drafted by DOJ Tax after receiving the special agent report?

DOJ. To the extent there is a general process that applies in all cases, he can speak to that.

Q. Well, no, I'm asking about the Hunter Biden case. Do you know whether a prosecution report was prepared by DOJ Tax?

DOJ. And I'm saying he can't speak about the ongoing investigation. And so if there –

Q. He's not asking what was in the report, he's asking was it prepared.

DOJ. Right. Yes, I understood the question. But the scope of his authorization does not allow him to speak about the ongoing

⁴²⁶ See Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Merrick B. Garland, Att'y Gen., U.S. Dep't of Just. (Feb. 28, 2023).

⁴²⁷ See Letter from Bradley Weinsheimer, Assistant Deputy Att'y Gen., U.S. Dep't of Just., to Thomas J. Sobocinski, Special Agent in Charge, Balt. Field Off., Fed. Bureau of Investigation (Sept. 6, 2023); Letter from Bradley Weinsheimer, Assistant Deputy Att'y Gen., U.S. Dep't of Just., to Ryeisha Holley, Assistant Special Agent in Charge, Balt. Field Off., Fed. Bureau of Investigation (Sept. 8, 2023).

investigation, whether it involves the contents or the fact of something that is prepared as part of the process.⁴²⁸

Later during the interview, Goldberg was asked if he “remember[ed] the purpose of the [June 15] meeting” about the 2014 and 2015 tax year charges.⁴²⁹ The Justice Department counsel interjected, “And once we start getting into purpose, what happened at the meeting, those go beyond the scope of his authorization.”⁴³⁰

During the transcribed interview of U.S. Attorney Graves, the Justice Department’s counsel again limited the testimony of Graves. In one exchange:

Q. So you’re not going to answer?

A. I agree it’s outside the scope. I could say it’s a matter of public record that the office has cross staffed with other special counsels.

Q. Okay. Have you ever recommended to another special counsel that they shouldn’t move forward with a case?

A. I could say, in general, I don’t recall weighing in or opining on a matter that is not in my office what that component head should or should not do, special counsel or regardless. That’s for them to decide.

Q. Okay. Do you recall any discussions about a campaign finance charge related to the Hunter Biden tax matter?

DOJ. Just even answering yes or no to that question, as I think you know, gets into questions associated with the ongoing investigation and prosecution, and it’s outside the scope of what he’s authorized to discuss.⁴³¹

The questions posed to the witnesses are critical to the Committees’ investigation—and the Department knows this. The Department’s decision to unilaterally limit witness testimony unnecessarily hinders the Committees’ oversight and prevents the Committees from gathering all necessary evidence.

The Department also directed two Tax Division employees, Senior Litigation Counsel Mark Daly and Trial Attorney Jack Morgan, to disregard lawfully issued deposition subpoenas

⁴²⁸ Goldberg Interview at 24-25.

⁴²⁹ *Id.* at 30.

⁴³⁰ *Id.*

⁴³¹ Graves Interview at 145.

from the Judiciary Committee.⁴³² As a result, both employees failed to appear for their respective depositions, despite representations from their personal counsel that they were willing to appear but for the Department's directive.⁴³³ The Department's directives resulted in the Judiciary Committee being unable to procure the testimony of two witnesses whose knowledge of the day-to-day operation of the Hunter Biden investigation is critical to this oversight. The Department's directives are even more concerning in light of its earlier requests that the Judiciary Committee delay the dates of Daly's and Morgan's depositions to accommodate Daly's and Morgan's schedules. The Committee agreed to postpone the depositions for nearly a month as an accommodation to the Department. As it now appears that the Department always intended to direct Daly and Morgan not to appear, the Department's request to postpone the deposition seems to be a bad-faith attempt to delay the Committee's oversight.⁴³⁴

The Department's response to the Committees' requests has been wholly inadequate, and there is no valid basis for the Department to obstruct the Committees' inquiry. The Department's suggestion that it can dictate the "timing and scope"⁴³⁵ of the Committees' oversight because of the ongoing nature of the Department's investigation lacks any valid legal basis and severely curtails the Committees' ability to gather information from Department witnesses. The Department's claim "rests on no constitutional privilege or case law authority" but rather on self-serving opinions unilaterally issued by the Department.⁴³⁶ In fact, there is ample legal and historical precedent contradicting the Department's assertion—that is, precedent of congressional committees conducting oversight of matters that are the subjects of ongoing investigations.⁴³⁷ The historical record is replete with examples of the Department providing information related to

⁴³² See Deposition of Mark Daly, Senior Litig. Counsel, U.S. Dep't of Just., Tax Div. (Oct. 26, 2023) [hereinafter Daly Deposition]; Deposition of Jack Morgan, Trial Att'y, U.S. Dep't of Just., Tax Div. (Nov. 6, 2023) [hereinafter Morgan Deposition].

⁴³³ See Daly Deposition at 3 ("Mr. Daly's personal counsel indicated to us that Mr. Daly was willing to appear and answer our questions. But obviously, he has received an order from the Justice Department not to appear."); Morgan Deposition at 4-5 ("Mr. Morgan[] has no per se objection to testifying, but, given the competing constitutional claims and interests expressed by his employer, the Department of Justice, he will be following his employer's directive.").

⁴³⁴ See Daly Deposition at 3; Morgan Deposition at 5.

⁴³⁵ See Letter from Carlos Felipe Uriarte, Assistant Att'y Gen., U.S. Dep't of Just., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 13, 2023).

⁴³⁶ *Obstruction of Justice: Does the Justice Department Have to Respond to Lawfully Issued and Valid Congressional Subpoenas*, Hearing Before the H. Comm. on Oversight and Gov't Reform, 112th Cong. (2011) (statement of Morton Rosenberg, Fellow, Const. Project). See also William McGurn, Opinion, *The 'Ongoing Investigation' Dodge on Hunter Biden*, WALL ST. J. (July 10, 2023) (quoting former Assistant U.S. Attorney Andrew McCarthy as stating, "The executive branch response of 'ongoing investigation' is really a political objection, rather than a legal one. There is no 'ongoing investigation' privilege.").

⁴³⁷ See WHEN CONGRESS COMES CALLING, at 75-82 (listing numerous examples of Congress obtaining testimony related to an ongoing criminal investigation); Christopher R. Smith, *I Fought the Law and the Law Lost: The Case for Congressional Oversight Over Systemic DOJ Discovery Abuse in Criminal Cases*, 9 CARDOZO PUB. L. POL'Y & ETHICS J. 85, 107 (2010) ("To preclude Congress from investigating prosecutorial misconduct because of open investigations would completely undermine Congress's constitutional duty to investigate government misconduct, an important legislative branch check on the executive branch."); Tristan Leavitt & Jason Foster, *No, Appointing A 'Special Counsel' Is Not A License For DOJ To Obstruct Congress*, THE FEDERALIST (Aug. 21, 2023) (listing "just a handful of the dozens [of instances] from the past century" in which Congress "obtained testimony and documents from prosecutors involved in active probes, including deliberative prosecutorial memoranda").

ongoing criminal investigations to congressional committees,⁴³⁸ including the exact type of evidence the Committees are looking for in this investigation.⁴³⁹ Courts have also recognized that partisan influence of the prosecutorial process is an appropriate target for congressional oversight.⁴⁴⁰ The Department's claim that material sought by the Committees is protected by the deliberative process privilege similarly lacks merit given that, according to the D.C. Circuit, this privilege "disappears altogether when there is any reason to believe government misconduct occurred."⁴⁴¹ Simply put, the Department's frivolous assertions are nothing more than a transparent effort to evade congressional scrutiny.

⁴³⁸ See *Obstruction of Justice: Does the Justice Department Have to Respond to Lawfully Issued and Valid Congressional Subpoenas*, Hearing Before the H. Comm. on Oversight and Gov't Reform, 112th Cong. (2011) (statement of Louis Fisher, Scholar in Residence, Const. Project) ("Congress has often obtained records related to ongoing criminal investigations."); WHEN CONGRESS COMES CALLING, at 83 ("[T]he oft-repeated claim that the [D]epartment [of Justice] never has allowed congressional access to open or closed litigation files or other 'sensitive' internal deliberative process matters is simply not accurate.").

⁴³⁹ WHEN CONGRESS COMES CALLING, at 76-77 (stating that over the past century congressional committees have "sought and obtained a wide variety of evidence, including: . . . the testimony of line attorneys and other subordinate agency employees regarding the conduct of open and closed cases; and detailed testimony about specific instances of the Department's failure to prosecute cases that allegedly merited prosecution.").

⁴⁴⁰ See *Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 78 (D.D.C. 2008) ("[G]iven [Congress's] unique ability to address improper partisan influence in the prosecutorial process . . . [n]o other institution will fill the vacuum if Congress is unable to investigate and respond to this evil." (internal quotation marks omitted)).

⁴⁴¹ *In re Sealed Case*, 121 F.3d 729, 746 (D.C. Cir. 1997).

CONCLUSION

The Committees' investigative work to date has revealed that the Justice Department afforded Hunter Biden—the President's son—preferential treatment throughout its investigation of his numerous alleged crimes, and then sought to cover up its actions after two courageous IRS agents stepped forward to blow the whistle on the Department's deviations from its investigative standards. The Department's concerning actions and kid-glove treatment of Hunter Biden serves as yet another example of the two-tiered justice system at the Biden Justice Department.

To date, the testimony and documents received by the Committees corroborate the whistleblowers' testimony that the Justice Department slow-walked its investigation of Hunter Biden and deviated from standard procedures in a way that favored Hunter Biden. The Committees have evidence that the U.S. Attorney's Office in Delaware worked to remove Hunter Biden's name from search warrants and subpoenas; prohibited investigators from asking about President Biden during witness interviews; tipped off defense counsel about investigative steps; and even allowed the statute of limitations on serious potential crimes to lapse. Additionally, contrary to his assertions to Congress, U.S. Attorney Weiss did not have "ultimate authority" over the Hunter Biden case. Instead, Biden Administration political appointees exercised significant oversight and control over the investigation. As one example, the Biden Justice Department worked closely with Hunter Biden's counsel to craft an unprecedented plea deal, that was so biased in the direction of Hunter Biden, it fell apart in open court.

The Committees are committed to ensuring that all Americans receive fair and uniform treatment under the law. The Committees' work is not complete, and the Committees' oversight will continue despite the Biden Administration's attempts to severely limit, obstruct, and curtail the Committees' inquiry. The Committees will continue to pursue relevant documents and seek key testimony from individuals that were intimately involved in the Department's mishandling of the Hunter Biden investigation.⁴⁴² The Committees' continued oversight will inform the ongoing impeachment inquiry,⁴⁴³ as well as inform potential legislation, which could include strengthening laws protecting whistleblowers from retaliation, reforming the "special attorney" statute,⁴⁴⁴ codifying the special counsel regulations,⁴⁴⁵ and reforming the Department's Tax Division. The Committees will supplement this interim staff report as necessary.

⁴⁴² See Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Merrick B. Garland, Att'y Gen., U.S. Dep't of Just. (June 29, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Merrick B. Garland, Att'y Gen., U.S. Dep't of Just. (July 21, 2023).

⁴⁴³ Memorandum from Chairmen Jim Jordan, James Comer, and Jason Smith, to Members of the H. Comm. on the Judiciary, H. Comm. on Oversight & Accountability, and H. Comm. on Ways & Means (Sept. 27, 2023).

⁴⁴⁴ See 28 U.S.C. § 515.

⁴⁴⁵ See 28 C.F.R. § 600 *et seq.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit H

Congress of the United States
Washington, DC 20515

July 21, 2023

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Garland:

In the wake of testimony from brave Internal Revenue Service whistleblowers about special treatment for the son of President Biden during the course of a criminal investigation, our Committees are conducting oversight of the Executive Branch's commitment to impartial justice, as well as investigating the veracity of statements made in response to congressional inquiries. As part of this oversight, on June 29, 2023, we requested you make eleven Department of Justice officials available for transcribed interviews before the Judiciary Committee.¹ The Department's July 13 response letter raised several bases for why the Department could not comply immediately with our request.² We write to address these bases and to reiterate our request for the Department's voluntary cooperation.

The Department's July 13 response letter questioned the Committees' legislative purpose in conducting our oversight of the Justice Department's preferential treatment afforded to Hunter Biden.³ There is no serious dispute that the Committees have a legislative purpose to examine how the Department has handled these matters. The Supreme Court has recognized that Congress has a "broad and indispensable" power to conduct oversight,⁴ and that a legislative purpose is valid if it "concern[s] a subject on which legislation could be had."⁵ In this matter, Congress may consider a number of legislative proposals including, but not limited to, reforming the "special attorney" statute,⁶ codifying the special counsel regulations,⁷ reforming the Tax Division of the

¹ Letter from Chairmen Jim Jordan, Jason Smith, and James Comer, to Merrick B. Garland, Att'y Gen., U.S. Dep't of Just. (June 29, 2023).

² Letter from Carlos Felipe Uriarte, Assistant Att'y Gen., U.S. Dep't of Just., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 13, 2023) [hereinafter July 13 Letter].

³ *Id.*

⁴ *Trump v. Mazars*, 140 S. Ct. 2019, 2031 (2020) (internal quotation marks omitted).

⁵ *Id.* (internal quotation marks omitted).

⁶ 28 U.S.C. § 515.

⁷ 28 C.F.R. § 600 *et seq.*

The Honorable Merrick B. Garland

July 21, 2023

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Department of Justice and its interactions with the IRS, and expanding the ability of the IRS, including whistleblowers, to share certain tax information with Congress.⁸

The Supreme Court has also recognized that a legislative purpose exists where Congress seeks information from the Executive Branch about “corruption, maladministration or inefficiency in agencies of the Government.”⁹ Here, whistleblowers have brought forward numerous concerns, backed by contemporaneous documentary evidence, of corruption (e.g., preferential treatment for the President’s son), maladministration (e.g., retaliation against whistleblowers), and inefficiency (e.g., an investigation so bogged down by delays and micromanagement that the statute of limitations lapsed before prosecutors could file certain charges). These are among the matters about which the Committees require testimony to inform potential legislative reforms.

The Department’s July 13 letter also asserted that it may not engage with Congress about pending investigations.¹⁰ In support of this proposition, the Department cited a nonbinding, twenty-three year old letter to a House subcommittee chairman.¹¹ The Department’s suggestion that it can dictate the “timing and scope” of the Committee’s oversight because of ongoing nature of the Department’s investigation lacks any valid legal basis and the Committees do not accept it as a legitimate reason to delay its oversight efforts.¹² Even assuming the Department is correct, as it has acknowledged, the U.S. District Court for the District of Delaware will consider Hunter Biden’s plea agreement on July 26.¹³ At that time, it is the Committees’ understanding that the Department’s prosecution will have concluded, the matter will be closed, and there will no longer be any reason for the Department to not comply in full with our requests.¹⁴

The Department’s July 13 response endorsed the statements previously made to the Judiciary Committee by U.S. Attorney for the District of Delaware, David Weiss, regarding his authority to investigate and prosecute Hunter Biden. Weiss’s representations about his authority, however, have shifted over time. Initially, in response to a letter addressed to you, Weiss asserted: “*I have been granted ultimate authority* over this matter, including responsibility for deciding where, when, and whether to file charges”¹⁵ Subsequently, in his June 30 letter to the Judiciary Committee, Weiss claimed that his “charging authority is geographically limited to [his] home district” and that “[i]f venue for a case lies elsewhere, common Departmental practice

⁸ See, e.g., 26 U.S.C. § 6103(f).

⁹ *Watkins v. United States*, 354 U.S. 178, 200 n.33 (1957).

¹⁰ July 13 Letter, *supra* note 2.

¹¹ *Id.* (citing Letter from Robert Raben, Assistant Att’y Gen., U.S. Dep’t of Just., to Rep. John Linder, Chairman, Subcomm. on Rules & Orgs. of the H. Comm. on Rules (Jan. 27, 200)).

¹² *Id.* Cf. William McGurn, Opinion, *The ‘Ongoing Investigation’ Dodge on Hunter Biden*, WALL ST. J. (July 10, 2023) (quoting former Assistant U.S. Attorney Andrew McCarthy as stating, “The executive branch response of ‘ongoing investigation’ is really a political objection, rather than a legal one. There is no ‘ongoing investigation’ privilege.”).

¹³ July 13 Letter, *supra* note 2.

¹⁴ See Ed. Bd., *Hunter Biden’s Prosecutor Keeps Dodging Congress*, WALL ST. J. (July 10, 2023) (“In his letter Mr. Weiss again refused to discuss anything further about his ‘ongoing investigation.’ But if he’s settled the case, why is it ‘ongoing’?”).

¹⁵ Letter from David C. Weiss, U.S. Att’y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 7, 2023) (emphasis added).

The Honorable Merrick B. Garland

July 21, 2023

Page 3

is to contact the United States Attorney's Office for the district in question and determine whether it wants to partner on the case.”¹⁶ If a fellow U.S. Attorney declined to “partner,” Weiss explained, he would have had to request “Special Attorney” status, which he claimed to “have been assured that, if necessary” he would receive.¹⁷ Finally, in a July 10 letter to Senator Lindsey Graham, Weiss acknowledged that he had “discussions” with unnamed “Departmental officials” about seeking Special Attorney status and “was assured” the authority would be granted.¹⁸

In other words, in his first letter, Weiss represented to the Judiciary Committee that he *had been* granted ultimate authority with respect to the filing of charges. But in his second letter, Weiss told the Committee that he had been assured by unnamed officials that he *would be* granted that authority in the future if necessary after going through a specified process, and he notably provided no explanation of who would make the determination of necessity. These are inconsistent representations, and it is not possible for both of them to be true.

Weiss's shifting statements about his authority to bring charges against Hunter Biden, especially his authority to bring charges outside of Delaware, suggest that improper political considerations factored into the Department's investigative and prosecutorial function. In addition, at least some of Weiss's statements to the Judiciary Committee contradict his own statement to line-level investigators in October 2022, in which he indicated that he was not the “deciding official” on bringing charges against Hunter Biden.¹⁹ This statement was memorialized contemporaneously in an email sent by IRS whistleblower Gary Shapley; and none of the other participants in the meeting at which Weiss made this assertion have contradicted Shapley's account.

On a recent teleconference with Judiciary Committee staff, the Department confirmed that Weiss would appear before the Committee. While we look forward to Weiss appearing at a hearing at the appropriate time, we must first conduct our investigative work, including conducting the transcribed interview of witnesses identified in our June 29 letter. As we explained in that letter, the Department has made available non-Senate-confirmed and line-level employees for testimony to Congress in the past, and we expect no deviation from this precedent in this matter. Accordingly, we write to reiterate our outstanding requests for transcribed interviews with the Department and FBI officials listed in our June 29 letter.

Please contact the Judiciary Committee as soon as possible, but no later than 5:00 p.m. on July 24, 2023, to schedule these transcribed interviews. Absent cooperation with this request, the Judiciary Committee will issue subpoenas to obtain the required testimony.

¹⁶ Letter from David C. Weiss, U.S. Att'y, Dist. of Del., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 30, 2023).

¹⁷ *Id.*

¹⁸ Letter from David C. Weiss, U.S. Att'y, Dist. of Del., to Sen. Lindsey O. Graham, Ranking Member, S. Comm. on the Judiciary (July 10, 2023).

¹⁹ Transcribed Interview of Gary A. Shapley, Jr., Supervisory Special Agent, Internal Revenue Serv., at 28 (May 26, 2023); Transcribed Interview of [Redacted], Special Agent, Internal Revenue Serv., at 40 (June 1, 2023).

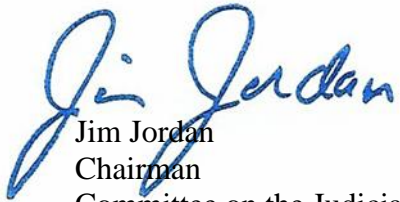
The Honorable Merrick B. Garland

July 21, 2023

Page 4

Thank you for your attention to this matter.

Sincerely,



Jim Jordan
Chairman
Committee on the Judiciary



Jason Smith
Chairman
Committee on Ways and Means



James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jerrold L. Nadler, Ranking Member
Committee on the Judiciary

The Honorable Richard E. Neal, Ranking Member
Committee on Ways and Means

The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

The Honorable Daniel Werfel, Commissioner of the Internal Revenue Service

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit I

JIM JORDAN, Ohio
CHAIRMAN

JERROLD NADLER, New York
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

February 28, 2023

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland:

The Committee on the Judiciary is conducting oversight over the operations and activities of the Department of Justice. The Department's investigation of Hunter Biden, son of President Biden, raises the appearance of a conflict of interest that would necessitate special counsel protections and authorities.¹ However, to date, you have declined to appoint a special counsel in this matter, despite appointing special counsels in other investigations.² Your refusal to appoint a special counsel here is conspicuous in this context.³ Accordingly, to further our oversight, we ask that you please provide the following documents:

1. All documents and communications sent or received by David Weiss or any employee of the U.S. Attorney's Office for the District of Delaware referring or relating to special counsel status for the investigation concerning Hunter Biden; and
2. All documents and communications between or among employees of the U.S. Attorney's Office for the District of Delaware and employees of any other U.S. Attorney's Office with venue to bring charges against Hunter Biden or his associates in that jurisdiction.

¹ See generally Letter from 33 U.S. Senators, to Hon. Merrick B. Garland, Att'y Gen., Dep't of Justice (Sept. 16, 2022); General Powers of Special Counsel, 28 C.F.R. § 600.1 (2010).

² Carrie Johnson, *A special counsel will probe government documents at Biden's home and private office*, NPR (Jan. 12, 2023).

³ See Letter from Sens. Charles E. Grassley & Ron Johnson, U.S. Senate, to Hon. David Weiss, U.S. Att'y, Dist. Del. (May 9, 2022).

The Honorable Merrick B. Garland

February 28, 2023

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Please provide this information as soon as possible but no later than 5:00 p.m. on March 14, 2023. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is fluid and cursive, with the first name "Jim" and last name "Jordan" clearly distinguishable.

Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit J

Congress of the United States
Washington, DC 20515

June 29, 2023

The Honorable Merrick B. Garland
Attorney General
Department of Justice
Washington, DC 20530

Dear Attorney General Garland:

Our Committees are continuing to conduct oversight of the programs and operations of the Department of Justice and Internal Revenue Service within their respective jurisdictions. Recent startling testimony from Internal Revenue Service whistleblowers raises serious questions about the Department's commitment to evenhanded justice and the veracity of assertions made to the Committee on the Judiciary. In order to fully assess these allegations, testimony is required from several Department and Federal Bureau of Investigation employees. We expect your full cooperation as we arrange these transcribed interviews.

From recent testimony before the Ways and Means Committee, we have identified several Department employees who we believe to possess information concerning allegations of politicization and misconduct with respect to the Department's investigation of Hunter Biden. Specifically, the Committees seek to examine whistleblower claims that the Department's investigation of Hunter Biden was purposely slow-walked and subjected to improper and politically motivated interference.¹ The Committees must obtain the first-hand testimony from these individuals to fully assess the serious allegations raised by these brave IRS whistleblowers. Accordingly, we ask that you initially make the following Department employees available for transcribed interviews before the Judiciary Committee promptly:

- | | |
|----------------------|--------------------------|
| 1. Lesley Wolf | 7. Stuart Goldberg |
| 2. Jack Morgan | 8. Shawn Weede |
| 3. Mark Daly | 9. Shannon Hanson |
| 4. Matthew Graves | 10. Tom Sobocinski (FBI) |
| 5. E. Martin Estrada | 11. Ryeshia Holley (FBI) |
| 6. David Weiss | |

We anticipate that we may require testimony from additional Department or FBI employees as our oversight continues, and we expect your cooperation in facilitating these future interviews as well. To the extent that the Department attempts to interfere with our oversight by asserting that line-level employees are off-limits to congressional oversight, please be advised that we will not

¹ See Transcribed interview of Gary Shapley, Internal Revenue Service (May 26, 2023); Transcribed interview of Case Agent, Internal Revenue Service (June 1, 2023).

The Honorable Merrick B. Garland

June 29, 2023

Page 2

accept that excuse. Congressional committees have regularly received testimony from non-Senate-confirmed and line-level Justice Department employees in the past.² We expect this past precedent to apply to our oversight in this matter as well.

The Supreme Court has recognized that Congress has a “broad and indispensable” power to conduct oversight, which “encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them.”³ Pursuant to Rule X of the Rules of the House of Representatives, the Committee on the Judiciary has jurisdiction over criminal justice matters in the United States.⁴ The Committee on Ways and Means is authorized to conduct oversight of the Internal Revenue Service and the administration of the Internal Revenue Code. The Committee on Oversight and Accountability may examine “any matter” at any time. The Committees’ need to obtain first-hand testimony from Department employees is vital for carrying out our oversight and for informing potential legislative reforms to the operations and activities of the Department.

To avoid any unnecessary delay, we ask that you please direct your staff to work with the Judiciary Committee staff to begin scheduling these transcribed interviews as soon as possible, but no later than 5:00 p.m. on July 13, 2023. Please be aware that the Committees will resort to compulsory process to obtain the required testimony. Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman
Committee on the Judiciary



Jason Smith
Chairman
Committee on Ways and Means



James Comer
Chairman
Committee on Oversight and Accountability

² See, e.g., Transcribed interview of Gary Grindler, U.S. Dep’t of Justice (Dec. 14, 2011); Transcribed interview of Jack Smith, U.S. Dep’t of Justice (May 29, 2014); Transcribed interview of Richard Pilger, U.S. Dep’t of Justice (May 6, 2014); Transcribed interview Maame Frimpong, U.S. Dep’t of Justice (July 19, 2016); Transcribed interview of Michael B. Steinbach, U.S. Dep’t of Justice (June 16, 2020); Transcribed interview of Bruce Ohr, U.S. Dep’t of Justice (June 30, 2020); Transcribed interview of Stuart Evans, U.S. Dep’t of Justice (July 31, 2020); Transcribed interview of Deputy Chief, Counterintelligence and Export Control Section, U.S. Dep’t of Justice (Sept. 18, 2020).

³ See, e.g., *Trump v. Mazars LLP*, No. 19-715 at 11 (U.S. slip op. July 9, 2020) (internal quotation marks and citations omitted).

⁴ Rules of the U.S. House of Representatives, R. X (2023).

The Honorable Merrick B. Garland

June 29, 2023

Page 3

cc: The Honorable Jerrold L. Nadler, Ranking Member
Committee on the Judiciary

The Honorable Richard E. Neal, Ranking Member
Committee on Ways and Means

The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit K

Congress of the United States
Washington, DC 20515

July 31, 2023

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland:

The Committees on Judiciary, Ways and Means, and Oversight and Accountability are continuing their oversight of the Executive Branch's commitment to impartial justice, as well as investigating the veracity of statements made in response to congressional inquiries related to the Department of Justice's investigation of Hunter Biden. Given recent unusual events relating to the Department's plea and pretrial diversion agreements with Mr. Biden, we write to better understand the Department's decision to sign off on such apparently atypical agreements.

According to court documents and recent news reports, Judge Maryellen Noreika of the United States District Court for the District of Delaware declined to accept on Wednesday the Department's plea and pretrial diversion agreements with Mr. Biden.¹ The plea agreement relates to tax charges that have been brought against Mr. Biden while the pretrial diversion agreement pertains to a firearms charge. Judge Noreika described the Department's deal as "not standard" and "different from what I normally see."²

Paragraph 14 of the Pretrial Diversion Agreement

Judge Noreika raised substantial concerns with paragraph 14 of the pretrial diversion agreement. Normally, if the Department determines that a defendant has breached a pretrial diversion agreement, it can unilaterally decide to bring charges against that defendant; it does not require the District Court's permission to do so. But as described by Judge Noreika, paragraph 14 of Mr. Biden's pretrial diversion agreement:

says if the United States believes that a knowing material breach of this agreement has occurred, it may seek a determination by the United States District Judge for the District of Delaware with responsibility for the supervision of this agreement. It then goes on to say that if I do find a breach, then the government can either give

¹ Transcript of Record at 108, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. July, 26, 2023). *See also*, Glenn Thrush and Michael S. Schmidt, *Judge delays Hunter Biden plea deal*, N.Y. TIMES (July 26, 2023); Perry Stein, Karl Baker, Devlin Barrett, and Matt Viser, *Judge puts Hunter Biden guilty plea on hold for now*, WASH. POST (July 26, 2023) Phil McCausland and Tom Winter, *Hunter Biden pleads not guilty after plea deal is derailed*, NBC NEWS (July 26, 2023).

² Transcript of Record at 10, *U.S. v. Robert Hunter Biden*, No. 23-mj-274-MN, No. 23-cr-61-MN (D. Del. July, 26, 2023).

The Honorable Merrick B. Garland

July 31, 2023

Page 2

the Defendant time to remedy the breach or prosecute him for the crime that is the subject of the information or any other that falls within the language of the agreement.³

Thus, paragraph 14 of the pretrial diversion agreement means that unless Judge Noreika makes a finding that the pretrial diversion agreement has been breached, “no criminal charges can be pursued [against Mr. Biden] for the gun charge or any other federal charge within the scope of the agreement not to be prosecuted.”⁴

At the hearing, Judge Noreika asked the Special Assistant United States Attorney (SAUSA) whether he “ha[d] any authority that any Court has ever accepted that or said that they would do that?”⁵ The SAUSA responded, “No.”⁶ Moreover, Judge Noreika expressed concerns about the constitutionality of the provision because “it makes me a gatekeeper to criminal charges and puts me in the middle of a decision as to whether to bring a charge.”⁷ She noted, “[T]he government does not have discretion to continue to pursue this charge or any other charge unless you include the Court. And that seems like it’s getting outside of my lane in terms of what I am allowed to do.”⁸

Judge Noreika reiterated: “I asked if there is any precedent for this, I was told no. I was asked if there is any authority for this, I was told no.”⁹

Paragraph 15 of the Pretrial Diversion Agreement

Paragraph 15 of the pretrial diversion agreement states: “The United States agrees not to criminally prosecute Biden, outside of the terms of this Agreement, for any federal crimes encompassed by the attached Statement of Facts (Attachment A) and the Statement of Facts attached as Exhibit 1 to the Memorandum of Plea Agreement filed this same day.” This grant of immunity in the pretrial diversion agreement therefore not only covers the gun-related conduct addressed by the pretrial diversion agreement but also the *entirely unrelated conduct covered by the plea agreement*.

During the hearing, Judge Noreika questioned the Department about this apparently unusual provision, asking whether the SAUSA “had any precedent for agreeing not to prosecute crimes that have nothing to do with the case or the charges being diverted.”¹⁰ The SAUSA responded: “I’m not aware of any, Your Honor.”¹¹ Judge Noreika followed up by asking the

³ Transcript of Record at 92-93.

⁴ *Id.* at 94.

⁵ *Id.* 95

⁶ *Id.* 95.

⁷ *Id.* 95.

⁸ *Id.* 98

⁹ *Id.* 103.

¹⁰ *Id.* at 46

¹¹ *Id.*

The Honorable Merrick B. Garland

July 31, 2023

Page 3

prosecutor: “[H]ave you ever seen a Diversion Agreement where the agreement not to prosecute is so broad that it encompasses crimes in a different case?”¹² The SAUSA’s answer was “No.”¹³

Impact of Unusual Provisions

Taken individually, each of the provisions discussed above raises serious concerns about how the Department has handled this matter. But when considered together, the provisions appear to be even more troubling. Judge Noreika explained the problem: “What’s funny to me is you put me right smack in the middle of the Diversion Agreement that I should have no role in, you plop [me] right in there and then on the thing that I would normally have the ability to sign off on or look at in the context of a Plea Agreement, you just take it out and you say Your Honor, don’t pay any attention to that provision not to prosecute because we put it in an agreement that’s beyond your ability.”¹⁴

In short, the Department shifted a broad immunity provision, which benefits Mr. Biden, from the plea agreement to the pretrial diversion agreement apparently to prevent the District Court from being able to scrutinize and reject that immunity provision. And then, the Department has benefitted Mr. Biden by giving up its unilateral ability to bring charges against him if it concludes that he has breached the pretrial diversion agreement. Instead, it has placed upon itself the burden of getting the District Court’s permission to bring charges even though the District Court normally has no role in policing a pretrial diversion agreement in that manner. So, the District Court is apparently removed from the equation when it helps Mr. Biden and inserted into the equation when it helps Mr. Biden.

Status of Ongoing Investigation

The Committees are also concerned that, contrary to its representations to the Judiciary Committee,¹⁵ the Department may be claiming that other investigations into Mr. Biden are ongoing to shield the Department from Congressional oversight about this matter.¹⁶ In that regard, it was notable that Mr. Biden’s counsel stated at the hearing that it was his understanding that the immunity provision in the pretrial diversion agreement would preclude the Department from bringing charges against Mr. Biden under the Foreign Agents Registration Act.¹⁷ While the Department did not agree with that position, it is difficult to understand how the parties would not have a meeting of the minds regarding a clause of the agreement as fundamental as the scope of the immunity provision, and it raises questions about what discussions have taken place between the Department and Mr. Biden’s counsel regarding the status of those investigations.

¹² *Id.* at 47.

¹³ *Id.*

¹⁴ *Id.* at 104.

¹⁵ Letter from Carlos Uriarte, Assistant Att’y Gen., U.S. Dep’t of Just., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 24, 2023).

¹⁶ Fox News Staff, *Jonathan Turley skewers DOJ after Hunter Biden plea deal falls apart: ‘A problem of their own making’*, FOX NEWS (July 26, 2023) (quoting Professor Jonathan Turley as stating, “This is really a case of the Department of Justice being hoisted on its own petard, because the Justice Department needs to say that there’s an ongoing investigation to stop giving information, holding back witnesses to Congress.”).

¹⁷ Transcript of Record at 55.

The Honorable Merrick B. Garland

July 31, 2023

Page 4

Questions/Requests for Documents and Information

The Department's unusual plea and pretrial diversion agreements with Mr. Biden raise serious concerns—especially when combined with recent whistleblower allegations—that the Department has provided preferential treatment toward Mr. Biden in the course of its investigation and proposed resolution of his alleged criminal conduct.¹⁸ The Committees therefore request that the Department provide written answers to the following questions:

1. Other than Mr. Biden's case, how many times in the last ten years has the U.S. Attorney's Office for the District of Delaware included in a pretrial diversion agreement a provision similar to paragraph 14 of the agreement with Mr. Biden? What percentage of the total pretrial diversion agreements entered into by the U.S. Attorney's Office for the District of Delaware does that number represent?
2. Other than Mr. Biden's case, how many times in the last ten years has any unit of the Department included in a pretrial diversion agreement a provision similar to paragraph 14 of the agreement with Mr. Biden? What percentage of total pretrial diversion agreements entered into by the Department does that number represent?
3. Other than Mr. Biden's case, how many times in the last ten years has the U.S. Attorney's Office for the District of Delaware included in a pretrial diversion agreement an agreement not to prosecute crimes that are unrelated to the charges being diverted? What percentage of the total pretrial diversion agreements entered into by the U.S. Attorney's Office for the District of Delaware does that number represent?
4. Other than Mr. Biden's case, how many times in the last ten years has any unit of the Department included in a pretrial diversion agreement an agreement not to prosecute crimes that are unrelated to the charges being diverted? What percentage of the total pretrial diversion agreements entered into by the Department does that number represent?
5. Did the U.S. Attorney's Office for the District of Delaware or Mr. Biden's counsel suggest placing paragraph 14 into the pretrial diversion agreement and requiring the District Court to give the Department permission to bring charges against Mr. Biden in the event the Department determines that he has breached the agreement?
6. Did the U.S. Attorney's Office for the District of Delaware or Mr. Biden's counsel suggest placing in the pretrial diversion agreement immunity for conduct described in the plea agreement?

Additionally, to advance our oversight and inform potential legislative reforms, please provide the Committees with the following documents and information:

¹⁸ Transcribed Interview of Gary A. Shapley, Jr., Supervisory Special Agent, Internal Revenue Serv., at 10 (May 26, 2023); Transcribed Interview of Joseph Ziegler, Special Agent, Internal Revenue Serv., at 120, 128 (June 1, 2023).

The Honorable Merrick B. Garland

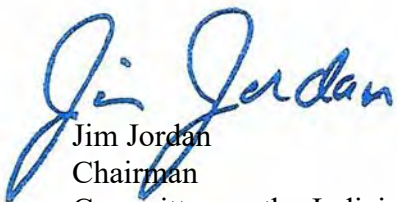
July 31, 2023

Page 5

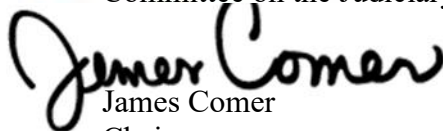
1. A list of similar pretrial diversion agreements entered into by the Department in the last ten years concerning the same charge of felony possession of a firearm by a person who is an unlawful user of or addicted to a controlled substance;
2. All documents and communications referring or relating to each similar pretrial diversion agreement entered into by the Department in the last ten years concerning the same charge of felony possession of a firearm by a person who is an unlawful user of or addicted to a controlled substance;
3. A list of pretrial diversion agreements entered into by the Department in the last ten years that include a provision similar to paragraph 14 of the agreement with Hunter Biden;
4. A list of pretrial diversion agreements entered into by the Department in the last ten years in which the Department agrees not to prosecute crimes that are unrelated to the charges being diverted;
5. A generalized description of the nature of the Department's ongoing investigation(s) concerning Hunter Biden; and
6. An explanation of why the Department originally agreed to a plea agreement if other investigation(s) concerning Hunter Biden are ongoing.

Please provide this information as soon as possible but no later than 5:00 p.m. on August 14, 2023. Additionally, please reach out to the Committees' staff to schedule a briefing regarding the nature of the Department's ongoing investigation(s) concerning Hunter Biden. Pursuant to Rule X of the Rules of the House of Representatives, the Committee on the Judiciary has jurisdiction over criminal justice matters in the United States.¹⁹ The Committee on Ways and Means is authorized to conduct oversight of the Internal Revenue Service and the administration of the Internal Revenue Code. The Committee on Oversight and Accountability may examine "any matter" at any time.

Thank you for your prompt attention to this matter.

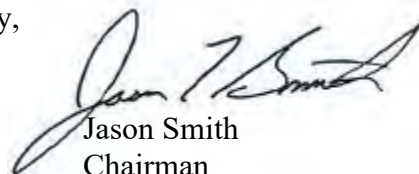


Jim Jordan
Chairman
Committee on the Judiciary



James Comer
Chairman
Committee on Oversight and Accountability

Sincerely,



Jason Smith
Chairman
Committee on Ways and Means

¹⁹ Rules of the U.S. House of Representatives, R. X, 118th Cong. (2023).

The Honorable Merrick B. Garland

July 31, 2023

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cc: The Honorable Jerrold L. Nadler, Ranking Member
Committee on the Judiciary

The Honorable Richard E. Neal, Ranking Member
Committee on Ways and Means

The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit L

Inside the Collapse of Hunter Biden's Plea Deal

An examination of confidential correspondence and interviews with those close to Mr. Biden and lawyers involved in the case show how the deal ultimately fell apart amid schisms and withering external pressures.



By Michael S. Schmidt, Luke Broadwater and Glenn Thrush

Aug. 19, 2023

There were signs, subtle but unmistakable, that Hunter Biden's high-stakes plea agreement with federal prosecutors might be on shaky ground hours before it went public in June, according to emails sent by his legal team to the U.S. attorney's office in Delaware.

When one of Mr. Biden's lawyers sent over the draft of the statement they intended to share with the news media, a top deputy to David C. Weiss, who had overseen the inquiry since 2018, asked to remove two words describing the status of the investigation, according to interviews and internal correspondence on the deal obtained by The New York Times. "Concluded" and "conclusion" should be replaced with the weaker "resolved," the deputy said.

Six weeks later, the federal judge presiding over a hearing on the agreement would expose even deeper divisions and the deal imploded, prompting Mr. Weiss to seek appointment as special counsel with the freedom to expand the inquiry and bring new charges.

The deal's collapse — chronicled in over 200 pages of confidential correspondence between Mr. Weiss's office and Mr. Biden's legal team, and interviews with those close to Mr. Biden, lawyers involved in the case and Justice Department officials — came after intense negotiations that started with the prospect that Mr. Biden would not be charged at all and now could end in his possible indictment and trial.

Earlier this year, The Times found, Mr. Weiss appeared willing to forgo any prosecution of Mr. Biden at all, and his office came close to agreeing to end the investigation without requiring a guilty plea on any charges. But the correspondence reveals that his position, relayed through his staff, changed in the spring, around the time a pair of I.R.S. officials on the case accused the Justice Department of hamstringing the investigation. Mr. Weiss suddenly demanded that Mr. Biden plead guilty to committing tax offenses.

Now, the I.R.S. agents and their Republican allies say they believe the evidence they brought forward, at the precise time they did, played a role in influencing the outcome, a claim senior law enforcement officials dispute. While Mr. Biden's legal team agrees that the I.R.S. agents affected the deal, his lawyers have contended to the Justice Department that by disclosing details about the investigation to Congress, they broke the law and should be prosecuted.

"It appears that if it weren't for the courageous actions of these whistle-blowers, who had nothing to gain and everything to lose, Hunter Biden would never have been charged at all," a team of lawyers for one of the I.R.S. agents said in a statement, adding that the initial agreement reflected preferential treatment.

A spokesman for Mr. Weiss had no comment. He is legally barred from discussing an open investigation, and a senior law enforcement official with knowledge of the situation pushed back on the idea that Mr. Weiss had been influenced by outside pressures, and ascribed any shifts to the typical ebb and flow of negotiations.

The documents and interviews also show that the relationship between Mr. Biden's legal team and Mr. Weiss's office reached a breaking point at a crucial moment after one of his top deputies — who had become a target of the I.R.S. agents and Republican allies — left the team for reasons that remain unclear.



Two I.R.S. officials accused the Justice Department of hamstringing their investigation of Hunter Biden.
Hailey Sadler for The New York Times

Above all, this inside chronicle of the agreement vividly illustrates the difficulty of the task facing Justice Department officials like Mr. Weiss, who have been called upon to investigate prominent figures at a time of extreme polarization, when the nation's political and criminal justice systems are intertwining in treacherous and unpredictable ways.

No one supervising a comparable inquiry in recent years — like those who oversaw the investigations into Hillary Clinton and Donald J. Trump — managed to smoothly unwind their investigations when they chose not to indict their targets.

Precisely what happens next is unclear. Mr. Biden's top lawyer has quit, and accused prosecutors of reneging on their commitments. And Republicans, who waged an all-out war to discredit the deal, are seeking to maximize the political

damage to President Biden, seeing it as a counter to the four criminal prosecutions of Mr. Trump, their party's presidential front-runner.

Mr. Weiss had a few reasons to ask Attorney General Merrick B. Garland to appoint him special counsel. The status could grant him greater authority to pursue leads around the country, and could provide him with added leverage in a revamped deal with Mr. Biden. But he was also motivated by a requirement to produce a report that would allow him to answer critics, according to people with knowledge of the situation — an accounting that could become public before the 2024 election.



David C. Weiss was appointed special counsel after the implosion of an agreement that would have spared the president's son prison time. Suchat Pederson/The News Journal, via Associated Press

An Opening Bid

In January, Christopher J. Clark, a lawyer for Hunter Biden, arrived in Wilmington, Del., to push Mr. Weiss to end the investigation into the president's troubled son that had, at that point, dragged on for more than four years.

Mr. Clark began by telling Mr. Weiss that his legacy would be defined by how he handled this decision.

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If his host somehow missed the message, Mr. Clark followed up with an even more dramatic gesture, reading a quote from a Supreme Court justice, Robert Jackson, who had been a prosecutor at the Nuremberg trials: Prosecutors could always find “a technical violation of some act on the part of almost anyone” but should never succumb to pressure from the powerful.

That first face-to-face interaction, between a fiery white-collar defense lawyer who has represented Elon Musk and a late-career federal prosecutor known for keeping his gray-haired head down, set into motion months of intense negotiations that led to an agreement that appeared to end Mr. Biden's tax and firearms violations, only to derail over the extent of his immunity from future prosecution.

Mr. Biden's foreign business ventures, especially when his father was vice president and later when he was addicted to crack cocaine, had long raised ethical and legal concerns. In 2018, Mr. Weiss was quietly assigned the Hunter Biden investigation and then kept on by Justice Department officials in the Biden administration to complete the job.

Mr. Weiss cast a wide net from the start, examining a range of Mr. Biden's business dealings, his finances and personal conduct. But the inquiry eventually narrowed.

By late 2022, Mr. Weiss — who relied on the work of I.R.S. investigators, the F.B.I. and lawyers in the Justice Department's tax division — had found some evidence but determined that he did not have sufficient grounds to indict Mr. Biden for major felonies, according to several people familiar with the situation.

Mr. Weiss told an associate that he preferred not to bring any charges, even misdemeanors, against Mr. Biden because the average American would not be prosecuted for similar offenses. (A senior law enforcement official forcefully denied the account.)

But in January, the two sides hunkered down on the business at hand. Mr. Clark first tried to undermine the gun case, arguing that the charge was likely unconstitutional and citing recent legal challenges after the Supreme Court's decision last year expanding gun rights.

Then he took on the tax case, laying out with slides how Mr. Trump's longtime confidant, Roger J. Stone Jr., had failed to pay his taxes for several more years than Mr. Biden but had been allowed to deal with it civilly and had faced no criminal punishment.

Mr. Weiss seemed noncommittal.

If he chose not to charge, members of Mr. Biden's legal team believed Mr. Weiss still wanted something from Mr. Biden — like an agreement to never own a gun again — to show there was some accountability after his long-running inquiry.

Mr. Clark would have to wait awhile to find out.



When Republicans took over the House in 2022, they had pledged to conduct investigations into the younger Mr. Biden. Al Drago for The New York Times

Four months later, on Monday, May 15, a familiar figure reached out to Mr. Clark: Lesley Wolf, a top Weiss deputy with whom Mr. Clark had developed a rapport over the previous two years. In a conference call with the Biden legal team, she acknowledged Mr. Clark's core demand: that his client never be asked to plead guilty to anything.

She then made a proposition — a deal in which Mr. Biden would not plead guilty, but would agree to what is known as a deferred prosecution agreement.

Such a deal allows a person charged with a crime to avoid entering a formal plea if he or she agrees to abide by a series of conditions, like enrolling in drug treatment or anti-violence programs, relinquishing ownership of weapons or forgoing alcohol.

The agreements, widely used to avoid clogging courts and jails with low-level offenders, have legal teeth. If the terms are violated, a person can be charged with the original crimes.

Mr. Clark — knowing Mr. Biden wanted to bring an end to the investigation that had hovered over him, his family and the Biden White House — was amenable. He told Ms. Wolf he would draft language for such an agreement, an opening bid that would kick off final talks.

By Thursday, Mr. Clark and his legal team sent Ms. Wolf their version of an agreement. It made no mention of a guilty plea, but included a promise that Mr. Biden would never again possess a gun and a pledge that he would pay his taxes.

Ms. Wolf suggested additions, including a demand for a statement of facts, a detailed and unflattering narrative of an individual's conduct that had been investigated.

The parties then turned to the most important provision of all, an issue that would ultimately unravel the deal: Mr. Clark's sweeping request for immunity not only for all potential crimes investigated by Mr. Weiss, but also for "any other federal crimes relating to matters investigated by the United States" he might have ever committed.

Ms. Wolf appears to have discarded Mr. Clark's language. Mr. Clark pushed back in a call with Mr. Weiss and the language was replaced with a narrower promise not to prosecute for any of the offenses "encompassed" in the statement of facts.

The end seemed in sight. When the basic outline was hashed out, Mr. Clark asked Ms. Wolf if she was serious about finalizing the agreement — if so, he would fly out to California to explain the terms to his nervous client.

Take the trip, she said.

Mr. Clark ran all of this by Mr. Biden in a meeting at his Malibu house — in a garage where he works on his paintings. He approved the plan.

That Friday, Mr. Clark asked Ms. Wolf if he should stay in California to finalize the deal in Mr. Biden's presence over the weekend.

No, she replied, it would take her a few more days.

Mr. Clark, believing that they were on the brink of a deal, flew back to New York.



Gary Shapley, a veteran I.R.S. investigator, tried to pursue what he believed could be a major break in the Biden investigation. Kenny Holston/The New York Times

Outcry on Capitol Hill

But on Capitol Hill, the efforts to upend a resolution were gaining momentum.

While Mr. Weiss concluded that there was not enough evidence to charge Mr. Biden with major crimes, not all his colleagues shared that opinion. The perception that Mr. Biden was being treated too softly spurred resistance among some

investigators who believed that his office had blocked them from following all leads.

Few were more frustrated than Gary Shapley. A veteran I.R.S. investigator, he had worked major cases and helped take on big bankers. But every time he said he tried to pursue what he believed could be a major break in the Biden investigation, he felt stymied.

When investigators went to interview Hunter Biden, they were told they couldn't approach the house. An attempt to serve a search warrant on Joseph R. Biden Jr.'s guesthouse? Denied. The request to search a storage unit belonging to Hunter Biden? Derailed.

Finally, he reached out to Mark Lytle, a former federal prosecutor, and the men eventually connected with former Republican staff members who had worked for Senator Charles E. Grassley, Republican of Iowa, and had knowledge of federal whistle-blower protections.

Mr. Shapley had been raising concerns internally since at least the fall of 2022, but that winter, he took his allegations to the Justice Department's watchdog, lodging a complaint in February.

By April, Mr. Shapley offered to share insider details with House Republican committee investigators, including his claim that Mr. Weiss had told him that federal prosecutors in Washington and California had refused to bring tax charges against Mr. Biden. His most startling allegation: Mr. Weiss had been so frustrated that he had considered asking Mr. Garland to appoint him as special counsel in late 2022. (Mr. Weiss and Mr. Garland have both denied that account.)



“I am committed to making as much of his report public as possible,” said Attorney General Merrick B. Garland, who has minimized contact with Mr. Weiss in hopes of insulating himself from the investigation into the president’s son. Kenny Holston/The New York Times

Mr. Shapley requested special protections to bypass legal restrictions on discussing ongoing federal investigations.

It all began to explode into public view on May 15 — the same day Ms. Wolf contacted Mr. Clark — when it was reported that the investigative team that had worked on the case, including Mr. Shapley, had been removed. The next day the chairman of the House Ways and Means Committee fired off a letter to the I.R.S. commissioner demanding an explanation.

Around that time, lawyers for a second tax investigator sent a letter to the I.R.S. commissioner, claiming the team of investigators on the case had been removed after expressing concerns about political interference from the Justice Department.

The letter was quickly made public. The agents' claims were the breakthrough House Republicans had long been seeking.

The I.R.S. investigators had given Congress something genuinely new: summaries of WhatsApp messages that appeared to show Hunter Biden involved in a shakedown in which he had invoked his father, firsthand testimony from people who had reviewed Mr. Biden's finances and the credibility of their long careers at the tax agency.

On May 24, CBS aired an interview with one of the agents. Two days later, he testified behind closed doors before the House Ways and Means Committee, creating buzz on Capitol Hill. The second man testified on June 1. Three weeks later, the committee voted to publicly release transcripts of the testimony, leading to even more news coverage.



Mr. Weiss was quietly assigned to investigate Hunter Biden in 2018, and was kept on by the Biden administration. Doug Mills/The New York Times

Shifting Ground

As the testimony from the I.R.S. agents took hold, Mr. Biden's legal team felt the ground shift beneath them. The U.S. attorney's office suddenly went quiet.

Early in the negotiations, Ms. Wolf included what seemed like a boilerplate disclaimer in an email, that her team "had not discussed or obtained approval" from her superiors for the terms of the final agreement.

On Tuesday, May 23, after four days of silence, Ms. Wolf delivered unwelcome news. Mr. Weiss had revised what he wanted in the deal, now demanding that Mr. Biden plead guilty to two misdemeanor counts of failing to pay his taxes. It crossed a red line for Mr. Clark.

Erupting in anger, Mr. Clark accused Ms. Wolf of misleading him. He renounced the possibility of any deal, but after consulting with Mr. Biden, reversed course and told Ms. Wolf that Mr. Biden was willing to go along.

Mr. Clark then went to Wilmington to meet the prosecutors, where they hammered out the details of the deal.

By the middle of June, both sides were prepared to announce a deal.

Under the agreement, Mr. Biden would plead guilty to two tax misdemeanors and avert prosecution on the gun charge by enrolling in a diversion program.

Mr. Biden's legal team was eager to issue a statement claiming that the agreement represented the conclusion of the government's investigation. That Monday, June 19, Mr. Clark sent a draft to Shannon Hanson, another Weiss deputy, which clearly stated the investigation was over.

"I can confirm that the five-year long, extensive federal investigation into my client, Hunter Biden, has been concluded through agreements with the United States Attorney's Office for the District of Delaware," it read.

"With the conclusion of this investigation, he looks forward to continuing his recovery and moving forward," it continued.

Ms. Hanson suggested the edit from “has been concluded” to “resolved,” and she also asked Mr. Clark to strike the phrase “With the conclusion of this investigation.”

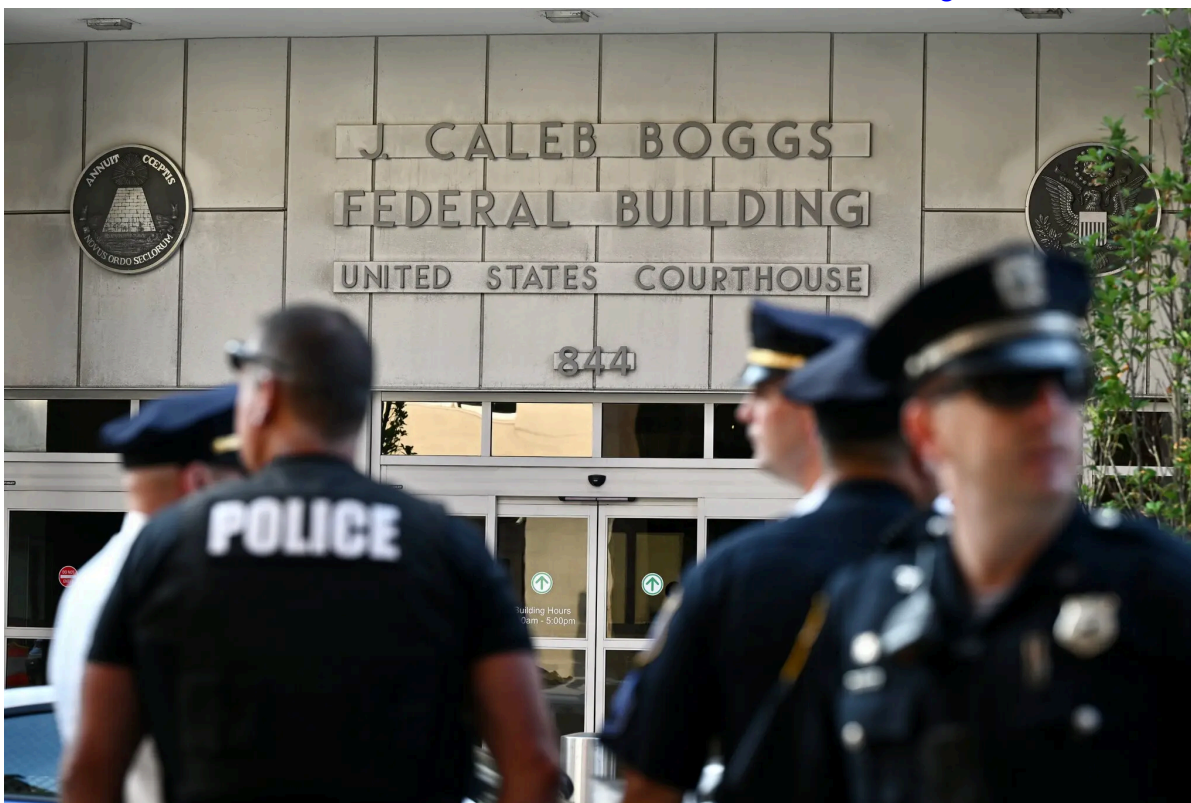
But hours after the agreement was announced, confusion set in. In a news release, Mr. Weiss’s office said that the investigation was “ongoing,” taking Mr. Biden and officials at Justice Department headquarters by surprise.

It was at this critical juncture that Ms. Wolf began to take a significantly reduced role, although it is unclear whether that had anything to do with the Biden case.

In their testimony, the I.R.S. whistle-blowers claimed that Ms. Wolf — who had made a couple of campaign donations to Democrats — had discouraged them from pursuing lines of inquiry that could lead to the elder Mr. Biden.

Around this time, Leo Wise — a senior prosecutor who had spent nearly two decades in the Baltimore U.S. attorney’s office — was quietly transferred to the department’s criminal division, then detailed to Delaware to add legal firepower to the relatively small Delaware office.

It was his name, not Ms. Wolf’s, that appeared on the plea deal. And it was Mr. Wise who was responsible for defending the deal, one he had not negotiated, in front of a federal judge who proved to be unforgiving.



Hunter Biden's plea deal fell apart at the courthouse in the J. Caleb Boggs Federal Building in Wilmington, Del. Kenny Holston/The New York Times

A Deal Upended

Hunter Biden walked into the Wilmington federal courthouse on July 26, with the expectation that his long legal odyssey was nearing an end.

But there were signs all was not well. Hours earlier, the Republican-controlled House Ways and Means committee had made one final stab at scuttling the agreement, urging the court to consider the whistle-blowers' testimony.

It turned out to be unnecessary.

Judge Maryellen Noreika, a Trump appointee, repeatedly informed the two sides that she would be no "rubber stamp." She picked apart the deal, exposing substantial disagreements over the extent of the immunity provision.

Mr. Clark said the deal indemnified his client not merely for the tax and gun offenses uncovered during the inquiry, but for other possible offenses stemming from his lucrative consulting deals. Mr. Wise said it was far narrower — and

suggested the government was still considering charges against Mr. Biden under laws regulating foreign lobbying.

The two sides tried to salvage it, Judge Noreika was not convinced, and Mr. Biden silently left the courthouse under a hail of shouted questions.

A correction was made on Aug. 19, 2023: An earlier version of this article misstated the date of Hunter Biden's plea hearing. It was July 26, not July 31.

When we learn of a mistake, we acknowledge it with a correction. If you spot an error, please let us know at nytnews@nytimes.com. [Learn more](#)

Michael S. Schmidt is a Washington correspondent covering national security and federal investigations. He was part of two teams that won Pulitzer Prizes in 2018 — one for reporting on workplace sexual harassment and the other for coverage of President Trump and his campaign's ties to Russia. More about Michael S. Schmidt

Luke Broadwater covers Congress. He was the lead reporter on a series of investigative articles at The Baltimore Sun that won a Pulitzer Prize and a George Polk Award in 2020. More about Luke Broadwater

Glenn Thrush covers the Department of Justice. He joined The Times in 2017 after working for Politico, Newsday, Bloomberg News, The New York Daily News, The Birmingham Post-Herald and City Limits. More about Glenn Thrush

A version of this article appears in print on , Section A, Page 1 of the New York edition with the headline: How Plea Deal Went Off Track For Biden's Son

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit M



Hunter Biden pleads not guilty to gun charges after plea deal fails

Politics Oct 3, 2023 10:38 AM EST

WILMINGTON, Del. (AP) — Hunter Biden pleaded not guilty on Tuesday to three federal firearms charges filed after a plea deal imploded, putting the case on track toward a possible trial as the 2024 election looms.

President Joe Biden's son is facing charges that he lied about his drug use in October 2018 on a form to buy a gun that he kept for about 11 days.

READ MORE: Hunter Biden files lawsuit against Rudy Giuliani and another lawyer for accessing and sharing his personal data

He's acknowledged struggling with an addiction to crack cocaine during that period, but his lawyers have said he didn't break the law. Gun charges like these are rare, and an appeals court has found the ban on drug users having guns violates the Second Amendment under new Supreme Court standards.

Hunter Biden's attorneys are suggesting that prosecutors bowed to pressure by Republicans who have insisted the Democratic president's son got a sweetheart deal, and that the charges were the result of political pressure.

He was indicted after the implosion this summer of his plea agreement with federal prosecutors on tax and gun charges. The deal devolved after the judge who was supposed to sign off on the agreement instead raised a series of questions about the deal. Federal prosecutors had been looking into his business dealings for five years, and the agreement would have dispensed with criminal proceedings before his father was actively campaigning for president in 2024.

Now, a special counsel has been appointed to handle the case, and there appears no easy end in sight. No new tax charges have yet been filed, but the special counsel has indicated they could come in Washington or in California, where Hunter Biden lives.

In Congress, House Republicans are seeking to link Hunter Biden's dealings to his father's through an impeachment inquiry. Republicans have been investigating Hunter Biden for years, since his father was Barack Obama's vice president. While questions have arisen about the ethics surrounding the Biden family's international business, no evidence has emerged so far to prove that Joe Biden, in his current or previous office, abused his role or accepted bribes.

The legal wrangling could spill into 2024, with Republicans eager to divert attention from the multiple criminal indictments faced by GOP primary front-runner Donald Trump, whose trials could be unfolding at the same time.

After remaining silent for years, Hunter Biden has taken a more aggressive legal stance in recent weeks, filing a series of lawsuits over the dissemination of personal information purportedly from his laptop and his tax data by whistleblower IRS agents who testified before Congress as part of the GOP probe.

READ MORE: Hunter Biden indicted on federal firearms charges weeks after a plea deal failed

The president's son, who has not held public office, is charged with two counts of making false statements and one count of illegal gun possession, punishable by up to 25 years in prison upon conviction. Under the failed deal, he would have pleaded guilty and served probation rather than jail time on misdemeanor tax charges and avoided prosecution on a gun count if he stayed out of trouble for two years.

Defense attorneys have argued that he remains protected by an immunity provision that was part of the scuttled plea agreement, but prosecutors overseen by special counsel David Weiss disagree. Weiss also serves as U.S. attorney for Delaware and was originally appointed by Trump.

Hunter Biden had asked for Tuesday's hearing to be conducted remotely over video feed, but U.S. Magistrate Judge Christopher Burke sided with prosecutors, saying there would be no "special treatment."

AP video journalist Tassanee Vejpongsa contributed to this report.

By – Lindsay Whitehurst, Associated Press

By – Claudia Lauer, Associated Press

What led to Hunter Biden's indictment on firearms charges and the legal battle ahead

Politics Sep 14

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

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Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit N

Attachment 22

9/22/2022

1430

Lesley Wolf and Mark Daly joined late.

Presidentially confirmed usa was confirmed last week. It will take her time to review the memo and learn to become a USAO.

The chief of economic/financial crimes at USAO looked at the 95 page prosecution recommendation like a hawk. They brought up several questions that need to be reviewed.

Mark Daly led the effort to answer CA's USAO questions because they were technical tax questions.

Gun charge will likely not be indicted in October.

No deadline given to John Kane concerning DOJ Tax review of charges. Neither Jason Poole nor Stewart Goldberg have given a deadline.

USAO and DOJ Tax made the decision not to charge until after the election. They said why should they shoot themselves in the foot by charging before.

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Exhibit O

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5 COMMITTEE ON THE JUDICIARY,

6 U.S. HOUSE OF REPRESENTATIVES,

7 WASHINGTON, D.C.

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13 INTERVIEW OF: STUART GOLDBERG

14

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16

17

18 Wednesday, October 25, 2023

19

20 Washington, D.C.

21

22

23 The interview in the above matter was held in room 2141, Rayburn House Office
24 Building, commencing at 10:04 a.m.

25 Present: Representative Jordan.

1

2 Appearances:

3

4

5 For the COMMITTEE ON THE JUDICIARY:

6

7 CLARK ABOURISK, COUNSEL

8 STEVE CASTOR, GENERAL COUNSEL

9 SEAN CLERGET, COUNSEL

10 BRITTANY HAVENS, PROFESSIONAL STAFF MEMBER

11 RACHEL JAG, COUNSEL

12 LILLIAN MEADOWS, COUNSEL

13 CAROLINE NABITY, CHIEF COUNSEL FOR OVERSIGHT

14 [REDACTED], MINORITY OVERSIGHT COUNSEL

15 [REDACTED], MINORITY CHIEF OVERSIGHT COUNSEL

16 [REDACTED], MINORITY OVERSIGHT COUNSEL

17 [REDACTED], MINORITY PROFESSIONAL STAFF MEMBER

18

19

20 For the U.S. DEPARTMENT OF JUSTICE:

21

22 GRETA GAO, SPECIAL COUNSEL, OFFICE OF LEGISLATIVE AFFAIRS

23 SARA ZDEB, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS

1

2 Mr. Castor. Good morning.

3 Mr. Goldberg. Good morning.

4 Mr. Castor. This is a transcribed interview of Mr. Stuart Goldberg with the
5 Justice Department's Tax Division. Chairman Jordan has requested this interview as part
6 of the committee's oversight of the Department's commitment to impartial justice and its
7 handling of the Hunter Biden investigation.

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

9 Mr. Goldberg. Stuart Goldberg.

10 Mr. Castor. And you're here with DOJ counsel.

11 Please state your name for the record.

12 Ms. Zdeb. Sara Zdeb, Department of Justice.

13 Ms. Gao. Greta Gao, Department of Justice.

14 Mr. Castor. And, Mr. Goldberg, you understand that agency counsel has a
15 primarily duty to represent the agency and not you personally?

16 Mr. Goldberg. I do.

17 Mr. Castor. And you've selected them to be in the room here with you today?
18 We gave you the option to have personal counsel or agency counsel?

19 Mr. Goldberg. Yes.

20 Mr. Castor. On behalf of the committee, I want to thank you for appearing here
21 today to answer our questions. The chairman also appreciates your willingness to
22 appear voluntarily.

23 My name is Steve Castor. I'm with Mr. Jordan's staff on the House Judiciary
24 Committee. I'll now have my committee colleagues introduce themselves.

25 Ms. Nabity. Caroline Nabity, Chairman Jordan's staff.

1 Chairman Jordan. Jim Jordan.

2 Mr. Clerget. Sean Clerget, Chairman Jordan's staff.

3 [REDACTED], Ranking Member Nadler's staff.

4 [REDACTED], Ranking Member Nadler's staff.

5 [REDACTED], Ranking Member Nadler's staff.

6 [REDACTED], Ranking Member Nadler's staff.

7 Ms. Havens. Brittany Havens, Chairman Jordan's staff.

8 Ms. Meadows. Lillian Meadows, Chairman Jordan's staff.

9 Ms. Jag. Rachel Jag, Chairman Jordan's staff.

10 Mr. Abourisk. Clark Abourisk, Chairman Jordan's staff.

11 Mr. Castor. I'll go over the ground rules and guidelines that we will follow during
12 today's interview.

13 Our questioning will proceed in 1-hour rounds. The majority will go first, then
14 we'll switch sides and the minority will have a chance to ask you questions.

15 We often take a break at the end of each hour, if you'd like to, but the breaks are
16 totally up to you.

17 There is an official court reporter taking down everything we say, so we'll go do
18 our best not to talk over one another. We'll also do our best to have a small number of
19 individuals asking you questions.

20 Mr. Goldberg. Okay.

21 Mr. Castor. So you're not fielding questions from various parts of the room.

22 If you need to go off the record to confer with DOJ counsel or your personal
23 counsel, who I understand is stationed in a nearby room, please let us know.

24 Mr. Goldberg. Thank you.

25 Mr. Castor. If you need to take a break for any other reason, that's also fine.

1 We want to make your stay here as comfortable as possible, given the circumstances.

2 We want you to answer our questions in the most complete and truthful manner
3 possible, so we'll take our time.

4 If you have any questions or don't understand what we're asking, just let us know.
5 Our questions may cover a wide range of topics. If you need clarification, please feel
6 free to ask.

7 You should also understand that by law you're required to answer questions
8 before Congress truthfully. You understand that?

9 Mr. Goldberg. Yes.

10 Mr. Castor. And there's a false statement statute that we remind all witnesses
11 about, 18 United States Code 1001, which subjects witnesses to criminal prosecution for
12 knowingly making false statements. You're aware of that?

13 Mr. Goldberg. I am.

14 Mr. Castor. And we mean no disrespect by bringing that up. Obviously, you're
15 a senior DOJ official and presumably have an appreciation for that. We just mention
16 that to all witnesses.

17 Mr. Goldberg. That's fine.

18 Mr. Castor. We like to keep the content of what we discuss confidential. To
19 the extent we have exhibits and we mark them, we'll collect them at the end of the
20 process, even if they're documents that are publicly available. So we appreciate your
21 cooperation with that.

22 At 10:08, I'll get going with the first Republican round.

23 Ms. Zdeb. Steve, I'm sorry. Before you do, could I make a couple of quick
24 remarks?

25 Mr. Castor. Of course.

1 Ms. Zdeb. And actually, I'm sorry, before I do, does your minority colleague
2 have --

3 Mr. Castor. [REDACTED] do you have any? I didn't give you a chance to offer
4 welcoming remarks. So I apologize, and please go forward if you do.

5 [REDACTED]: No. We will note the sound system is definitely working now.

6 Mr. Castor. Okay.

7 [REDACTED]: No, we just thank the witness for taking time out of your busy
8 schedule to join us today.

9 Ms. Zdeb. Thank you.

10 As you're aware, the committee's inquiry implicates an ongoing criminal
11 investigation and prosecution. At this juncture, Mr. Goldberg is going to be able to
12 discuss questions that can be answered without compromising the ongoing matter.

13 Specifically, the Department has authorized him to discuss the scope of David
14 Weiss' authority. He is also authorized to discuss the Tax Division's role in criminal
15 investigations and prosecutions arising under the Internal Revenue laws, and that
16 includes the process that the Tax Division follows when working with U.S. Attorney's
17 Offices to investigate and prosecute criminal tax offenses.

18 There may be some additional information Mr. Goldberg can share, depending on
19 the question and, again, consistent with our need to protect the ongoing investigation
20 and prosecution.

21 And as always, if you have questions that he is not able, due to the scope of his
22 authorization, to answer today in the room, we are always happy to take those back and
23 continue engaging with the committee.

24 Mr. Castor. It now is 10:09. We'll go on the clock for the first hour.

25 EXAMINATION

1 BY MR. CASTOR:

2 Q Mr. Goldberg, how long have you been with the Justice Department?

3 A Since January 1988.

4 Q And have you always worked at Main Justice?

5 A No. I've worked in the U.S. Attorney's Office in Maryland as well.

6 Q Okay. Could you just give us a -- maybe starting with your current position
7 and duties -- and just give us a recap of your career?

8 A Okay. Currently, I'm the Acting Deputy Assistant Attorney General for
9 Criminal Matters at the Tax Division. I joined the Tax Division in 2015, I think around '15,
10 February 2015. My title at that time was Senior Counselor to the Assistant Attorney
11 General.

12 Before that, I was in the Deputy Attorney General's Office where I was the
13 Principal Associate Deputy Attorney General. A slight period of time before that, chief
14 of staff to the Deputy Attorney General.

15 Before that, I was the first assistant at the U.S. Attorney's Office in Maryland.
16 Prior to that, I was at the Public Integrity Section, where I was the Principal Deputy Chief,
17 and before that the Deputy Chief for Litigation, and before that a trial attorney in Public
18 Integrity.

19 Q All right.

20 How many lawyers report up to you as part of the criminal function within the Tax
21 Division?

22 A So there are roughly 100 lawyers doing criminal-related work in the Tax
23 Division. I have, I think, four or five direct reports.

24 Q Can you explain the leadership of the Tax Division? There's been some
25 question about whether you're the senior-most official in the Tax Division or exactly what

1 your responsibilities are in terms of leadership?

2 A Sure. So there are no political appointees in the Tax Division right now.
3 And I oversee the criminal side. There's another individual, David Hubbert, who is the
4 head of component. He's basically the head of the Tax Division. He oversees the civil
5 side and the appellate side, and I guess the admin side, too, though I kind of help in that.

6 So I'm on top of the criminal side, though I help with the direction of the Tax
7 Division overall. But Dave Hubbert's the head of the Tax Division.

8 Q Okay. But as far as criminal matters are concerned, you have the ultimate
9 responsibility within the Tax Division?

10 A There are particular things where Dave Hubbert might have some ability to
11 do something that I cannot do, in which case he would have to take that action.

12 Q Okay. Can you explain how DOJ Tax interacts with the U.S. Attorney's
13 Offices around the country?

14 A Sure. So we use, as a rough rule of thumb, about 90 percent of all the tax
15 cases that get brought by the U.S. Attorney's Offices and 10 percent the Tax Division.

16 So cases get referred out to the Tax -- to the -- well, there are several ways U.S.
17 Attorney's Offices can get cases, sometimes from the Tax Division. Sometimes they can
18 invite the IRS in and then expand an existing non-tax investigation.

19 And then, on occasion -- most of those cases just the U.S. Attorney's Office
20 personnel are working that case. Occasionally the U.S. Attorney's Offices ask for
21 litigation assistance from the Tax Division or we might see a case where we think this
22 would benefit from having our technical expertise or we have somebody who can
23 contribute from a resource standpoint, in which case we talk to the U.S. Attorney's Office
24 and we will work jointly with the U.S. Attorney's Office on the case.

25 Q Can you explain the role of the Tax Division in approving criminal

1 investigations?

2 A So there are various approval functions that the Tax Division has that might
3 come up in the course of a particular case. Some of those deal with whether or not a
4 grand jury investigation can be opened, whether or not a prosecution can be brought
5 generally.

6 There are investigative steps that are reserved for the Tax Division, and somebody
7 in my position would have to sign off on things like attorney subpoenas, for instance.

8 That's overall what it looks like.

9 Q According to the Department of Justice, the Justice Manual, only after the
10 Tax Division has authorized a grand jury investigation may a United States Attorney's
11 Office issue subpoenas and undertake other investigative actions.

12 Is that consistent with your understanding?

13 A In terms of directly working a tax case. Sometimes there are overlapping
14 Title 18 charges where they might be able to collect information that's useful. But, yes,
15 before they issue a tax-related subpoena should have a grand jury authorization.

16 Q And isn't it also true that under the Justice Manual DOJ Tax's approval is
17 required before the U.S. Attorney's Office may bring charges for felony cases?

18 A Yes, that is true, though there are a very small number of cases, I think, that
19 under the regulations -- I think there are a small number of cases, excise tax cases and
20 things like that, where I think it's possible for a U.S. Attorney's Office to get a direct
21 referral and actually bring the case. But those are small and unusual.

22 Q Are there any instances where a U.S. Attorney's Office would be able to
23 override the Tax Division on questions of prosecution of a felony tax case?

24 A Well, I'm not sure I understand what you mean by override. Can you
25 expand that a little bit?

1 Q Well, if the Tax Division recommends not prosecuting a felony tax case or
2 doesn't provide the required authorizations, are there instances where a U.S. Attorney's
3 Office may go forward anyway?

4 A In that instance we would expect to have a conversation with the U.S.
5 Attorney's Office about it and what their concerns were and see if they can be resolved.
6 They might decide they don't want to go forward or they may decide -- we may decide we
7 missed something and change our views. But they also could go up the line and appeal
8 what we decided to the Deputy Attorney General's Office.

9 Q How would that work? How would the appeal process work?

10 A Generally, they would contact the Deputy Attorney General's Office and they
11 would then decide how they wanted the process to work.

12 Q The DAG's office would?

13 A Yeah.

14 Q How does the process work currently?

15 A Well, it's idiosyncratic. I think a lot of times it has to do with who's there
16 and what the particular case is.

17 Q Okay. Has that situation unfolded during your tenure in the last 3 years?

18 A Yes.

19 Q And could you tell us how that process worked from a general standpoint?
20 I'm not asking about the Hunter Biden case yet.

21 A Just generally, I think the U.S. Attorney's Office indicated -- the DAG's
22 office -- they disagreed with something we had done. And the DAG's office I think
23 solicited memos from them and memos from the Tax Division and had a meeting to talk
24 about it.

25 Q Is there a particular person in the DAG's office that has responsibility for that

1 or is that the PADAG?

2 A I think the PADAG can do that, but it's up to the Deputy Attorney General or
3 the Deputy Attorney General's office to decide who would field that particularly.

4 Q Okay.

5 Chairman Jordan. How often has that happened in the last 3 years, that
6 situation?

7 Mr. Goldberg. Not frequently.

8 Chairman Jordan. Can you give us a number?

9 Mr. Goldberg. I can recall one instance.

10 Chairman Jordan. Okay.

11 BY MR. CASTOR:

12 Q Does DOJ Tax just approve whether a U.S. Attorney's Office may bring
13 criminal tax charges against a particular individual or does it have to approve the specific
14 charges that the U.S. Attorney's Office may bring?

15 A Generally speaking, we approve specific charges. But we might provide an
16 option, I guess. In some tax cases the Tax Division might say, "U.S. Attorney, you have
17 discretion to bring this charge or this other charge."

18 Q When does the Tax Division get involved to make a decision on a set of
19 charges against a particular person. It is -- as we understand the processes, the
20 criminal investigative team prepares -- at least in the Hunter Biden case there was a
21 special agent report that was prepared and was sent to DOJ Tax with the concurrence of
22 the U.S. Attorney's Office in Delaware. Is that the process, how it ordinarily unfolds?

23 A Are you talking about prosecution or are you talking about grand jury?

24 Q Prosecution, correct.

25 A So that's my understanding, is that there typically would be a special agent's

1 report from the IRS.

2 Q And in this case we've learned from two whistleblowers that the special
3 agent report was prepared, sent to DOJ Tax with the concurrence of the U.S. Attorney's
4 Office in Delaware.

5 And then DOJ Tax lawyers, what is their next step? Do they prepare a report or
6 do they just review the papers and make a recommendation?

7 A I'm sorry, I didn't follow who "they" was.

8 Q The DOJ Tax lawyers that are assigned to review the matter.

9 A So just without talking about the Hunter Biden case in particular and lay this
10 out?

11 Q Uh-huh.

12 A When it comes in, generally we have three regional trial sections. And so
13 the report would go to a trial section that had jurisdiction over where the venue for this
14 was or where the field office was that was referring this.

15 And it would come in, it would get assigned typically to a line person to write a
16 memo, I think which we call a pros memo typically. And then they would review the
17 SAR, the special agent report. They would talk to the U.S. Attorney's Office. They
18 would review.

19 We get a memo from CT counsel, which is the lawyers to the Criminal
20 Investigation Division. They would review that as well.

21 Then that memo would typically go to another person, usually an assistant chief in
22 that section, who would read that memo and maybe consult with some of the other
23 materials.

24 Depending upon what the issues are, they would write a review note. And then
25 that would go to a chief in most instances. And that chief would sometimes write

1 something, sometimes not.

2 But that's the typical case, that's where the line would go.

3 Q Okay. Is it fair to say that there's an approval, a declination -- approval or
4 declination given from the Tax Division?

5 A Sometimes cases get sent back for more work. So that is an option. And
6 there is declination, approval, or prosecution with discretion or prosecution authorized.

7 Q And what's the difference between approval and with discretion and a
8 straight approval?

9 A So in approval prosecution authorization there is an expectation the case
10 would be brought by the U.S. Attorney's Office. If it is prosecution with discretion then
11 the U.S. Attorney's Office has the ability to decide not to bring the case. That is within
12 their purview. They don't have to come back to the Tax Division.

13 Q So when DOJ Tax approves an outright approval --

14 A Right.

15 Q -- the thinking is that the prosecution will happen?

16 A It's the expectation. Occasionally U.S. Attorney's Offices come back and
17 they say, "We've looked more at this case and we don't think it should be brought," or
18 they don't act on it.

19 Q And approval with discretion the Tax Division is basically saying, "Yeah, we're
20 okay with these charges but it's up to you whether you file them"?

21 A I don't think we'd frame it as informally as that. But it's --

22 Q Right. Like, how would you frame it?

23 A Well, that generally the case is back to you. It came up because there was
24 an interest in us looking at the case. And so the U.S. Attorney's Office typically in those
25 cases is engaged with the case and has some knowledge of the case.

1 Q Okay. When did the Hunter Biden case specifically come to your attention?

2 A 2019.

3 Q Okay. Is it fair to say that it's notable because it's the son of, at the time,
4 former Vice President Biden?

5 A When it came in, I think people in the Tax Division recognized that it was the
6 son of Joseph Biden, yes.

7 Chairman Jordan. When in 2019?

8 Mr. Goldberg. I'm not precisely sure. I think sort of midyear-ish, but I'm not
9 sure.

10 Mr. Castor. And can you just explain to us how the case was handled from your
11 perspective inside the Tax Division?

12 Ms. Zdeb. And if I could just interject.

13 He is not authorized to talk specifically about this investigation and prosecution.

14 And so to the extent there is a generic response related to the overall processes of the
15 Tax Division and how it works with U.S. Attorney's Offices, he's able to get into that. But
16 if it pertains to the specific investigation, there's not a whole lot he can say.

17 Mr. Castor. Okay. So what can you say?

18 Mr. Goldberg. Can you restate the question slightly?

19 Mr. Castor. I'm just trying to understand the procedural history of the Hunter
20 Biden case. You said it was first brought to your attention, the Tax Division's attention,
21 midyear 2019.

22 What can you tell us about how the case was handled? Who was it brought to?
23 What work was done? What was requested? And if you can only answer in a privilege
24 log level, it's better than nothing.

25 Ms. Zdeb. Can we go off the record for a quick second?

1 [Discussion off the record.]

2 Mr. Goldberg. Okay. So when the case came in, just for clarity, I was not in
3 charge of the criminal side of the Tax Division. Richard Zuckerman, who was the
4 political appointee, was the Principal Deputy Assistant Attorney General and the Deputy
5 Assistant Attorney General for criminal matters. So he was the one overseeing any
6 steps that took place at that time.

7 The case came in and there needed to be a decision about whether or not to open
8 a grand jury in the case. And that decision was made. And the U.S. Attorney's Office
9 asked for litigation assistance, is my recollection, in connection with the case.

10 So people from the Tax Division were assigned to work with the U.S. Attorney's
11 Office on the case as well. My knowledge is that the U.S. Attorney's Office had a
12 non-tax as well as tax things that they were reviewing. And then the case proceeded to
13 be worked.

14 BY MR. CASTOR:

15 Q And how many Tax Division lawyers were working with the U.S. Attorney's
16 Office in Delaware at this time?

17 A I think there was a person that was initially involved and dropped off of it
18 from the Tax Division. And then, my recollection, there were two people that were
19 assigned and actively were working.

20 Q And for the tenure of the case, did DOJ Tax have lawyers on the team?

21 A Yes.

22 Q Ultimately, do you know whether DOJ Tax provided authorization to pursue
23 criminal tax charges?

24 A As I understand the line, I'm not sure I can answer that question.

25 Q You're not permitted to tell us whether DOJ Tax authorized felony tax

1 charges?

2 Ms. Zdeb. That's getting a little bit away from the question of Mr. Weiss'
3 authority and into specific charging decisions and internal decisionmaking.

4 Mr. Castor. Did the U.S. Attorney's Office in Delaware and the Tax Division come
5 to an agreement on the types of charges to be pursued at the outset of 2022?

6 Ms. Zdeb. And, again, that is also getting into specific internal decisionmaking
7 around charging decisions?

8 BY MR. CASTOR:

9 Q Between DOJ Tax and the U.S. Attorney's Office in Delaware, who would you
10 say is the primary decisionmaker on this case with regard to the tax component?

11 A So from my perspective, David Weiss in the U.S. Attorney's Office was
12 leading the case and running the case and were doing that and that Tax Division had
13 responsibilities under the Justice Department procedures and policies to review certain
14 things and approve certain things, yes.

15 Q And if there was a disagreement between David Weiss' office and the Tax
16 Division, how was that resolved in terms of activity during the course of the investigation?

17 A So I expect that during that investigation stages, that there was ongoing
18 discussions back and forth. So any disagreement or difference of opinion as to certain
19 perspectives would be discussed, I think, and if some resolution couldn't be reached, then
20 it would have to be decided by somebody else in higher authority.

21 Q Is it fair to say the whistleblowers provided testimony that the U.S.
22 Attorney's Office in Delaware would often say, "We need to get DOJ Tax's approval for
23 that type of investigative steps"?

24 A Okay.

25 Q Is that fair, is that a fair thing to say?

1 A Without commenting specifically on the Hunter Biden case, there were
2 specific things that I think I alluded to before, like an attorney subpoena in a tax case,
3 where Tax Division has to sign off in order for the U.S. Attorney's Office to take that step.

4 Q Was the fact that Hunter Biden was involved here, did that require DOJ Tax's
5 sign-off because it's a sensitive matter?

6 A Well, without getting into the case, again trying to answer a question at a
7 slightly higher level, there are cases that are sensitive, people -- some would say sensitive,
8 sometimes say significant cases. And those cases typically have closer supervision than
9 other, more run of the mill cases.

10 Q And if there's a target of an investigation that has some political significance
11 attached to him or her, is that -- does that trigger any heightened review process within
12 DOJ Tax?

13 A So if something can be termed as sensitive pursuant to the case it might be
14 because it's a public official or it's a person that has a noteworthy profile or it's going to
15 generate a lot of media attention, or might be congressional interest. It could be a
16 corporation or an individual. That might mean that the case would come to my level for
17 ultimate sign-off on the case as opposed to be handled at the chief's level.

18 Q Okay. And is it fair to say that the Hunter Biden case fell into that
19 category?

20 A Yes.

21 Q On specific investigative steps, did the U.S. Attorney's Office in Delaware
22 have the ability to overrule a DOJ Tax decision on whether a certain grand jury subpoena
23 was issued or a certain witness was interviewed?

24 A I think typically U.S. Attorney's Office, if we were working with a U.S.
25 Attorney -- and, again, I'm going to try to keep it at a more generic level so that I can

1 respond -- if DOJ Tax is working on a case with a U.S. Attorney's Office, that U.S.
2 Attorney's Office often is the lead in that case and they would be making most of the
3 ultimate decisions. But we would expect them, if we have people on the case, to be
4 consulting with our folks about the investigative steps that were taken and there would
5 be discussions that would be had about those.

6 Q What timeframe did you assume responsibility for the criminal component?

7 A After Mr. Zuckerman left in January 20th, 2021.

8 Q And had you been involved prior to that in terms of the day-to-day approval
9 process?

10 A So I don't believe I had day-to-day involvement in this case at any stage
11 particularly. But I was somebody who Richard Zuckerman consulted with on criminal
12 matters, and this is one of the matters, yes, that he consulted with me on.

13 Q Okay.

14 A The other thing that I would say is, if he was unavailable and there was any
15 action that needed to be taken with regard to a case, he would often ask me to handle
16 that as Acting Deputy Assistant Attorney General, and I might approve that particular
17 action in his stead.

18 Q Okay. So going back to midyear 2019 through the present, you've had a
19 consistent supervisory responsibility over the decisions made in this case?

20 A I wouldn't say it's been consistent, because Richard Zuckerman was
21 interacting with David Weiss and other people in the Department in connection with this
22 case and I wasn't typically during the period when he was there.

23 Q But he kept you looped in, correct?

24 A He shared with me whatever he shared with me. I don't know what he
25 didn't share with me. I'm not suggesting he did anything wrong or that he should have

1 shared anything. But he had dealings with the U.S. Attorney's Office and with others in
2 the Department where I was not involved.

3 Q Special Agent Ziegler testified that an AUSA in Delaware -- that DOJ Tax
4 didn't expect the case to be indicted until 2023 because there were various levels of
5 approvals that needed to be secured.

6 Is that consistent with your understanding?

7 Ms. Zdeb. And, again, this is getting into decisions in an ongoing case. And so
8 to the extent he can provide a general answer about approvals that are needed in any
9 case, he's able to do that. But he can't speak specifically to what did or did not happen
10 in this case.

11 Mr. Castor. Okay.

12 Mr. Goldberg. Cases at some point come to -- as I described the process before,
13 they have to get evaluated and analyzed by the line level, the assistant chief level, the
14 chief level. And if it's coming to me, those three things definitely happened.

15 BY MR. CASTOR:

16 Q Can you tell us, when a case is being worked by FBI criminal investigators
17 and IRS criminal investigators relating to tax charges, how the duties and responsibilities
18 are divided?

19 A So I'm trying to rely on what I've seen over the years in different jobs.

20 So IRS Tax has a particular role, a very unique role in a criminal investigation,
21 Federal criminal investigation. That is that they have access to tax information more
22 easily than other parts. So there are restrictions on what can be pushed through. That
23 means that IRS Tax handles certain things.

24 But, generally speaking, where I've seen IRS and FBI in cases together, they work
25 closely together and share information relevant to the cases. Generally, the reason the

1 FBI is on the case is because there are potential non-tax charges, Title 18 charges, and so
2 they would have an interest in things the IRS was doing and vice versa, but they would
3 have their own jurisdictions and responsibilities.

4 Q And did you have contact with the FBI field office about this case?

5 A I did not. I met a couple of the supervisors from that office, but I did not
6 have contact with them.

7 Q How frequently did you have contact with David Weiss?

8 A I would -- not that frequently. If something came up that required my
9 attention or he -- or I thought I needed to talk to him. Typically things came through our
10 chain of command, so my main contact on this case would be through the chief of our
11 northern section.

12 Q Okay.

13 A Because Delaware was in the northern section.

14 Q Okay. And it's been well documented that the two IRS Tax Division
15 lawyers, Mark Daly and Jack Morgan, were the primary points of contact for the IRS
16 criminal investigators and the U.S. Attorney's Office. Is that your understanding?

17 A Before I answer that, I've been asked by the Department of Justice to avoid
18 using names of people who are non-supervisory. So I would request that the committee
19 consider redacting their names in the transcript. But both Mr. Daly and Mr. Morgan
20 were assigned to the matter, yes.

21 Q And what were their duties or the differences, how did they split up their
22 responsibilities?

23 A Between each other?

24 Q Yes.

25 A Mark Daly is more senior, he's a senior litigation counsel. Had more

1 experience. Both of them are very smart, hardworking people. But I think they
2 worked along with each other deciding how to split up things in consultation with their
3 supervisor in the northern region.

4 Q Are you familiar with the special agent report that was prepared by the IRS
5 in this matter, in the Hunter Biden matter?

6 A I'm aware that there was such a report, yes.

7 Q And do you know when DOJ Tax received the report?

8 Ms. Zdeb. And, again, we're -- well, he can answer that yes or no if he knows the
9 answer. But he's not able to get into specific documents, specific steps in the
10 investigative process.

11 Mr. Goldberg. I think it was received in February 2022.

12 Mr. Castor. Okay. And prior to the preparation of the special agent report,
13 there was a consensus developed, as it's been represented to us, a consensus developed
14 by the prosecution team.

15 And by prosecution team, I mean the U.S. Attorney's Office in Delaware, the IRS
16 criminal tax investigators, the FBI agents came to a determination that they were going to
17 move forward with criminal tax charges against Hunter Biden late in 2021.

18 It's been represented to us through testimony that Special Agent Ziegler at the IRS
19 prepared the special agent report the latter part of 2021 and it was available, submitted
20 to DOJ Tax in, like you said, February of 2022.

21 Is that your recollection of the process?

22 Ms. Zdeb. And there was a lot baked into that question about the ongoing
23 investigative process and decisions, whether or not there was consensus, what happened.
24 All of that involves the ongoing matter and is beyond the scope of what he's able to speak
25 to.

1 If you have a general question about kind of the role of the special agent's report
2 relative to a pros memo, those are the sorts of things he can speak to.

3 Mr. Castor. Were you aware before the special agent report was drafted that
4 the U.S. Attorney's Office in Delaware and everyone on the team presumably agreed to
5 move forward with the special agent report?

6 Ms. Zdeb. And it's the same objection.

7 BY MR. CASTOR:

8 Q Do you know whether Mr. Daly or Mr. Morgan were involved with those
9 meetings and that determination that Special Agent Ziegler would draft that report?

10 A Whether they were involved in the decision to have him draft a report?

11 Q Right.

12 A I don't know for sure. I assume there were some discussions, though,
13 between Mr. Daly or Mr. Morgan and the investigators while they were doing that report.

14 Q Do you know -- I mean, the special agent report is a pretty sophisticated
15 document, correct? It's long, it contains recitation of all the evidence collected, correct?

16 A It's a compilation of a lot of evidence, but it doesn't necessarily address all
17 aspects of a case.

18 Q But is it fair to say it's a big project --

19 A Yes.

20 Q -- for the IRS to prepare a special agent report?

21 A It's going to require work. If in a larger case would require more work, yes.

22 Q And Special Agent Ziegler and Supervisory Special Agent Shapley
23 represented to us that before they set out to prepare this document that they wanted to
24 make sure everybody was on the same page. And they represented to us that everyone,
25 in fact, was on the same page. And the question to you is whether that's consistent

1 with your recollection.

2 Ms. Zdeb. And that question also gets into deliberations about the ongoing case
3 and he's not able to speak to that.

4 BY MR. CASTOR:

5 Q Do you remember how long the special agent report was?

6 A I don't.

7 Q And did you read it?

8 A I did not read the special agent report.

9 Q Was it provided to you? Did you examine it? Did you flip through it to get
10 a sense of what was included?

11 A I might have seen pieces of it but I didn't read it. Typically, I don't read
12 those reports. They get distilled by the pros memo, the assistant chief and the chief, the
13 relevant parts, or they talk about it in various ways.

14 Q And what was the process here? The special agent report you said came in
15 in February of 2022. What were the next steps inside of DOJ Tax Division? And if you
16 don't want to talk -- if you're not able to talk specifically about the Hunter Biden case,
17 maybe you could just give a general process, how the process would unfold.

18 A So I'm trying to take this up a level.

19 The special agent's report comes in. And it depends upon where you are in the
20 case. The case might require a grand jury investigation, it might require additional
21 investigation that was not covered. People read the investigative report and decide that
22 there needs to be additional investigation that has to be undertaken in connection with it.

23 Sometimes there's a conference, a tax conference that's afforded to the target of
24 the report, in which case that occurs, and that information then gets analyzed.

25 There's thought about how the case is going to put together from the standpoint

1 of the Federal Principles of Prosecution. Lawyers look at cases a little differently
2 generally from agents in terms of admissible evidence and order of proof, who the
3 witnesses are going to be.

4 Q And are you able to tell us anything about what happened with the Hunter
5 Biden case in terms of the process?

6 Ms. Zdeb. He is not.

7 Mr. Castor. Do you know whether a prosecution report was drafted by DOJ Tax
8 after receiving the special agent report?

9 Ms. Zdeb. To the extent there is a general process that applies in all cases, he
10 can speak to that.

11 Mr. Castor. Well, no, I'm asking about the Hunter Biden case.

12 Do you know whether a prosecution report was prepared by DOJ Tax?

13 Ms. Zdeb. And I'm saying he can't speak about the ongoing investigation. And
14 so if there --

15 Chairman Jordan. He's not asking what was in the report, he's asking was it
16 prepared.

17 Ms. Zdeb. Right. Yes, I understood the question. But the scope of his
18 authorization does not allow him to speak about the ongoing investigation, whether it
19 involves the contents or the fact of something that is prepared as part of the process.

20 BY MR. CASTOR:

21 Q Do you know the answer to my question?

22 A As I understand my direction from the Department, I can't say yes or no.

23 Q Well, I understand you're not going to answer the question. But were you
24 permitted to answer the question, would you be able to? Do you know the answer?

25 A Like I said, I feel like I can't answer that question given the direction I've

1 gotten from the Department.

2 Q Well, there was either a prosecution report prepared or not. And my
3 question is whether you know the answer to that question, not whether there was one
4 produced.

5 A I'm trying to think of how I can answer this question in a way that doesn't
6 require me to go back to the Department.

7 Ms. Zdeb. I mean, I think he's conveyed what he is comfortable conveying.
8 But, again, if you want to ask him if that is something that happens in a typical case and
9 what the typical process is, he can speak to that.

10 BY MR. CASTOR:

11 Q Okay. But I'm asking about the Hunter Biden case.

12 Do you know whether a prosecution report was prepared, yes or no? Like, yes,
13 the report was prepared, or no, the report wasn't prepared. I mean, if you know the
14 answer to that question, I guess that's what I'm looking for, do you know the answer to
15 the question, not whether the prosecution report was prepared or not prepared.

16 A Let me -- I was the supervisor of that case. I am the supervisor of that
17 ongoing case. So I'm familiar with any significant matters that took place in that case, to
18 keep that at eye level and answer your question.

19 Q Did you participate in any meetings in person with the Delaware U.S.
20 Attorney's Office?

21 A Yes.

22 Q How many?

23 A One.

24 Q And when was that?

25 A January 2023.

1 Q And who was in attendance?

2 A The U.S. Attorney.

3 Q Mr. Weiss?

4 A Yes. Several assistants from his office.

5 Q Was Lesley Wolf there?

6 A Yes. The lawyers from the Tax Division were there.

7 Q Mr. Morgan and Mr. Daly?

8 A Yes. And defense counsel representing Mr. Biden.

9 Q And who was representing Mr. Biden?

10 A Chris Clark.

11 Q Anyone else?

12 A There were two other lawyers there.

13 Q Associates of his from his firm?

14 A I don't remember whether exactly his firm, but they were working with him
15 on the case.

16 Chairman Jordan. Where was the meeting?

17 Mr. Goldberg. Pardon me?

18 Chairman Jordan. Where was the meeting?

19 Mr. Goldberg. At the U.S. Attorney's Office.

20 Chairman Jordan. In Delaware?

21 Mr. Goldberg. Yes.

22 Mr. Castor. You traveled to Delaware for that meeting?

23 Mr. Goldberg. Yes.

24 Mr. Castor. And what happened at that meeting?

25 Ms. Zdeb. He can't speak to what happened at a meeting about the case.

1 BY MR. CASTOR:

2 Q Certainly you can tell us at least what Mr. Clark, from that standpoint of the
3 conversation, what Mr. Clark said.

4 A He was making a presentation on the case.

5 Q A PowerPoint presentation? Did he have a slide deck?

6 A I think he did, yes.

7 Q And how long was the presentation?

8 A I'm not sure. I think it was about an hour maybe.

9 Q Okay. And was it customary for you to attend that type of meeting or did
10 you only attend here because of the significance of the target and the investigation?

11 A I attended because Mr. Weiss asked me to come up for the meeting.

12 Q Okay. How frequently do you travel to U.S. Attorney's Offices for meetings
13 of that sort? Was that unusual for you to --

14 A For me to go to a U.S. Attorney's Office on a case?

15 Q Yeah.

16 A It's not something that I would commonly do.

17 Q Okay. How many times have you done it?

18 A In the Tax Division or in other supervisory --

19 Q In your current role?

20 A I think it's the only time I've done it. But I think this is a matter -- the case
21 was being run out of the U.S. Attorney's Office in Delaware and everybody else was going
22 to be there, so they asked me to tag along as well.

23 Q Okay. But you hadn't been a part of any of the in-person meetings prior to
24 that outside of the presence of Mr. Biden's lawyers?

25 A That was a complicated question. Could you rephrase that?

1 Q I'm sorry. Was that the first time that you had an in-person meeting with
2 David Weiss?

3 A No.

4 Q Okay. On this case?

5 A I had had other meetings with David Weiss prior to that meeting, yes.

6 Q On the Hunter Biden case?

7 A Yes.

8 Q And can you tell us how many? In-person meetings.

9 A Yes.

10 Q Like, how many times have you been to the U.S. Attorney's Office in
11 Delaware? Maybe that's a good place to start.

12 A I think you asked that question. One.

13 Q Okay. So that was the only time?

14 A Yes.

15 Q One visit to Delaware on this case and it was the meeting with Chris Clark?

16 A It was a meeting that David Weiss asked me to attend in connection with the
17 case.

18 Q Okay. But Chris Clark was there making a presentation, right?

19 A Yes.

20 Q Okay. And then how many meetings with David Weiss in person did you
21 attend in other locations, presumably D.C.?

22 A I would say -- I'm guessing -- maybe seven or eight.

23 Q And do you remember roughly the dates of those?

24 A I don't. I don't. Some of them were short, some of them less.

25 Chairman Jordan. Those were all in person?

1 Mr. Goldberg. Yes.

2 Chairman Jordan. The many times you met in person, Mr. Weiss would be here
3 in D.C.?

4 Mr. Goldberg. Yeah, all the meetings I had with him were in D.C.

5 Chairman Jordan. So you had seven or eight meetings with him in D.C., then one
6 meeting was in January 2023 at the U.S. Attorney's Office in Delaware?

7 Mr. Goldberg. He set up a meeting in D.C. -- in Delaware -- and asked me to
8 attend, along with the other people from my office and people from his office that were
9 at the meeting.

10 BY MR. CASTOR:

11 Q Did you attend a meeting in June of 2022 at Main Justice --

12 A Yes.

13 Q -- on this?

14 Do you remember who attended that meeting? And if you don't, I can --

15 A I have a general recollection of they were --

16 Q Was Gary Shapley there?

17 A Yes.

18 Q Darrell Waldon?

19 A I don't know him very well, but I know that there were IRS supervisors there.

20 So that sounds right.

21 Q And David Weiss?

22 A David Weiss was there, yes.

23 Q Lesley Wolf?

24 A Yes.

25 Q Mr. Daly? Mr. Morgan?

1 A Yes.

2 Q And then two FBI officials, Mr. Sobocinski and Ms. Holley?

3 A Yes. And I think there was other IRS agents there and some FBI agents
4 there as well.

5 Q And do you remember the purpose of the meeting?

6 Ms. Zdeb. And once we start getting into purpose, what happened at the
7 meeting, those go beyond the scope of his authorization.

8 BY MR. CASTOR:

9 Q Do you remember who requested the meeting, who set it up?

10 A David Weiss asked for the meeting to be set up.

11 Q And do you remember if David Weiss was in charge of inviting and
12 assembling the individuals that attended the meeting or was that handled by somebody
13 else?

14 A I don't know who logistically contacted people or decided who should
15 attend.

16 Q I guess my question, though, is, did David Weiss say, "Hey, we need to get
17 everyone in the room, let's get FBI, let's get the IRS, let's get the Tax Division people"?
18 Was that David Weiss' initiative or Lesley Wolf's initiative to assemble everyone?

19 A My recollection is that David Weiss wanted to have a meeting with people
20 involved in the case.

21 Q And we received testimony that Mr. Morgan and Mr. Daly gave a
22 presentation regarding the reasons why the case should not be charged. Is that your
23 recollection?

24 Ms. Zdeb. He can speak to whether there was a presentation, but he is not able
25 to get into what any presentation consisted of.

1 Mr. Goldberg. Yes. There was a presentation that was made.

2 BY MR. CASTOR:

3 Q And do you remember who provided the presentation?

4 A Mr. Daly and Mr. Morgan.

5 Q And anyone else have a presentation or a counter-presentation?

6 A I don't recall a counter-presentation. There were other people there who
7 made comments during the course of it.

8 Q Okay. Do you know if anyone, any of the participants, expressed
9 frustration that the purpose of the meeting had been misrepresented to them?

10 Ms. Zdeb. And, again, this is getting into the contents of the meeting on the
11 ongoing investigation, so he's not able to address that.

12 Mr. Castor. Do you remember whether this particular meeting dealt with the
13 2014 and 2015 tax years?

14 Ms. Zdeb. And that also relates to the contents of the meeting on the ongoing
15 investigation.

16 Mr. Castor. So I guess the question is, was the meeting related to the global case
17 or was it specific to a couple tax years? I mean, at the time they were -- we've received
18 testimony pursuing tax -- criminal tax charges for 2014, 2015, 2018, and 2019. And the
19 question is, was this meeting dealing with all of those issues or just the 2014 and 2015 tax
20 years?

21 Ms. Zdeb. And I think that's essentially the same question. It's seeking the
22 contents of a meeting on the case.

23 Mr. Castor. Were you aware that the statute of limitations was about to expire
24 on the 2014 and 2015 tax years?

25 Ms. Zdeb. And, again, that relates to the ongoing case and he's not able to

1 address it.

2 Mr. Castor. Were you aware that there was a tolling agreement arranged with
3 Hunter Biden's lawyers to extend the statute of limitations?

4 Ms. Zdeb. He can answer if he is aware of a tolling agreement. But if what
5 you're asking is whether something like that was discussed at this meeting or any other
6 particular meeting, he can't get into that.

7 Mr. Goldberg. Could you repeat the question? I'm sorry.

8 BY MR. CASTOR:

9 Q Are you aware of whether or not there was a tolling agreement on the 2014
10 and 2015 tax years?

11 A I don't believe that -- I believe there was a tolling agreement, but I'm not
12 sure it was restricted to particular years.

13 Q Okay. Can you tell us how tolling agreements ordinarily work?

14 A So in a general case, whether it's a tax case or not, sometimes there are
15 discussions between the Department of Justice and people who are targets of
16 investigations, because there are statute of limitations that might come into play at some
17 point and there may be requests by the Department or an offer by the target to extend
18 that statute through the course of a tolling agreement.

19 Usually there's a request made by a defendant -- or not defendant -- a target
20 prior, that in exchange for that they might want to make a presentation or do other
21 things. And there is a written agreement that gets executed that -- typically there are
22 different variations of it -- that excludes time.

23 Q And why would a target want to enter into a tolling agreement to allow the
24 government more time to bring a case?

25 A You know, I've asked myself that question sometimes. And I think it's

1 because a target sometimes thinks that then they will get an opportunity to provide a
2 more fulsome presentation about things.

3 Other times I think defense attorneys, they are in favor of pushing things down
4 the road a little bit. Maybe they feel like they need time to get up to speed on their own
5 case. But they make their own decision from the perspective of their client.

6 Chairman Jordan. What happened before the meeting? So Mr. Daly and
7 Mr. Morgan make a presentation at this meeting. Were you fully abreast of what they
8 were going to present at the meeting with Mr. Weiss and other people, part of the
9 investigative team?

10 Ms. Zdeb. You can answer yes or no.

11 Mr. Goldberg. Fully abreast is -- I was aware that they were going to make a
12 presentation. I had a sense of that presentation.

13 Chairman Jordan. And you were fine with them presenting the material in the
14 way they were going to present it?

15 Mr. Goldberg. I don't recall I had a detailed knowledge of exactly what they
16 were going to present. I didn't review their slides. I think I had some notion of some
17 of the documents that they had.

18 Chairman Jordan. Were you in agreement with what they presented to the rest
19 of the investigative team, to Mr. Weiss and his team?

20 Mr. Goldberg. I think this was a presentation that was being made by them
21 about the case. I'm not sure I can go into that more given the line I have given me.

22 BY MR. CASTOR:

23 Q Did you have a pre-meeting with Morgan and Daly and the Tax Division
24 officials that were in attendance to iron out of what was going to be discussed?

25 A I don't think so, not in the way you're talking about. I know I talked to

1 them beforehand that there was going to a meeting and got some sense of what was
2 going to be covered at the meeting.

3 Q Were there any levels of supervisors between Daly and Morgan and yourself
4 involved with this case at DOJ Tax?

5 A Yes.

6 Q And who is that?

7 A So the chief of northern, Jason Poole, and another individual who is an
8 assistant chief in northern as well.

9 Q And did those two officials attend the meeting?

10 A I'm pretty sure that almost assuredly Jason Poole was there, and I think the
11 other assistant chief was there as well.

12 Q Okay. And did Jason Poole, would he be the primary person you would
13 interact with on the contents of matters like this? Or were you dealing more directly
14 with Morgan and Daly, I guess is my question.

15 A Generally speaking, on this case I observed the chain of command.

16 So most of my dealings on the case were through Jason Poole. Occasionally the
17 lawyers that were involved, Mark and Jack, would also be on a call or at a meeting or
18 sometimes they might reach out directly or --

19 Chairman Jordan. Yeah, but we're not talking about generally, we're talking
20 about what happened in June of '22. What happened here?

21 Mr. Goldberg. I can't remember whether or not I talked -- whether Jason Poole
22 or the assistant chief were present before the meeting when we talked at all. I think I
23 talked to Mark Daly and Jack Morgan prior to this.

24 Chairman Jordan. Before the meeting you talked to Mr. Daly and Mr. Morgan,
25 and Mr. Poole and the other assistant may have been there or may not have been there.

1 But you definitely talked to Mr. Morgan and Mr. Daly prior to the meeting?

2 Mr. Goldberg. Yes, yes, yes.

3 Chairman Jordan. Just prior?

4 Mr. Goldberg. I don't know if it was just prior. It could have been 2 days
5 before. But prior to the meeting.

6 Mr. Castor. Who would have reviewed their presentation and okayed it?

7 Mr. Goldberg. I don't know the answer to that particularly. Remember, this is
8 a joint case with the U.S. Attorney's Office and I don't know what interaction -- and David
9 Weiss had asked for this meeting to happen. So I don't know what interactions there
10 were between the U.S. Attorney's Office and them as well regarding the presentation.

11 Chairman Jordan. Did David Weiss call you to make this meeting happen? Or
12 how did it get coordinated?

13 Mr. Goldberg. I think I got contacted that said -- through one of my folks -- that
14 said David Weiss wants to have a meeting in Washington with folks about the case.
15 That's how I think I got it. It's my recollection.

16 Mr. Castor. Do you recall any differences of opinion that occurred during that
17 meeting?

18 Ms. Zdeb. And that also gets into the substance of the meeting, which he is not
19 authorized to discuss.

20 BY MR. CASTOR:

21 Q Agent Ziegler testified that the special agent in charge of the Baltimore Field
22 Office, Agent Sobocinski, asked several questions about the tax case and presented
23 rebuttals to DOJ Tax attorneys who were presenting on defenses raised by defense
24 counsel. Do you recall that?

25 Ms. Zdeb. That also involves the contents of the meeting on the ongoing

1 investigation. He's not authorized to discuss it.

2 BY MR. CASTOR:

3 Q But do you know the answer to that question?

4 A I'm not sure how I can answer that question and stay --

5 Q Well, you're here voluntarily.

6 A Yes.

7 Q And so if we ask a question and you don't want to answer it, we need to
8 make the determination whether that type of question -- at the end of the interview we'll
9 make a list of the information we were seeking from you that we were unable to get and
10 we'll make a decision about whether we need to compel your testimony. And, granted,
11 if we compel your testimony you may come back and refuse to answer.

12 But before we do that, we'd like to know whether, if we are successful in
13 compelling your testimony, whether you know the answer to the question, because if we
14 ask you something and you say, "Well, we can't get into it," but it turns out you don't
15 even know the answer to the question, then it's not really worth the quarrel.

16 Ms. Zdeb. But I think you've asked him whether he recalls a specific thing
17 happening at that meeting.

18 Mr. Castor. Yes.

19 Ms. Zdeb. And there's no way that he can answer whether he knows the answer
20 to that question or not without revealing the answer to the underlying --

21 Mr. Castor. I disagree, I disagree, because -- and my time's up here and so
22 we'll -- this will be it for the first round.

23 But I disagree because I articulated a vignette that Agent Ziegler testified to. And
24 Mr. Goldberg, I think, is in a position to say, "Yes, I remember that," or, "No, I don't
25 remember that," and so that's going to be his answer. But if he can't answer that, then

1 my question is, are you able to say yes or no?

2 Ms. Zdeb. Right. I know what your question is, and my point is that it -- he
3 cannot answer that question without revealing the answer to the other question he is not
4 authorized to speak to.

5 And more broadly, this meeting in general is not within the scope of what he's
6 authorized to speak to. He's happy to speak to Mr. Weiss' authority, to general
7 processes, but he simply cannot get into the substance of the meeting on the case?

8 Mr. Castor. Okay. That's the end of our hour.

9 [Recess.]

1

2 [11:26 a.m.]

3 [REDACTED] It is 11:26. We can go back on the record.

4

EXAMINATION

5

BY [REDACTED]:

6

Q Mr. Goldberg, good morning again. I'm [REDACTED]. I'm with Ranking

7

Member Nadler's staff.

8

I want to go back. We talked through, at the very beginning of the first round,

9

your background, and I want to just touch on that again.

10

You said you first joined the Justice Department in January 1988, correct?

11

A Yes.

12

Q And you've served in every -- roles from a trial attorney in the Public

13

Integrity Section, supervisory level in the Public Integrity Section. You were in the U.S.

14

Attorney's Office in Maryland for a period of time, then you were in the Deputy Attorney

15

General's Office for a time before you went to the Tax Division.

16

Is that a good summation?

17

A Yes.

18

Q And so it's fair to say that you've seen cases both at a line attorney level, at

19

the supervisory level, and also at kind of the Department management level?

20

A Yes.

21

Q Okay. You received a Director's Award in 2010, correct?

22

A Yes.

23

Q What was that award for?

24

A It was when I was the first assistant in the U.S. Attorney's Office, and it was

25

for my job overseeing things, in particular white collar cases in the U.S. Attorney's Office.

1 Q Thank you.

2 So is it fair to say that you are a longtime career-level employee of the
3 Department of Justice?

4 A Yes.

5 Q And in that capacity you've served under both Republican administrations,
6 right?

7 A Yes.

8 Q And you've also served under Democratic administrations?

9 A I have, yes.

10 Q Okay. I want to look at the Tax Division specifically.

11 I think in the first round you said that right now there's no political appointees at
12 the Tax Division. Is that correct?

13 A Yes.

14 Q Is that typical?

15 A It's not typical for most components of the Justice Department, but the Tax
16 Division has had a lot of vacancies over the years in their political positions.

17 Q Okay. So is it fair to say that right now certainly everybody in the Tax
18 Division is a career employee?

19 A Yes.

20 Q Okay. And with regard to the Hunter Biden investigation specifically, you
21 said in the earlier hour that when the case first came to DOJ Tax the person who handled
22 it was Richard Zuckerman. Is that correct?

23 A He was the supervisor of criminal matters at that time, yes.

24 Q Okay. And who was Mr. Zuckerman?

25 A He was a political appointee during the Trump administration. He was a

1 guy who begun his career, I think, in the Department of Justice for a couple years, and
2 then had been a white collar lawyer out in Detroit for a number of years before he
3 became the DAG for criminal matters at the Tax Division.

4 Q Okay. And he was, you said, an appointee of former President Trump?

5 A Of that administration, yes.

6 Q Okay. So is it fair to say that with respect to the Hunter Biden matter -- I'm
7 sorry, and other than Mr. Zuckerberg -- Mr. Zuckerman, I'm sorry -- everybody who has
8 touched the Hunter Biden matter has actually been a career employee, is that fair to say,
9 with respect to Tax Division specifically?

10 A Yes.

11 Q Okay. Over the course of your career at the Department, and looking in
12 particular, for example, at your time with the Public Integrity Section, did you prosecute
13 both Republican and Democratic politicians?

14 A Yes. When we were -- when I was an attorney there and a supervisor, yes.
15 But we didn't put people in those buckets. We prosecuted public officials and
16 employees who committed violations. We didn't keep track of how many were
17 Republican or how many were Democrat.

18 Q Okay. And can you explain that a little more? When you say, we didn't
19 put people into buckets, why was that?

20 A Well, it's important, particularly in public corruption cases, that partisan
21 politics plays no role in criminal prosecutions.

22 And so we investigate people following the evidence, and then make a judgment
23 based on the evidence that's been developed and the Principles of Federal Prosecution
24 what should be done with the case. Sometimes we declined the case; sometimes we
25 went forward and prosecuted the case. It was based on that evidence and not political

1 labels.

2 Q Okay. And you said that's important in particular with respect to the Public
3 Integrity Section.

4 A Yes.

5 Q But do you think that's also important, for example, when you're prosecuting
6 white collar cases at the District of Maryland?

7 A Yes. Yes. And I think it's important across the Department in everything
8 we do, and criminal cases shouldn't have partisan elements in the middle of them.

9 Q And what about the Tax Division, is it important --

10 A Yes.

11 Q -- for the Tax Division to not look at political labels but follow the facts and
12 the law where they lead?

13 A Yes.

14 Q There have been allegations that the Justice Department Tax Division's
15 decision-making in the Hunter Biden case specifically was driven by some decision to
16 protect Hunter Biden from prosecution because of who his father is.

17 What's your reaction to that allegation?

18 A So just keeping things at a very high level, partisan politics, in my view,
19 played no role and hasn't played and I expect will play no role in the way the Tax Division
20 in the Department of Justice handles the Hunter Biden case.

21 [REDACTED]: Okay. Go ahead.

1

2

BY [REDACTED]:

3

4

5

Q On the subject of Mr. Zuckerman's involvement in this case, can you repeat again for the record what his position was when he was ultimately responsible for approving decisions in that case?

6

7

8

9

A Sure. He wore two hats. One was as the Principal Deputy Assistant Attorney General, so he was the head of the Tax Division. But he also wore the hat of the Deputy Assistant Attorney General for Criminal Matters, which is the position I'm in, where he oversaw directly the criminal side of the Tax Division.

10

11

12

Q Okay. And the only person during the pendency of the Hunter Biden matter who was a political appointee in that position was Mr. Zuckerman. Is that correct?

13

14

15

A Yes. We had a couple of other political appointees in the Tax Division during the Trump administration, but I don't believe they had, to my knowledge, any involvement in the Hunter Biden case.

16

17

18

19

Q And I believe you said in the first hour that one of the case-related decisions that Mr. Zuckerman made with respect to Hunter Biden was the decision to open a grand jury. Is that fair? I say that because I thought that was the testimony in the first hour. If I'm wrong, you can correct me.

20

21

22

A So a grand jury was opened during that period of time.

23

24

Q Was that decision ultimately under the supervision and ultimate approval of Mr. Zuckerman?

25

A Yes, though I don't know if I can get in any further into this given the Department's direction to me.

Q Okay.

1 BY [REDACTED]:

2 Q When did Mr. Zuckerman leave the Department, if you remember?

3 A I believe it was January 20th, 2021.

4 Q Okay. So he was there pretty much through the end of the Trump
5 administration?

6 A Yes.

7 Q You mentioned earlier, and I know you've asked for the names to be
8 redacted from the final transcript, but Jack Morgan and Mark Daly. Those are -- they're
9 both Tax Division employees, correct?

10 A Yes. Well, Jack Morgan is not currently a Tax Division employee.

11 Q Okay. Where is he -- who is he an employee of right now?

12 A He's an Assistant U.S. Attorney in the Eastern District of Virginia.

13 Q Okay. And is that recent?

14 A It's as of, I think, August 2022, so late 2022, maybe.

15 Q Okay. To the extent that you worked with Mr. Morgan and Mr. Daly and
16 interacted with them in this case, but also just generally as a supervisor in the Tax
17 Division, is it your opinion that they, like you, followed the facts and the law wherever
18 they might meet in a case?

19 A Yes. They're two very dedicated, hardworking, smart prosecutors who are
20 trying to follow the evidence and the law, yes.

21 Q Did you ever have any indications or any reason to believe that partisan
22 political opinion or bias might be playing a role in their decision-making?

23 A No.

24 Q Okay. In the earlier hour, you were discussing the difference between a
25 special agent report and a prosecution memo, and I don't think you really got the chance

1 to explain in detail how they differ from each other.

2 So for the record, briefly, can you explain what a special agent report is?

3 A It's the formal referral from the IRS to the Tax Division asking the Tax
4 Division to authorize charges in a tax prosecution.

5 Q And what type of things might a special agent report contain?

6 A Copies of interview reports, copies of significant evidence, bank statements,
7 or things along those lines. There's generally some overview text that's written by the
8 special agent as well.

9 Q You said in the earlier hour that the special agent report is a compilation of a
10 lot of things, but it doesn't address everything. I think you said something along those
11 lines.

12 A Yes.

13 Q What might not be included in a special agent report?

14 A Just talking generally, there often may not be a well-developed analysis of
15 the defenses in a particular case. And that may be largely because of the agent doesn't
16 have the information at that time or hasn't focused on it. But it also doesn't contain a
17 lot of information that a prosecutor might want and require in order to apply the
18 Principles of Federal Prosecution.

19 It doesn't get into evidentiary questions generally, in my view. It doesn't get into
20 the elements of particular -- I think it has very broad brush typical discussion of elements,
21 but it's not the sort of in-depth analysis that lawyers tend to do.

22 So what the lawyer is looking at in a case may be different from what's in that
23 report. So they may be interested -- the prosecutor may think that upon reading that
24 report that additional evidence needs to be developed further, for instance.

25 Q And that's because a prosecutor is ultimately the individual who would have

1 to try the case, so they have to have a better sense of what evidence might be needed at
2 trial. Is that fair to say?

3 A Yes. And prosecutors are obliged under our role in the Justice Department
4 to evaluate whether something meets the Principles of Federal Prosecution in order to
5 proceed with a case.

6 Q Okay. The things that are not contained in the special agent report, things
7 like evidentiary considerations -- and that would be, for example, whether evidence
8 would be admissible, correct?

9 A Yes. I guess, it's possible there's some reference to that, but certainly there
10 wouldn't be in-depth analysis, in my experience.

11 Q Okay. So things that are not in the special agent report, like evidentiary
12 consideration, like a more extensive discussion of the elements of particular charges, are
13 those the type of things that would be included in a prosecution memo?

14 A Yes.

15 Q Okay. And can you describe what a prosecution memo is, just generally,
16 not with respect to this case in particular?

17 A Generally, it's a memo that reviews the relevant facts in the case and the
18 relevant law. Often there's a discussion of the -- an evaluation of the potential
19 witnesses and maybe their credibility, maybe other assessments about them. There
20 may be discussions of venue or other aspects, legal aspects of a case, as well.

21 Q Who prepares the prosecution memo?

22 A In a tax case, it's generally assigned by the chief of the section to a particular
23 attorney to prepare.

24 Q Okay. And then who would review a memo after it's -- after an attorney
25 prepares it?

1 A It would go up to the next level, which is typically an assistant chief in the
2 Tax Division in a tax case.

3 Q Okay. And then sometimes these memos, in fact, reach up -- they reach
4 you, correct?

5 A Sometimes. If it comes to me, there's usually on top of that a chief's
6 review note as well.

7 Q Okay. You've mentioned the Principles of Federal Prosecution a couple
8 times.

9 A Right.

10 Q And I want to look into those in a little bit of detail.

1

2

[Goldberg Exhibit No. 1

3

Was marked for identification.]

4

BY [REDACTED]:

5

Q I'm going to introduce as exhibit 1 Section 9-27.220 from the Justice

6

Manual's Principles of Federal Prosecution, which is the section entitled, "Grounds for

7

Commencing or Declining Prosecution." And we're going to look at -- 9-27.220 is at the

8

bottom of the second pages printed.

9

And I should say, we've printed this off. It is, oh, maybe three dozen sections

10

long. So we've only included the one section we're going to go through here. The

11

actual full section is, I think, 30 pages.

12

A Okay.

13

Q I'm going to read the very first paragraph under 9-27.220. It reads,

14

"Grounds for commencing or declining prosecution. The attorney for the government

15

should commence or recommend federal prosecution if he or she believes that the

16

person's conduct constitutes a federal offense, and that the admissible evidence will

17

probably be sufficient to obtain and sustain a conviction, unless, number one, the

18

prosecution would serve no substantial federal interest; number two, the person is

19

subject to effective prosecution in another jurisdiction; or, number three, there exists an

20

adequate non-criminal alternative to prosecution."

21

Did I read that correctly?

22

A Yes.

23

Q So under these principles, prosecutors should only bring charges when,

24

among other considerations, they believe that the admissible evidence will probably be

25

sufficient to obtain and sustain a conviction, correct?

1 A Yes.

2 Q In layperson's terms, what does admissible evidence mean?

3 A It's evidence that a court is going to allow the finder of fact, which typically is
4 a jury, to see and consider in a criminal case.

5 Q So what are examples of evidence that might not be admissible?

6 A It could be evidence that's barred by hearsay or where there is not a witness
7 that's going to have personal knowledge, that you bring in somebody to testify about
8 things that he or she did not directly observe or learn.

9 Q The burden of proof for a criminal prosecutor to obtain a conviction at
10 trial -- so this goes to the obtain and sustain a conviction -- the burden of proof is beyond
11 a reasonable doubt, correct?

12 A Yes.

13 Q What does beyond a reasonable doubt mean?

14 A That's something that's usually left up to juries to decide, and often courts
15 are reluctant to define that. But it's only a doubt for which you have a reason, really, is
16 what courts sometimes say. It doesn't have to be beyond a shadow of a doubt, but it
17 needs to -- it's a fairly high -- it's a pretty high standard.

18 I think the principle we have in the United States is that rather have a guilty
19 person go free rather than -- not that you want that -- rather than have an innocent
20 person convicted.

21 So we have a very high burden of proof, and the jury needs to be unanimous in
22 finding that it's beyond a reasonable doubt.

23 Q Okay. And it's actually -- beyond a reasonable doubt is actually the highest
24 evidentiary standard in the law, correct?

25 A Yes.

1 Q So it's higher than, for example, probable cause?

2 A Yes, significantly higher.

3 Q And it's higher than preponderance of the evidence, correct?

4 A Yes.

5 Q Okay. I want to talk through some of the considerations that a prosecutor
6 might take into account when weighing whether the admissible evidence is sufficient to
7 obtain and sustain a conviction, so sufficient to convince a jury beyond a reasonable
8 doubt.

9 Is sufficiency of the evidence something that a prosecutor might take into
10 consideration?

11 A Yes. Now we're talking generally about --

12 Q Yeah, just generally. Yep.

13 A -- general criminal cases.

14 Q What does sufficiency of the evidence mean?

15 A Whether there is enough evidence that a fact finder, let's say the judge,
16 would determine it could go to a jury because there is enough evidence that if, taking the
17 inferences in the government's favor, that there are elements that -- that there's
18 evidence that meets all the elements of the crime, of a particular crime, and that it's
19 proven beyond a reasonable doubt.

20 Q Okay. Do prosecutors take into account their ability to explain the charges
21 to a jury effectively? So in other words, very complicated evidence might be challenging
22 to present to a jury?

23 A Yes, though, particularly in the Tax Division, we try to work at doing that in
24 our cases. We handle more complex cases generally.

25 Q Are prosecutors required to take into account or should they take into

1 account potential defenses that might be raised by the defense attorney for the
2 witness -- or for the defendant?

3 A Yes. I think both in terms of knowing what those are and then thinking
4 about ways to neutralize those defenses or otherwise show that the person is still guilty
5 despite their bringing up particular defenses.

6 But, yeah, prosecutors need to kind of focus on that as well and try to make an
7 assessment of how the evidence and the defenses that are likely to be offered are going
8 to be perceived by the jury, yes.

9 Q And in tax cases in particular, and this is speaking about tax cases broadly,
10 might one defense that an attorney could raise be that the defendant had actually paid
11 the taxes that he or she owed?

12 A That's something that they may attempt to do, yes, and the Tax Division
13 might attempt to bar that particular testimony.

14 Q But they might raise it, and it might -- if it's allowed in, it could be persuasive
15 to a jury. Is that fair to say?

16 A If it's allowed in, yes, it's possible that a jury might seek to nullify, have a
17 verdict -- would reach a conclusion that the person shouldn't be convicted. We might
18 try to exclude that, yes.

19 Q In a tax case, is a prosecutor required to prove that a defendant's conduct
20 was willful?

21 A Yes.

22 Q And what does willfulness mean?

23 A It's a voluntary and intentional act that violates a specific known legal duty.

24 Q What factors might a prosecutor consider in assessing whether they can
25 prove willfulness to a jury?

1 A So willfulness in tax cases is the highest level of specific intent, highest level
2 of proof we have to show someone -- that they're intent in a case would render them
3 liable for.

4 There are lots of different factors. It may have to do with a person who is
5 knowledgeable about their tax obligation, that they believe that that obligation had not
6 been entirely met, that willfulness is not mistake, it's not negligence, it has to be sort
7 of -- our obligation is really kind of show it's beyond that.

8 Q Okay. So in a situation where a defendant, for example, had a -- was going
9 through challenging personal times at the time of an alleged tax non-payment, that might
10 tend to be used by a defense attorney to show that that defendant was not acting
11 willfully, they were just -- they had other things going on. Is that fair to say?

12 A Yeah, I think in those cases a defense attorney might try to show that
13 somebody was impaired in some way and was not able to assess what their obligation
14 was or to make a deliberate step not to meet that obligation.

15 And in a tax case we would have to confront, if that's the case, what the particular
16 evidence is, and then try to show that we could prove otherwise.

17 Q Okay. We've talked through some of the considerations that prosecutors
18 take into account, and you referenced earlier the need to convince 12 jurors.

19 The jurors' decision must be unanimous to convict, correct?

20 A Yes.

21 Q And so that means that if, considering all these factors, if even only one
22 single juror has what he or she considers to be a reasonable doubt about the sufficiency
23 of the evidence or whether willfulness has been shown or whether defenses outweigh
24 the sufficiency of the evidence, that juror will be actually instructed to find your
25 defendant -- to find the defendant not guilty, correct?

1 A Well, there are general instructions to jurors about they should
2 individually -- they should deliberate with each other but make a judgment about the
3 case, yes.

4 Q Have you ever had the experience as a prosecutor or as a supervisor
5 managing other prosecutors where you felt strongly that you had presented a case to a
6 jury with sufficient evidence to prove the case beyond a reasonable doubt, but there was
7 one juror who did not agree and so, as a result, the defendant was not convicted?

8 A So there are cases where the Justice Department goes forward in the case
9 and does not secure a conviction, and that is a surprise, yes. We're not always allowed
10 to talk to the jurors afterwards. We don't necessarily know why that happens.

11 Q But there have been times when you've presented a case you thought, this is
12 a slam dunk, we've lined up all the evidence, and then sometimes the jury still comes
13 back and it's a hung jury or they don't convict.

14 A There are cases that I've supervised where we've gotten a not guilty verdict
15 when we were expecting to get a guilty verdict, yes.

16 Q We talked through these various considerations that prosecutors make
17 when determining whether to charge or -- to bring charges or not. How do prosecutors
18 learn how to assess and evaluate these considerations?

19 A They learn from training from other prosecutors. They learn from trying
20 cases, observing other people try cases. They learn from participating in what we call
21 indictment reviews, where the goal is to take a case and figure out what the right way to
22 charge it is, to present it in a way that we can get our evidence in and neutralize defenses.

23 They learn it from what we call postmortems, where after someone has a
24 case -- sometimes they win, sometimes they lose -- there's a presentation to other people
25 in the office or the division about that case, and prosecutors talk about what the

1 weaknesses were or what they could've done better or why they thought the case went
2 one way or the other.

3 They learn about it through what we call trial reviews where we -- before the trial
4 somebody might participate in a trial review about someone else's case and you get to
5 see how people think about a case, how you put together a case, and how senior people
6 think it's effective to make your prosecution.

7 Q Okay. So it's fair to say that prosecutors have pretty extensive and unique
8 experience in training and assessing whether -- the sufficiency of the admissible evidence,
9 for example?

10 A That's a central job of the prosecutor.

11 Q And it's fair to say that prosecutors have pretty extensive and pretty unique
12 training in assessing the likelihood that the admissible evidence will actually be
13 persuasive to a jury. Is that right?

14 A They get both training and on-the-job experience on that, yes.

15 Q Okay. And along the same lines, prosecutors have both extensive training
16 and extensive on-the-job learning by doing in assessing whether the evidence that's
17 admitted is likely to result in a conviction.

18 A Yes.

19 Q Okay. As a prosecutor, you have worked with investigators who are
20 responsible for gathering evidence in a case, correct?

21 A Yes.

22 Q Is it fair to say that investigators working on a case generally do not have the
23 same kind of extensive experience that prosecutors do in assessing whether the
24 admissible evidence is likely to result in a conviction?

25 A They have different jobs, so their focus tends to be different from a

1 prosecutor.

2 Q And as part of their focus being different, investigators are not necessarily
3 the best positioned to look at the evidence that's been gathered and decide whether or
4 not that evidence is sufficient to convince a jury. Is that fair to say?

5 A Yeah, I don't want to comment about any particular investigator or not.
6 Some have good insights and good experiences.

7 But the role of a Justice Department prosecutor is to make these sorts of
8 judgments, and they're trained and supervised by other people to ensure they do it in a
9 way that's smart and effective.

10 Q And given the difference, this difference in roles that you've described, is it
11 sometimes the case that there are differences in opinion between investigators and
12 prosecutors about, for example, the strength of the evidence and the likelihood of
13 success at trial?

14 A Yes.

15 Q Over the course of your career, have you had such disagreements with
16 investigators about particular investigative steps or about charging decisions?

17 A Yes.

18 Q Have you supervised other prosecutors who have had disagreements with
19 investigators about particular investigative steps or charging decisions?

20 A Yes. And typically in those instances you try to have a conversation and
21 understand why the other person has a particular view, make sure they get the benefit of
22 everybody's thoughts on it.

23 Q And after you have that conversation, if there's still a disagreement, it's
24 ultimately the prosecutors who make the decision about whether to take a particular
25 investigative step or whether to charge a case.

1 A Particularly when it comes to charging a case, that's the Justice Department
2 prosecutor's job. We've got to make the ultimate call under Department rules.

3 Q Okay. In the first round you talked through the difference between
4 approving, the Tax Division approving charges versus denying charges versus granting
5 discretion over a matter. Do you recall that conversation?

6 A Yes.

7 Q And I just want to sum up for the record and make sure I'm clear on this.
8 What specifically does it mean when the Tax Division grants a United States
9 Attorney's Office discretion over a matter?

10 A It's usually in the context of specific charges in a tax case. So the Tax
11 Division grants discretion regarding those charges, and it means that the
12 U.S. Attorney's Office is free to decide not to go forward on those particular charges.

13 Q Okay. But they can also go forward on the charges if --

14 A Yes, they can.

15 Q -- they choose to do so?

16 A Yes, they can.

17 Q Okay. And by contrast, when the Tax Division grants approval, the
18 U.S. Attorney's Office must bring the charges, right? They don't have the discretion to
19 say: Actually, on further review, we don't think these are -- this is a very strong case.

20 A There is an expectation. I think occasionally the U.S. Attorney's Office
21 might come back and ask us to reconsider. But, yes.

22 Q Okay. And then denying approval means that the U.S. Attorney's Office
23 cannot bring the charges, correct?

24 A It means the Tax Division has decided that those charges should not be
25 brought. If the U.S. Attorney's Office disagrees, it could take that up the line.

1 Q So of these three options -- approval, denial, or discretion -- granting
2 discretion actually gives the U.S. Attorney's Office the most authority over whether to
3 bring charges, correct, because they can bring them if they choose to do so, but they can
4 also decide not to bring them?

5 A It gives substantial flexibility to the U.S. Attorney's Office, yes.

6 Q Can you estimate how often the Tax Division grants a U.S. Attorney's Office
7 discretion as opposed to approval or denial?

8 A I can't come up with that number in particular. I'd say it's not uncommon.

9 Q I want to turn to this case in particular.
10 You said that Mr. Weiss -- or the Hunter Biden matter first came to the Tax
11 Division in early 2019, correct?

12 A Yes.

13 Q And you said that at some time in 2019 it was determined that attorneys
14 from the Tax Division would actually become part of the prosecution team. Is that
15 right?

16 A That they would work with the U.S. Attorney's Office in Delaware on the
17 case, yes.

18 Q Okay. How did that happen? How did it come to be that they were
19 effectively -- that they were assigned to work on the case in Delaware?

20 A I think Richard Zuckerman indicated that we should be helping out on this
21 case. And when there was contact with the U.S. Attorney's Office they asked us for
22 litigation assistance. Because sometimes we can just be a consultant on a case or just
23 provide advice or we can actively provide litigation assistance. And my recollection is
24 that the U.S. Attorney's Office wanted litigation assistance in this case.

25 Q And do you have an understanding of why they wanted litigation assistance

1 in this case?

2 A I don't. I mean, it could be because they likely, in my mind, would be that
3 they wanted tax expertise on it, but sometimes U.S. Attorney's Offices also like additional
4 bodies, additional resources to help out on a case.

5 Q Understood. Is it fair to say that tax prosecutions in particular -- and just
6 speaking broadly -- can be somewhat complex?

7 A Yes.

8 Q And is it fair to say that DOJ Tax attorneys have specialized experience in tax
9 cases?

10 A Yes.

11 Q And Tax Division attorneys also have particular expertise in prosecuting such
12 cases. Is that fair to say?

13 A Yes. Tax cases are not commonly done like a violent crime case or
14 immigration case at a U.S. Attorney's Office. They might not have that many people
15 that do tax cases, but they would have lots of other people that do many other Federal
16 offenses on a regular basis.

17 Q So it can be helpful for U.S. Attorney's Offices to have these specialized Tax
18 Division attorneys working with their office directly on cases. Is that fair to say?

19 A Yes. Yes.

20 Q Okay. And the Department of Justice also has an interest in ensuring that it
21 only prosecutes tax cases which are reasonably likely to result in a guilty verdict, correct?

22 A When we bring a case, we want to win, yes.

23 Q Okay. And is it fair to say that tax attorneys who -- or attorneys from the
24 Tax Division who have this specialized expertise are more likely to have experience in
25 ensuring that there is sufficient evidence to support and sustain a conviction in a tax

1 matter?

2 A I think they're knowledgeable about what the elements are and what
3 particular pieces of evidence that are commonly found that might help meet those
4 elements and persuade a jury, yes.

5 Q And an Assistant U.S. Attorney in a U.S. Attorney's Office, who maybe
6 prosecutes a wide range of crimes, wouldn't have that specialized knowledge. Is that
7 fair to say?

8 A Wouldn't have the experience dealing with these issues, right.

9 Q And the Justice Department also has an interest in ensuring that like cases
10 are treated alike. Is that right?

11 A Yes.

12 Q What does that mean?

13 A It means, particularly in the tax area, Tax Division overall is interested in
14 having uniformity, so that a case, a tax case that's brought in one geographic area is
15 comparable to, in terms of the level of conduct and things like that, to another
16 geographic area.

17 Not that they have to be identical in any way, but that, given the nature of tax
18 enforcement, where there are various levels -- people can be audited, there could be a
19 civil lawsuit in tax court against them, or they can be criminally prosecuted -- and try to
20 treat criminal prosecutions the same way, and that they're different from civil
21 enforcement, they're different from audits.

22 Q Okay. So if a case with similar facts in, say, the District of Maine and similar
23 facts in the District of Arizona, the Tax Division wants to ensure that those cases are
24 treated the same. Is that fair to say?

25 A I think it's the nature of the conduct. Every jurisdiction is different. The

1 juries may be different. The level of -- in New York City a \$250,000 case, it may not be
2 very significant; in another part of the United States it might be much more significant.
3 When dollar amounts are lower, from the jury's perspective, it can be harder to prove
4 willfulness.

5 Q Okay. And why is that?

6 A Just because a jury might look at it and say: I'm not sure that this is worthy
7 of labeling this criminal conduct or that an individual wouldn't have taken a criminal step
8 just to get that small amount of money.

9 Q Okay. And is it fair to say that DOJ Tax Division attorneys, again, with their
10 specialized experience, their specialized training in this, in these matters, would help to
11 ensure that cases are treated the same regardless of what jurisdiction they're prosecuted
12 in?

13 A Yes. One of our goals is to make sure that there's uniformity, yes.

14 Q Okay. There have been allegations made that having DOJ Tax involved in
15 the Hunter Biden case, in particular, somehow led to delays or blockages in that case, and
16 I want to walk through some of those.

17 Did --

18 A Just to interject for a second. I've got a line from the Department in terms
19 of where we can respond and where we can't necessarily respond about things directly
20 related to the Hunter Biden case, as I understand the line that I've been told.

21 Q Understood. And I will try and keep these at a very high level, and I will try
22 not to take up too much time on them, because I understand that that's the line that
23 you're trying to walk.

24 A I feel like I'm obligated to actually walk.

25 Q To the best of your knowledge, did the Justice Department's Tax Division

1 block or prevent Mr. Weiss from bringing charges in the Hunter Biden case?

2 A I don't think I can answer that question given the line that the Department
3 has given me.

4 I can say that the -- just at a very high level -- that partisan politics played no role,
5 as far as I've observed, in the Hunter Biden case.

6 And any dealings with the U.S. Attorney's Office were based on the Tax Division's
7 efforts to ensure that case was being handled the way cases should be handled, and that
8 the facts and the law were developed and the correct conclusion would be made.

9 BY [REDACTED]:

10 Q You indicated in the first hour that it was your belief throughout the
11 pendency of this matter, the Hunter Biden case, that Mr. Weiss was the one who had
12 ultimate authority to make charging decisions. Is that correct?

13 A That he was the lead of the case, yes.

14 Q Okay. And when Mr. Weiss indicated to Congress that he had the ultimate
15 authority to make charging decisions, do you have any reason to believe that he was not
16 being truthful?

17 A So I can't really comment on what David Weiss said. He's the best person
18 to talk about that. And I think you're referring to a letter that he sent. Is that what
19 this is referencing?

20 Q A couple of letters, yes.

21 A So the Tax Division has responsibility to authorize cases or not authorize
22 cases. That's what we're required to do under the Department's policies.

23 My recollection is that David Weiss in his letter qualified or recognized that he
24 was -- I can't remember if it's ultimate authority, I don't have this memorized by any
25 means -- but that he was in that position to make certain appraisals consistent with -- and

1 it's Department's rules, the Federal rules -- the Federal Principles -- Principles of Federal
2 Prosecution, other departmental policies.

3 That's my recollection of what Mr. Weiss communicated. But the letter speaks
4 for whatever it speaks for.

5 Q Right. And when you were talking about -- and throughout this discussion
6 here today you've talked about grants of authority, denials of authority that lie in the Tax
7 Division, you're referring to the Justice Manual, is that right, the procedures that are laid
8 out in the Justice Manual?

9 A Yes, and there may be other policy documents, yes.

10 Q Okay. But you're not referring to statutes, is that correct, that actually lay
11 out where denial of authority within Justice Department procedures would derive?
12 You're talking about the manuals and procedures?

13 A There's a regulation, 28 CFR 0.70, which specifically says that Tax Division
14 has authority over matters arising under the Internal Revenue laws.

15 Q Okay.

16 A That's where the fount of our authority, I think, comes from.

17 [Goldberg Exhibit No. 2

18 Was marked for identification.]

19 BY [REDACTED]:

20 Q Are you familiar with -- I'm going to mark this as exhibit 2. This is 28 U.S.C.
21 Section 509, entitled, "Functions of the Attorney General."

22 A Yes.

23 Q Are you familiar with the statute?

24 A I have seen it, not recently, but I have seen it before, yes.

25 Q Okay. Just take a minute to look at it under Section 509, if you would. It's

1 the first column.

2 A Okay.

3 Q It's brief. So the statute says, quote: "All functions of other officers of the
4 Department of Justice and all functions of agencies and employees of the Department of
5 Justice are vested in the Attorney General."

6 And then it lists a few exceptions. None of those have to do with what we're
7 here for today. They talk about administrative law judges, for example, the Federal
8 Prison Industries, and Board of Directors for the Federal Prison Industries.

9 Is that correct?

10 A Yes.

11 Q Okay. So fair to say that prosecuting authority -- all prosecuting authority
12 within the Department of Justice ultimately lies with the Attorney General of the United
13 States? Do you agree with that?

14 A I think that's a fair characterization of this.

15 Q Okay. And the Attorney General, who holds that authority under the
16 statutes, is able to delegate his authority, his or her authority, as he wishes within the
17 Department of Justice. Is that fair?

18 A I'm not an expert in this area.

19 Q I understand.

20 A There are certain things that are not delegable, that the Attorney General
21 himself has to do.

22 Q That's what I'm talking about, though, is that the authority given to the
23 Attorney General by the statute --

24 A Right.

25 Q -- can be delegated by the Attorney General. In some cases it's delegated

1 to U.S. Attorneys to prosecute Federal offenses within their districts. In other cases,
2 there are policies and procedures, such as in the Justice Manual, where certain Main
3 Justice elements are given approval processes or other kind of discretion over matters.

4 But what I'm asking you is if you understand, within your experience in the Justice
5 Department, that ultimately the statutory authority to prosecute a Federal offense within
6 the United States lies at the highest level with the Attorney General of the United States,
7 and that that authority is then delegated in different ways throughout the Department of
8 Justice and the various United States Attorney's Offices according to the Attorney
9 General's process.

10 A I guess I agree that he has the authority over everything the Justice
11 Department does. There may be -- and like I said, I'm not an expert in this area. I'm
12 not from the Office of Legal Counsel.

13 Q Right.

14 A But my recollection is there is a statute that deals with U.S. Attorneys --

15 Q Yes.

16 A -- that gives them authority.

17 So the authority for a U.S. Attorney, for instance, doesn't derive exclusively from
18 509. So I'm not trying to parse this in some sort of detail, but --

19 Q Yeah, and I'm not trying to ask you for legal expertise.

20 A Right.

21 Q I'm just trying to -- I'm trying to understand just why we're here. I mean,
22 we're here today because we're trying to understand whether the Tax Division had some
23 authority over the decisions that Mr. Weiss has told --

24 A Yes.

25 Q -- us that he had ultimate authority to do, because he had been given that

1 authority in this case by the Attorney General of the United States.

2 And I guess I can get right down to this question. I mean, if there had been some
3 kind of agreement, just hypothetically, between opinions or conclusions that the Tax
4 Division had with respect to some matter -- with respect to this matter -- and the
5 Attorney General himself had a different sense of what should happen, the Attorney
6 General's opinion could ultimately prevail. Do you agree?

7 A Yes. I think with regard to any matter being handled by the Tax Division or
8 probably any component of the Department of Justice, if the Attorney General wanted to
9 take a contrary action, that he was within his authority to do that.

10 Q Okay. And so he could then offer that same authority or delegate that
11 same authority to Mr. Weiss in this example.

12 A He could take steps where he exercised his authority to ensure that a
13 particular decision was made one way or another, yes.

14 Q Okay. So ultimately, when the Attorney General said, I -- sorry. Okay.
15 Go ahead. Do you want to --

16 [REDACTED]: Yeah.

17 Sorry for the back and forth.

18 On September 20th of this year, so a couple weeks ago, Attorney General Garland
19 testified before this committee, and he said that, quote, "Mr. Weiss has full authority to
20 conduct his investigation however he wishes."

21 Do you have any information to contradict the Attorney General's statement?

22 Mr. Goldberg. No.

23 [REDACTED]: Okay. And the Attorney General also said, quote, "Mr. Weiss had,
24 as I said from the beginning -- at the very beginning -- that he had authority over all
25 matters that pertain to Hunter Biden."

1 Do you have any information to contradict the Attorney General's statement?

2 Mr. Goldberg. I don't have anything to contradict the Attorney General's
3 statement, but I do believe that the Attorney General in his statements is implicitly saying
4 that -- when he says people have full authority -- it's to conduct their work subject to the
5 standard policies and rules of the Department of Justice, unless the Attorney General
6 specifically disagrees with that.

7 And the reason I'm saying that is that special counsels, for instance, in my
8 recollection, the regulations require them to abide by the Department's policies.

9 BY [REDACTED]:

10 Q I want to ask you just generally your experience at the Department of
11 Justice.

12 Have you ever seen a situation where Justice Department officials have asked for
13 some deviation in procedures in order to avoid the appearance of impartiality in a
14 politically sensitive case? And, for example, someone recusing themselves because they
15 might have -- be in a political position where it might create the appearance of
16 impartiality in public? Have you ever seen anything like that?

17 A Where people have recused themselves rather than be a decision-maker?

18 Q That's an example, yeah.

19 A Yes.

20 Q So there's some deviation from the policy. The person who's in a position,
21 according to the Justice Manual, to make a decision --

22 A Yes.

23 Q -- to approve or deny.

24 A Yes.

25 Q Can you give an example of that?

1 A I think, just to give an example in a general way, so a U.S. Attorney
2 sometimes might recuse from a case in their district because they got their position with
3 the help of a particular individual who is under investigation.

4 So rather than them specifically working on that case, they recuse themselves.
5 Actually, they need to contact the Department of Justice to formalize that. But, yes.

6 Q Okay. Because, like, there might be some procedure that in the normal
7 circumstance within the Department of Justice would require that person to be the
8 person who gave an approval or made a decision.

9 A Yes.

10 Q Correct?

11 A Right.

12 Q But there was deviation for that procedure because there was a need,
13 someone thought, to avoid the appearance of impartiality, at least in this example, is that
14 correct, in the example that you're giving?

15 A Yes.

16 Q And in order to allow the deviation to happen from procedures within the
17 Justice Manual or some other part of the Justice Department, they had to go up the chain
18 towards the Attorney General, the Deputy Attorney General, to approve that deviation
19 from policy. Fair to say?

20 A Yes, they can recuse the situation. Often they have to get the approval of
21 the Deputy Attorney General's Office if someone else could be appointed to handle the
22 case.

23 Q Okay. And ultimately someone, the Attorney General himself, is the person
24 who's able to allow the deviation from procedure to occur, right?

25 A He can do that, yes.

1 Q Okay. Now, can I just say, Mr. Zuckerman -- you spoke about
2 Mr. Zuckerman earlier. Mr. Zuckerman was a political appointee, correct?

3 A Yes, he was, he was a political appointee.

4 Q Okay. And at the time he was in a position, according to the Justice
5 Department's procedures, within the Tax Division to be the person who made a decision
6 about whether to open a grand jury with respect to Hunter Biden, correct?

7 A Yes. Ultimately, he was responsible. Whether somebody at a lower level
8 made the actual decision, I can't tell you for sure. But, yes.

9 Q He was in the position to approve that decision as it was made, correct?

10 A Yes.

11 Q Okay. Was there any discussion, to your knowledge, that Mr. Zuckerman
12 should recuse himself from that decision given that this was a highly sensitive political
13 matter involving the son of the candidate who was going to challenge the President who
14 had appointed that person to his position?

15 Ms. Zdeb. That gets into deliberations and decision-making on an ongoing case,
16 and I think that it's beyond the scope of what he can speak to.

17 BY [REDACTED]:

18 Q Okay. He didn't recuse himself, to your knowledge?

19 A No.

20 Q Okay. When politically sensitive matters in general are being handled by
21 DOJ, you indicated that sometimes procedures can be deviated from, correct?

22 A I wouldn't frame it like that because --

23 Q With the provision of the Attorney General, I'm sorry, or someone in his
24 office?

25 A The Attorney General has the ability to order that different decisions are

1 made or different paths are taken in connection with cases being handled by people
2 beneath him, yes.

3 Q Okay. And in this case the Attorney General has deviated from procedure
4 in several ways, according to his own public statements, including by keeping the
5 Trump-appointed U.S. Attorney, Mr. Weiss, in place so that he would avoid the
6 appearance of impartiality by letting the prosecution of Hunter Biden be undertaken or
7 continued by someone who was a political appointee of the President.

8 Do you understand that process here of what's happened?

9 A Yeah. Mr. Weiss was held on, but I can't say exactly who made that
10 decision or what the exact reasons were for it.

11 BY [REDACTED]:

12 Q And just -- we're almost out of time, but I did want to ask, in the prior round,
13 the meeting that you attended in Delaware in January, 2023, was discussed.

14 A Yes.

15 Q That was a meeting with defense -- where defense counsel presented a
16 presentation to a number of individuals from the Delaware U.S. Attorney's Office, to
17 yourself, and some others. Is that right?

18 A Yes.

19 Q Okay. Is that type of meeting, at which defense attorneys effectively
20 present a case to prosecutors, is that uncommon?

21 A No. I think it's common in a white collar case for defense attorneys to
22 make a presentation to the government in an effort to try to persuade the government
23 not to take certain actions.

24 Q So that's happened in a number of other cases that you've worked on?

25 A Yes.

1 Q Has it happened many times? Is that fair to say?

2 A Well, I think it's common for that to happen in a case. And in Tax Division
3 there's a mechanism called the conference where they afford people the opportunity to
4 do that.

5 Q Okay. And why did those meetings take place, just generally speaking, not
6 the January 2023 one specifically?

7 A Well, I think one is it's an effort to provide the defense an opportunity to
8 show facts or make legal arguments that demonstrate that their client should not be
9 charged. And if there are facts that we don't know about or that we've missed or don't
10 understand or legal aspects that we didn't pick up on, we want to hear that to get to the
11 right decision.

12 At the same time, I think it's very valuable from the standpoint of the Department
13 of Justice, because we get to hear ahead of time what the defenses are going to be. And
14 that allows us to kind of kick the tires on that and figure out if there are ways to
15 neutralize those defenses or collect additional evidence while we still have an open grand
16 jury to run down facts that might be useful for us in proving our case.

17 Q So in other words, the presentation from the defense attorneys might
18 actually help inform your case as prosecutors?

19 A Yes.

20 [REDACTED]. Okay. All right. Thank you.

21 We can go off the record.

22 [Recess.]

1

2 [12:30 p.m.]

3 Mr. Castor. Good afternoon. We're back on the record. It's 12:30.

4 Mr. Goldberg. Good afternoon.

5 BY MR. CASTOR:

6 Q In March of 2022, David Weiss and U.S. Attorney's Office in Delaware staff
7 brought a case to the D.C. U.S. Attorney Matthew Graves. Are you aware of that?

8 A Yes.

9 Q And were you aware -- before that presentation was made to Matthew
10 Graves, were you aware that it was going to happen?

11 A Yes.

12 Q And did you concur with the presentation that was made by Mr. Weiss?

13 A I wasn't part of the conversation that Mr. Weiss had with Mr. Graves.

14 Q Okay. What did you know about that presentation going into it?

15 A That there was going to be a contact with Mr. Graves about bringing a case
16 in D.C.

17 Q Okay. And did the Tax Division support that initiative?

18 Ms. Zdeb. And I think at this point, we're getting a little bit far into internal
19 decision-making and deliberations around this particular episode during the case.

20 BY MR. CASTOR:

21 Q Okay. Did you oppose that?

22 Ms. Zdeb. It's the same question.

23 BY MR. CASTOR:

24 Q Do you know when the presentation occurred?

25 A Mr. Weiss' call?

1 Q Yeah. Well, as we understand it, the U.S. Attorneys and his office had been
2 working with Mr. Graves' staff.

3 A So my recollection is there was a call between the two of them, and then
4 there was interaction between AUSAs and D.C. and people working on the Hunter Biden
5 case.

6 Q And do you know what the outcome of it was?

7 A Yes.

8 Q Mr. Graves declined to partner with Mr. Weiss, correct?

9 A Yes. Yes.

10 Q And do you know why?

11 Ms. Zdeb. And that, again, gets into deliberations about the ongoing case, and
12 he's not able to address it.

13 BY MR. CASTOR:

14 Q How would Mr. Weiss be able to bring a case in D.C. without Mr. Graves'
15 okay?

16 A So to take this up a level so that I can try to address it as much as possible:
17 If a U.S. Attorney wanted to bring a case in another district, and the U.S. Attorney there
18 was not agreeing to -- didn't want to be partnered with it, didn't want to sign on to the
19 indictment, then the U.S. Attorney would need to secure a 515 letter in order to bring
20 that case in that district.

21 Q Okay. And do you know if Mr. Weiss sought a 515 letter?

22 A I don't know the answer to that.

23 Q Do you know if Mr. Weiss has 515 authority now?

24 A I don't know the answer to that.

25 Q And 515 authority is 28 United States Code 515?

1 A 515. Yes.

2 Q And that's the special counsel --

3 A Not special counsel.

4 Q Special attorney?

5 A It's special attorney. Yeah.

6 Q And is that the designation that Mr. Weiss is operating under currently?

7 A Is what the designation? He's under a special counsel designation.

8 Q It's not under the special attorney provisions of 28 United States Code?

9 A I only know -- I know about the public reports. I wasn't involved in the
10 appointment. I'm not exactly sure. But I believe he has got a special counsel
11 designation, and that's what he is operating under.

12 Q Okay. Were you aware that Mr. Weiss also was interested in bringing
13 charges in California?

14 A I'm aware that he had contact with the U.S. Attorney's Office in California,
15 yes.

16 Q In the Central District of California?

17 A Yes.

18 Q The Los Angeles office?

19 A Right.

20 Q Do you know when that occurred?

21 A I'm not entirely sure when he actually made that outreach. Possibly
22 September.

23 Q And do you know what the outcome of that was?

24 A Yes.

25 Q And what was the outcome?

1 A That U.S. Attorney's Office did not want to partner with the case either.

2 Q And so, at that point, what were Mr. Weiss' options? I mean, he went to
3 D.C., and they said no. He went to Los Angeles, and they said no. What, in your mind,
4 were Mr. Weiss' options at that point?

5 A If he wanted to proceed with the case, he was to obtain 515 authority.

6 Q Okay.

7 Mr. Castor. Let's see. What are we up to? 3?

8 Ms. Nabity. 3.

9 Mr. Castor. Marking exhibits 3, 4, and 5.

10 [Goldberg Exhibits Nos. 3,4, and 5

11 Were marked for identification.]

12 BY MR. CASTOR:

13 Q I just marked three letters that we received from Mr. Weiss. The first is
14 exhibit 3. It's a letter on June 7th to Chairman Jordan.

15 Exhibit 4 is a letter to Mr. Jordan from Mr. Weiss dated June 30th.

16 And the third letter, which is exhibit 5, is a letter to Senator Graham from David
17 Weiss dated July 10th.

18 Have you seen these letters before?

19 A I have.

20 Q Did you see them in real time, or did you see them in your preparation for
21 today?

22 A I saw them when they came out, roughly. I think they appeared in the
23 media, a number of them.

24 Q Okay. We talked about earlier this morning that the final authority for
25 prosecution or not of criminal matters arising under the Internal Revenue laws rest with

1 the Tax Division, correct?

2 A We have approval authority, though someone can appeal us if they disagree.
3 But, yes, it's our responsibility in the first instance to do that.

4 Q Okay. So if felony tax charges are going to be brought, the Tax Division has
5 to sign off? Has to okay it?

6 A In a typical case, yes, we would have to okay that. But if somebody
7 thought we should have okayed it and we didn't, then they could appeal. But, yes, it's
8 our responsibility.

9 Q Okay. And if someone -- if Mr. Weiss gets 515 authority, he would still be
10 required to go through the Tax Division to get approval of tax charges. Is that correct?

11 A Yes.

12 Q Okay. So even if Mr. Weiss had been afforded special attorney status or
13 special counsel status, he would still be operating within the Justice Department's
14 guidelines in the Justice Manual, correct?

15 A Yes.

16 Q The June 7th letter, exhibit 3, states in the second paragraph -- it's the
17 second sentence of the second paragraph where Mr. Weiss states, quote, "I have been
18 granted ultimate authority over this matter, including responsibility for deciding where,
19 when, and whether to file charges, and for making decisions necessary to preserve the
20 integrity of the prosecution consistent with Federal law, the principles of Federal
21 prosecution, and departmental regulations."

22 Do you see that sentence there?

23 A Yes.

24 Q Is that consistent with your understanding of how things work at the
25 Department?

1 A Well, these are not my words, so --

2 Q Fair enough.

3 A -- I'm not in a position to interpret them exactly how the writer -- whoever
4 the writer was of this -- meant it.

5 My understanding is that if you're a U.S. Attorney who is leading a prosecution,
6 that you can make recommendations on your case, but that you -- if you want to bring a
7 tax case, you need to get Tax Division authority.

8 Q So just the plain reading of this part of the letter, I mean, isn't true, right?

9 A Well, it does reference departmental regulations, and 28 CFR 0.70 is the
10 regulation that talks about the Tax Division being vested with authority. So I don't know
11 if the author meant that as a shorthand as a list of these kind of qualifiers in here.

12 Q But when he said that he had been granted ultimate authority, I mean, he
13 did not have ultimate authority. He needed to make sure that the Tax Division
14 authorized the charges, correct?

15 A I don't know what the writer meant by "ultimate authority" here.

16 Q Okay. And he certainly didn't have ultimate responsibility for deciding
17 where, when, and whether to file charges, correct?

18 A Again, the phraseology of the words that were used here, I don't know
19 exactly what the writer was trying to convey.

20 Q Okay. Turning to exhibit 4, the next letter from Mr. Weiss.

21 A This is June 30th?

22 Q The June 30th letter.

23 A Okay. All right. Mine are not marked. They don't have numbers on
24 them.

25 Q Oh, fair enough. The June 30th letter to Mr. Jordan from Mr. Weiss.

1 I want to call your attention to the last sentence on the first page and then the
2 first paragraph on the second page, whereas in the June 7th letter, Mr. Weiss had made a
3 pretty sweeping statement that -- he said, "I have been granted ultimate authority over
4 this matter, including responsibility for deciding where, when, and whether to file
5 charges."

6 In the June 30th letter, he seems to walk that back a good bit, and he states, "I
7 stand by what I wrote" -- but, of course, he doesn't stand by what he writes -- but "I stand
8 by what I wrote and wish to expand on what this means. As the U.S. Attorney" -- and
9 this is the top of page 2 of the June 30th letter.

10 A Okay.

11 Q "As the U.S. Attorney for the district of Delaware, my charging authority is
12 geographically limited to my home district. If venue for a case lies elsewhere, common
13 departmental practice is to contact the U.S. Attorney's Office for the district in question
14 and determine whether it wants to partner in the case. If not" -- and, of course, he had
15 done that.

16 He had taken the case to two separate United States Attorneys. He took it to the
17 U.S. Attorney for the district of D.C., and he took it to the U.S. Attorney for the Central
18 District of California, and both U.S. Attorneys declined to partner, correct?

19 A That's my understanding, that they did not want to partner on the case.

20 Q So, again, "If venue for a case lies elsewhere, common departmental practice
21 is to contact the United States Attorney's Office for the district in question and determine
22 whether it wants to partner." They didn't want to partner.

23 "If not, I may request special attorney status from the Attorney General pursuant
24 to 28 United States Code 515. Here, I have been assured that, if necessary after the
25 above process, I would be granted 515 authority in the District of Columbia, the Central

1 District of California, or any other district where charges could be brought."

2 Are you aware if he -- after the declination from Mr. Graves and Mr. Estrada, are
3 you aware of whether he sought 515 authority?

4 A I wouldn't really characterize it as declination. That's your word.

5 Q He declined to partner. Is that a word we can agree on?

6 A Yes. I'm not going to get hung up on it, but declination is different than
7 decline to partner.

8 My understanding is that they did not want to join the case. Whether he sought
9 515 authority, I think, like I said before, I'm not aware of whether he did or didn't.

10 Q During times relevant, the Tax Division was intricately involved with what
11 the U.S. Attorney's Office in Delaware wanted to do on these cases, correct?

12 A We were working with them and consulting with them, yes.

13 Q And so you were aware that there was an avenue to bring a charge -- for
14 2014, 2015, to bring that case in D.C., correct?

15 Ms. Zdeb. I think he can speak generally to avenues to bringing any charges.
16 He is not able to get into specific tax years and venues for those tax years.

17 BY MR. CASTOR:

18 Q So presumably, if Mr. Weiss brought a case to D.C., at that point in time, the
19 Tax Division had okayed that. Is that a fair assumption?

20 A Well, I think I mentioned that I talked to Mr. Weiss before he contacted Mr.
21 Graves about bringing the case there.

22 Q So if it's felony tax charges -- as we understand it was -- in D.C., then the Tax
23 Division had okayed that. It had given Mr. Weiss the approval to move forward. Is
24 that fair to say?

25 A Well, he was contacting the U.S. Attorney's Office about venueing a case in

1 D.C. That's what the discussion was, as I understood it.

2 Q And had the Tax Division already rendered a decision?

3 A Based on the direction that I've gotten from the Department of Justice, I
4 don't think I can answer that question.

5 Q Okay. But you were working -- the Tax Division was working collaboratively
6 with Mr. Weiss --

7 A Yes.

8 Q -- on the team? Mr. Morgan, Mr. Daly, yourself as the senior person with
9 criminal responsibility in the Tax Division, correct?

10 A We were working with him on the case. I did not have day-to-day
11 involvement in the case, as opposed to Mark Daly and Jack Morgan, who were
12 involved -- actively involved.

13 Q So isn't it fair to say that if the Tax Division did not okay the charges, then it
14 would be fruitless for Mr. Weiss to go to Mr. Graves and ask to partner on the case?

15 A I think we're -- I don't think I can answer the question given the directions
16 I've gotten from the Department of Justice on this.

17 Q Okay.

18 A He contacted them.

19 Q Okay. To bring a case? To partner?

20 A To -- you know, partnering on a case means working ultimately with a case.
21 It doesn't necessarily say what stage of the case and where the case is or anything like
22 that. I can't really get into that.

23 Q Right. But before he did that, he would obviously need to check the
24 appropriate Justice Department boxes, right?

25 A This is about moving the case from Delaware to D.C. That's what the

1 contact was. It was an ongoing case that got moved from Delaware to D.C.

2 Q But was it about bringing charges, or was it about just conducting additional
3 investigative activity?

4 Ms. Zdeb. I think he said he understood it to be about potentially partnering,
5 and beyond that, whether it involved investigative activity or charging activity gets into
6 the ongoing matter.

7 BY MR. CASTOR:

8 Q But the statute of limitations was about to expire, correct?

9 A I don't remember the exact chronology on that in terms of that time period.

10 Q Okay. And then the third letter to Senator Graham. Calling your
11 attention to the third paragraph that begins "to clarify."

12 A You said third paragraph? Oh, I see it.

13 Q Yeah. The third paragraph on the first page. "To clarify."

14 A "To clarify." Okay.

15 Q "To clarify an apparent misperception and to avoid future confusion, I wish
16 to make one point clear. In this case, I have not requested special counsel designation
17 pursuant to 28 CFR Section 600 et seq. Rather, I had discussions with departmental
18 officials regarding potential appointment under 28 USC 515, which would have allowed
19 me to file charges in a district outside my own without the partnership of the local U.S.
20 Attorney."

21 But it's clear from this letter that he didn't have special counsel authority under
22 the statute or the regulations, correct?

23 A I'm just reading the rest of the letter. Sorry.

24 I'm not sure I can answer that question.

25 Q Okay. Well, do you acknowledge that he writes, "In this case, I have not

1 requested special counsel designation pursuant to the CFR"?

2 A That's what that lines says, yes. "One point clear. In this case, I have not
3 requested special counsel designation." Yes.

4 Q Okay. And then he states, "Rather, I had discussions with departmental
5 officials regarding potential appointment under 28 USC 515, which would have allowed
6 me to file charges in a district outside my own without the partnership of a local U.S.
7 Attorney," correct?

8 A Yes.

9 Q So at this point, on July 10th, 2023, Mr. Weiss is asserting to Senator Graham
10 that he didn't have special counsel authority under the regs or special attorney authority
11 under 515?

12 A I don't read it exactly that way.

13 Q Okay.

14 A I didn't write it, and it's a little confusing --

15 Q Okay.

16 A -- honestly to me. So it is not clear what tense this was in.

17 Q Okay. What was your understanding at this point in time of Mr. Weiss'
18 authority?

19 A Whether he had 515 authority? I don't know whether he asked for it or
20 not. I know that he was aware of 515 authority, and I think he expected and I expected
21 that he would get it if needed.

22 Q Okay. Without that authority, he was unable to bring charges in a district
23 not his own, correct? Without --

24 A Correct. Yes.

25 Q Okay. What was your understanding of Mr. Weiss' intention to use the

1 authority of 515? Was there a discussion that he was going to seek special counsel
2 status? Was that part of the --

3 A Not with me. He didn't have any discussion with me about seeking special
4 counsel status.

5 Q And did he have any discussion with your people?

6 A Not that I'm aware of.

7 Q Okay. And so what were you thinking was the resolution of these matters,
8 both in D.C. and California?

9 A As I said, I expected that he would be able to get 515 status if he asked for it.
10 Whether he, in fact, asked for it, I don't know, but I expected that he would get it. It's
11 not -- it's authority that is given in the Justice Department all the time.

12 Q It is given all the time?

13 A Yeah. With some frequency, sure.

14 Just to be clear, you know, in the Tax Division, we send people out to go to a U.S.
15 Attorney's Office. I sign a letter, a 515 letter, so that they can go and operate in that
16 district.

17 Q Okay.

18 A If, let's say, a U.S. Attorney in a particular district is recused, and they need
19 to bring another U.S. Attorney's Office in to handle that case in that district, then the
20 DAG's office typically issues 515 letters in that context.

21 Q Okay. But for this particular case, no request was made for that type of --

22 A That's the part that I don't know.

23 Q Okay.

24 A Right.

25 Q And do you think, in this particular case, would it have been you that would

1 have signed the 515 letter?

2 A No. No.

3 Q Who would have signed it?

4 A I'm guessing somebody in the DAG's office.

5 Q Going back to the June 7th letter.

6 After looking at the -- all sort of talking about all three letters, I would just like to
7 go back to the statement that he made that he's been granted ultimate authority, but he
8 hadn't. Nobody gave him 515 designation. Nobody gave him any other type of
9 authority, whether it be through the regs or otherwise, correct?

10 A So, like I said, I don't know exactly what was meant by "ultimate authority."
11 My understanding is that he was the lead on his case. He was in a position where he
12 was going to make a recommendation --

13 Q Right.

14 A -- regarding the prosecution, and that -- and we had advised him that he
15 was -- if we authorized charges that he was seeking, that it was going to be with
16 discretion, so he had the ability to not bring the charges or not. That's my
17 understanding of where it is. And that if he disagreed with our determination in the
18 case, he could take it to the DAG's office or the AG. That's my understanding.
19 Whether that amounts to ultimate authority, I think that's for somebody else to --

20 Q Did he do that, to your knowledge?

21 A Did he do what?

22 Q Did he take it to the DAG or the AG?

23 Ms. Zdeb. That's getting into the ongoing case.

24 Mr. Castor. But it also gets into Mr. Weiss' authority.

25 Ms. Zdeb. Well, I think Mr. Goldberg has addressed his authority as it pertains to

1 the ability of the U.S. Attorney to take something up the chain to the DAG or the AG.
2 Whether that actually happened involves the case.

3 BY MR. CASTOR:

4 Q Okay. But the term, "ultimate authority," is certainly something Mr. Weiss
5 did not have. And he couldn't override the Tax Division, and he couldn't override the
6 two U.S. Attorneys. Is that correct? Without some special authority that he didn't
7 have?

8 A And I don't know what conversations he had with people at other levels in
9 the Justice Department that might have told him that he could do certain things or not.

10 Q But as of June 7th, he didn't have that authority, correct?

11 A Like I said, I don't know what -- you know, he had conversations with people
12 in the DAG's office. I was not present for those conversations. What the nature of
13 them or what was said, I can't say. And I wasn't involved in writing this letter or drafting
14 the words in it.

15 Q But the Tax Division was intricately involved with the prosecution's efforts
16 here. I mean, Mark Daly, Jack Morgan, they're in this day to day.

17 And so, if Mr. Weiss, as of June 7th, did indeed have ultimate authority, you would
18 most likely know it, correct?

19 A Well, like I said, I'm not sure exactly what was meant by this. And I go back
20 to -- because I'm just trying to read it and understand it -- is that it's qualified. It says, "I
21 have been granted ultimate authority," and it says, "consistent with," and then it says,
22 "Federal law principles, Federal prosecution, and departmental regulations," which -- and
23 I read that -- just trying to read this language in a coherent way -- as saying that it's
24 subject to limitations that are placed on departmental prosecutors.

25 Q Right. But I could say the same thing. I've been granted ultimate

1 authority over a matter consistent with Federal law, the principles of Federal prosecution,
2 and departmental regulations, and I can't go prosecute a case.

3 A No, but he was actually the U.S. Attorney. He had been running this case.
4 He was going to be making a recommendation on the case.

5 Q Right.

6 A He's in a different posture than you are.

7 Q Right. But he hadn't -- you know, the way he makes it sound, it's as if it's
8 his authority and not the Tax Division's. I mean, isn't that a fair reading of it?

9 A I've told you what I think is my best reading about it.

10 Mr. Castor. Okay.

11 Mr. Clerget?

12 BY MR. CLERGET:

13 Q Who made the decision to keep U.S. Attorney Weiss in place around the
14 time of the new administration coming in January 2021?

15 A I don't know.

16 Q Were you consulted about that decision?

17 A No.

18 Q Okay. Do you know anything about why the prior U.S. Attorney would be
19 kept on?

20 A No.

21 Q In your career at the Justice Department, have you seen U.S. Attorneys held
22 over from one administration to the next when the party switches?

23 A Yes. I can think of instances, but I'm not sure about the party switching. I
24 think so. I think so.

25 Q And it's common for U.S. Attorneys to offer their resignation at the end of a

1 Presidential term. Is that right?

2 A It's become more common. There was a period of time where people were
3 refusing to, I think, resign. So I think Rod Rosenstein was held on and continued
4 as -- and then there were two other people as well. Maybe George Holding. I'm trying
5 to reach back into memory, but --

6 Q That's okay. I'm just trying to get a sense of how common it is from a
7 general perspective.

8 A Generally, there aren't a lot of them. There are few that are held over or
9 none.

10 Q When a U.S. Attorney changes -- when a U.S. Attorney moves on and a new
11 U.S. Attorney is installed, there are typically pending cases, right?

12 A Yes.

13 Q Okay. So cases are handed from one U.S. Attorney to a new U.S. Attorney
14 commonly?

15 A Yes.

16 Q Okay. So do you have any sense as to why this case needed to be -- needed
17 to have a U.S. Attorney kept in place?

18 A I was not involved in the decision. I don't know why they made that
19 decision.

20 Q Do you have an opinion about it, just from your own observation?

21 A I don't want to speculate on it.

22 Q Do you think it was because the target of the investigation was the son of
23 the incoming President?

24 A I don't want to speculate on that.

25 Q In your role at DOJ Tax Division, do you interact frequently with the IRS?

1 A I wouldn't say frequently. I would say I have some regular interaction with
2 the head of the CI, the Criminal Investigations Unit. I have some -- I attend some
3 meetings with other senior folks at the Chief Counsel's Office. Occasionally, I intersect
4 with an agent or two in a case.

5 Q And line level attorneys that report to you, do they interact more frequently
6 with the IRS?

7 A Yes.

8 Q Okay. You know, for example, we've been talking about Mr. Daly and Mr.
9 Morgan. Do they interact frequently with IRS agents investigating a case?

10 A In the course of their duties at the Tax Division, yes.

11 Q Is that typical on investigations of criminal tax cases?

12 A That there would be interaction with IRS agents, yes.

13 Q Okay. In your career, have you interacted with the civil side of the IRS or
14 just the criminal side?

15 A A little bit on the civil side.

16 Q Okay. More so with the criminal side?

17 A Yes. Though limited, like I said, on the criminal side, but yes.

18 Q Okay. So our understanding from the testimony we've received on this
19 matter is that it began as a spin-off of another criminal tax investigation, and so, the
20 matter began at IRS CI as a criminal investigation. Is that consistent with your
21 understanding?

22 A Yes.

23 Q And our understanding is that, when IRS CI is doing a criminal tax
24 investigation, the civil side is paused during that time. Is that consistent with your
25 understanding?

1 A Sometimes that's true, and other times, I think, it's not true.

2 Q So sometimes, from your understanding -- and I know you're not at IRS.
3 You're at DOJ.

4 A Right.

5 Q But can a civil audit proceed alongside a criminal investigation? A criminal
6 tax investigation?

7 A I'm not an expert on this, so -- but my understanding is that you can't
8 leverage a civil audit for criminal purposes. That would be impermissible. But there
9 may be ways to have things in a different channel. But other times, they stop them, yes.

10 Q Okay. So sometimes they do stop --

11 A Yes.

12 Q -- the civil side while a criminal investigation goes forward?

13 A Yes.

14 Q So our understanding from the testimony we received is that that was the
15 case here, that the civil audit side was paused, and that, as we discussed, the tax years
16 2014 and 2015 statute of limitation was allowed to expire.

17 Do you know whether the civil side was paused for Hunter Biden in this case?

18 Ms. Zdeb. Whether -- I'm sorry. Are you asking about the IRS's investigation?

19 Mr. Clerget. Yes. Does he know whether the civil audit procedures were
20 paused for Hunter Biden?

21 Ms. Zdeb. Can we go off the record for a second?

22 Mr. Clerget. Can we go off the record?

23 [Discussion off the record.]

24 Mr. Clerget. We'll go back on the record.

25 Mr. Goldberg. All right.

1 BY MR. CLERGET:

2 Q So we discussed whether a civil audit can be paused while criminal tax
3 investigations proceed.

4 A It doesn't mean that there is a civil audit, though, right?

5 Q True. Yeah, I'm not --

6 A Are you suggesting that there was a civil audit?

7 Q No. There may never --

8 A Okay. That's the part I'm confused about.

9 Q I guess I should ask you --

10 A I can't comment if there was because it would be 6103 information.

11 Q Okay. But it's possible for there to be a criminal tax investigation without a
12 civil audit. Is that correct?

13 A Yes.

14 Q Okay. And if it begins on the criminal side and the civil audit side is paused
15 or --

16 A But there may not be.

17 Q -- or is not allowed to go forward, you don't open a civil audit if you've
18 started it as a criminal tax matter. Is that correct?

19 A I think that -- I'm not an expert in this area. I think that's probably true,
20 though civil audits can get opened, I think, later in later stages depending upon. So you
21 can -- you don't have to wait until the end of a criminal case in order to green-light
22 civil -- taking action on a case.

23 Q Okay.

24 A So, you know, I'm aware of that happening in other cases where the agents,
25 the IRS CI agents -- told us they can go ahead and look at certain things.

1 Q And do you know if that decision or procedure is an internal IRS process
2 determination?

3 A The IRS would have to make a determination of whether to go forward on a
4 civil matter.

5 Q Okay. So our understanding is that it began as a criminal matter inside the
6 IRS and the civil audit -- a civil audit didn't go forward.

7 And our understanding is also that the statute of limitations expired for tax years
8 2014 and 2015. And our understanding is also that, because of the rules, the look-back
9 period for civil audit, that a civil audit -- the timeframe for a civil audit has now passed.
10 In other words, there is no way for a civil audit to be opened in this matter.

11 Would that be consistent with your understanding?

12 Ms. Zdeb. And, I'm sorry, but that is getting into the ongoing investigation.

13 And I urge him to also express some concerns about questions related to potential
14 civil audits in a specific case also implicating 6103.

15 BY MR. CLERGET:

16 Q Okay. I can ask it at a general level. I'm just trying to understand your
17 understanding of how these tax cases work across from one agency to another. There's
18 civil. There's criminal. There's DOJ. There's DOJ Tax. It's a little complicated. I'm
19 just trying to understand the issues here based on what we've been told.

20 Our understanding is that it's possible in a criminal case for a civil audit to not be
21 opened because it's already being criminally investigated. And if a statute of limitations
22 is allowed to expire, or an investigation lasts for a number of years -- 6 years or 7
23 years -- that you get beyond the civil look-back period, and an audit can no longer be
24 opened. Is something like that possible?

25 A It's very speculative to me. I don't know a lot about the civil area, except

1 my understanding is there is no civil statute of limitations. IRS can go -- it's unlike in the
2 criminal area. So the IRS can go back, theoretically, and assess any case if there is fraud
3 or false -- or evasion. Those are the circumstances that are required for that.

4 So that, I know. But internal IRS procedures beyond that, I don't know.

5 Q Okay. But with a showing of fraud or evasion, you could -- your
6 understanding is that the IRS could open a civil audit that would otherwise be past the
7 look-back period?

8 A I don't know what you mean by "look-back period."

9 Q It's the equivalent of a statute of limitations. I think it's typically 6 years for
10 most tax issues on the civil audit side.

11 A Like I said, my understanding is -- and I'm not a civil tax lawyer, so I'm not
12 going to get in a dangerous area for me -- is that there is no statute of limitations if there
13 is fraud in connection with a civil collection case. That's what my understanding is.

14 Q If there's fraud?

15 A There has to be fraud or evasion. I don't have the statute in front of me,
16 but yes. If there was fraud or false statements or evasion. I don't remember the exact
17 wording of the statute.

18 Q Okay. So we've received testimony that, if the statute of limitations has
19 expired, that there's no way for the U.S. Government to recover unpaid tax liabilities
20 going back to 2014, 2015.

21 Is that a possible outcome in a situation like this?

22 A Like I said, I have exhausted my knowledge of civil tax.

23 Q Would you be concerned if it was the case that the length of a criminal
24 investigation could prevent the IRS from collecting unpaid taxes?

25 A I don't think I should speculate about this.

1 Q About whether that would concern you?

2 A No. About the premise that there's a bar because of this or that. That's
3 where this is coming from.

4 Q I'm asking you to accept the hypothetical now. If that were the case, would
5 that be a concern?

6 A And I don't want to get in hypotheticals about this. You're talking to a
7 criminal prosecutor, really.

8 Q I understand. Okay.

9 In the last hour, you were asked some questions about considerations that the
10 Department of Justice and the prosecutors have to take into account when determining
11 whether or not to bring charges. Things like chances of success, admissibility of
12 evidence, proving a case beyond a reasonable doubt. Do you remember that line of
13 questioning generally?

14 A Yes.

15 Q In your career at the Department of Justice, have you worked with a large
16 number of prosecutors?

17 A Yes.

18 Q And would you say that the Department of Justice has skilled prosecutors in
19 its employ?

20 A Yes.

21 Q Yesterday, we interviewed U.S. Attorney Estrada, who detailed some of the
22 horrible crime going on in his district. He talked about cartels, gangs, Mafia, some
23 pretty difficult and challenging cases and potential defendants involved in his work in that
24 district.

25 Do you think that the Department has prosecutors talented enough to prosecute

1 cases related to activities of individuals like that? Cartel members? Mafia members?

2 A Yes.

3 Q In your experience, are DOJ prosecutors typically afraid to bring cases
4 against those individuals?

5 A Cartel members or things like that? I think we're lucky to have a number of
6 career narcotics prosecutors that are willing to take those cases on. Sometimes they do
7 get threats or have to have protection from the Marshals Service, so.

8 Q But they don't usually stand down and drop their cases in those situations?

9 A You know, there may be individual prosecutors that are concerned about
10 themselves or their family and want to stay -- move into another part of the Justice
11 Department, yes.

12 Q But the Department wouldn't drop a case because of a threat?

13 A The Department? No.

14 Q Okay. And do DOJ attorneys interact with defense counsel frequently?

15 A Yes.

16 Q And, in your experience, are prosecutors you've worked with typically afraid
17 of or intimidated by defense counsel?

18 A No. I don't think they should be intimidated by -- but sometimes defense
19 attorneys attempt to do that, yes.

20 Q Are you aware of testimony that says that Chris Clark told DOJ officials that
21 bringing charges against Hunter Biden would be career suicide?

22 A I recall seeing something like that. You know, in my experience, having sat
23 in on some meetings where defense attorneys make -- not necessarily those statements,
24 and I'm not saying Chris Clark said that or not because I wasn't present -- but I think it's
25 counterproductive. That tends to solidify prosecutors in the Justice Department not to

1 put their head down and try to do their job.

2 Q Okay. And so you weren't present when -- if that was said, you weren't
3 present for it?

4 A No.

5 Q Okay. Did anyone ever report that to you?

6 A I don't recall it. You know, I know that there was, you know, often
7 contentious discussions between defense counsels and prosecutors, and I think some of
8 that happened here. But I don't recall the specific verbiage, no.

9 Q Okay. And are you aware of reporting that Chris Clark stated that he would
10 call President Biden as a witness if DOJ moved forward with the case?

11 A I saw that mentioned somewhere.

12 Q Were you aware of that beyond the public reporting?

13 A No, I wasn't. But I don't think it's relevant at all to how we would handle
14 the case.

15 Q So you don't think prosecutors involved in the case were concerned or
16 worried or intimidated by that statement?

17 A I don't know if the statement was actually made because I wasn't there.
18 But prosecutors in the Tax Division were engaged in the case and trying to get to the right
19 decision on it without any external comments that may be made.

20 Q So prosecutors don't typically fold under pressure from defense attorneys?

21 A Not in my experience.

22 Q If someone meets all the elements for a felony tax evasion case, and later
23 gets caught for tax evasion and then, once caught, pays tax liabilities off, pays the IRS the
24 money that they should have that they previously evaded, was a crime still committed if
25 all the elements of tax evasion were there?

1 A Can you restate that again? I'm having trouble following.

2 Q So if all the elements of the crime of tax evasion are met, but the target or
3 the defendant later pays off the liability of the amount of tax due, has a crime still been
4 committed?

5 A The question would be whether -- I'd have to know the whole -- all the facts.
6 But the defense would try to argue that somehow -- that that payment showed what
7 willfulness the defendant had in his or her mind.

8 Q But what if they pay it back after they've been caught?

9 A Right. Right. Right. The Department -- like I said, that's what the
10 defense would argue. In some courts, they may admit that payment. In other courts,
11 they may not. It depends upon what the circuit is. It depends upon what other -- what
12 the circumstances are. I can't really opine on a case like that.

13 If they came up with the money -- they had no money initially and then they came
14 up with the money, and as soon as they came up with the money, they paid it, that might
15 be more relevant, right?

16 Q My question isn't whether it would be relevant or admissible. It may be
17 relevant or admissible to any sentencing in whatever the case may be.

18 But if the elements of the crime are met, does paying off the liability alleviate you
19 from the criminal conduct? Have you still committed a crime if you initially evaded
20 taxes?

21 A And I'm just trying not to opine on a case where I don't have all the facts.
22 You say the crime has been committed, but the question is what the evidence is relating
23 to that. And whether this payment -- subsequent payment has an impact or not, I can't
24 say. So it's hard for me to opine on that.

25 Q Okay. I'm just trying to understand if paying off your taxes after you get

1 caught for any tax crime alleviates you of criminal liability. Is that the Department's
2 position?

3 A So no. If you commit a crime -- like, just take this. Let's take bank
4 robbery, right? You rob a bank, and you get caught, and you hand the money back later.
5 That's not going to alleviate you for liability for the crime. That's clear.

6 And in many respects, similar -- in a tax case, we have to prove willfulness, which
7 is the highest level of intent. And all the circumstances about how that person reacts in
8 connection with his or her tax liabilities are going to be relevant to whether or not
9 willfulness is proven. And it is possible that the way they handle this repayment may be
10 relevant to that.

11 So without knowing all the little pieces, I can't say. But I can tell you that
12 defense attorneys try to bring that stuff in all the time in regular cases, and the
13 government often tries to exclude that.

14 Q In the testimony we've received, we've also been interested and concerned
15 about how the different agencies and different parts of the agencies involved in a
16 tax -- criminal tax matter work together, or fail to work together in some cases. You
17 have IRS CI. We talked about the possible role of civil, but put that to the side for now.
18 FBI, U.S. Attorney's Office, Main Justice, Main DOJ, DOJ Tax. It's a lot of entities.

19 Throughout your career, how have you found the working relationship to be
20 between all of those entities in the coordination necessary for investigation?

21 A I've been lucky enough to find that I think there generally is pretty good
22 coordination, though there in cases where a case is going for a while, there can be bumps
23 in the road in terms of people don't see things exactly the same or that there's change in
24 personnel when -- but DOJ does a pretty good job, I think, working within itself. And Tax
25 Division has a good relationship, my impression is, with IRS CI. And that's how we make

1 our cases. We have the IRS CI in every one of our cases. So I think we navigate those
2 things.

3 BY MR. CASTOR:

4 Q In late March of 2022, we've been told that Mark Daly contacted Special
5 Agent Ziegler to say that, in his communications with the first assistant in the D.C. U.S.
6 Attorney's Office, that the first assistant was optimistic that the case would be permitted
7 to be brought in D.C.

8 Did that fact ever make it to your attention? That before Mr. Graves declined to
9 partner, the staff-to-staff communication of your staff, Mr. Daly, and Mr. Graves' staff has
10 been -- you know, we have testimony to say that Mr. Daly believed that the first assistant
11 was very encouraged that Mr. Graves would be able to, you know, allow the case to be
12 brought. Had that been brought to your attention?

13 A That the first assistant in D.C. said --

14 Q That Mr. Daly was encouraged by his communications with Mr. Graves' staff.

15 A We're getting into deliberations, I think, right? So based on the line that
16 the Department is drawing, I'm not sure I can get into conversations that may have taken
17 place.

18 Q Did Mr. Daly keep you updated on the blow-by-blow?

19 A I don't know whether I was updated on the blow-by-blow, but it was
20 reported back to me about the dealings with the U.S. Attorney's Office, at least in some
21 instances or some level. Whether there were -- how many interactions and whether I
22 received information after each one, that I can't say.

23 Q Did you have an idea that Mr. Graves was going to decline to partner before
24 he did?

25 A I don't -- I'm not sure I understand the question. Could you ask it again in a

1 different way?

2 Q Of course. Was it your expectation that Mr. Graves was going to partner or
3 not going to partner before he made his final decision?

4 A I'm not sure when he made his final decision exactly. I'm a little -- I don't
5 have a current recollection. As I said before, they -- I learned that he was not interested
6 in partnering with us and that he was willing to give us a point of contact and things like
7 that.

8 Q Okay. Leading up to that, did you have any inclination -- did you have an
9 expectation that he would or would not partner?

10 A I don't know that I can answer that question without getting into what
11 conversations -- deliberative conversations might have taken place.

12 Q How common is it for a U.S. Attorney, like Mr. Graves, to decline to partner
13 when the U.S. Attorney from the different jurisdiction, Mr. Weiss, apparently has the
14 support of the Tax Division? How common is that?

15 A I know it occurs. I can't tell you how common it is because I don't know the
16 full universe of people. I don't think it's all that common for U.S. Attorney's Offices to
17 move white-collar cases from one place to another. It happens occasionally.

18 Q Well, for tax cases, though, are venues pretty certain?

19 A Right. But sometimes that decision is made at an earlier stage, or if it's at a
20 later stage, then I think U.S. Attorney's Offices might carve up their own case in a way
21 that didn't require them to move.

22 Q Why did it take Mr. Weiss so long to bring the D.C. component to Mr.
23 Graves?

24 Ms. Zdeb. That gets into the ongoing case, and it's beyond the scope of his
25 authorization.

1 BY MR. CASTOR:

2 Q Do you remember when the case was brought to Mr. Graves?

3 A I think in March of 2022.

4 Q And the case had -- at least the tax part of the case had begun in 2019,
5 correct?

6 A Yes.

7 Q You had a supervisory role during that whole time period, right?

8 A Even though it was a different role, I would say that I had a supervisory-type
9 role, though Richard Zuckerman, between 2019 and 2021 -- beginning of 2021 -- was the
10 one supervising the case.

11 Q But it was clear all along that for the tax years 2014 and 2015, the venue was
12 appropriate in D.C., and for the other years, the venue was appropriate out in Malibu and
13 the Los Angeles area?

14 Ms. Zdeb. That gets into internal analysis and deliberations around venue, and
15 it's not something he is authorized to discuss.

16 BY MR. CASTOR:

17 Q So I'm just wondering why it took so long. That's sort of a big question. I
18 mean, I guess that's one of the reasons we want to speak with Mr. Daly and Mr. Morgan
19 because they're much more involved with the day-to-day blow-by-blow.

20 So had anyone brought concerns to you or maybe Mr. Poole about what was
21 taking so long in bringing these cases to the respective U.S. Attorneys?

22 Ms. Zdeb. That question seeks deliberations about the ongoing investigation.
23 And whether you're speaking to Mr. Goldberg or any other witness at this point, the
24 Department hasn't authorized testimony on that sort of topic.

25 BY MR. CASTOR:

1 Q Who is John Kane?

2 A John Kane is an assistant chief in the Tax Division.

3 Q Does he work for Mr. Poole?

4 A Yes.

5 Q Earlier, you mentioned -- we had asked you which personnel in the Tax
6 Division were working on this case, and I think we agreed it was Mr. Morgan, Mr. Daly,
7 Mr. Poole, and then there was --

8 A I said assistant chief because I'm trying to follow the direction --

9 Q No, I understand.

10 A -- given from the Justice Department. And I'm going to request again that
11 you redact his name from the transcript.

12 Q So Mr. Kane would be the fourth person?

13 A He would be the assistant chief I was referring to, yes.

14 Q Okay. But do I have that right, that essentially there were four people
15 involved with the consideration of this case from a Tax Division standpoint other than
16 yourself?

17 A Yes. Yes.

18 Q And is it fair to say that he was assigned to review the special agent report
19 that Mr. Ziegler prepared?

20 A We're getting into details about how the case was conducted, right? So I'm
21 not sure I can get to that.

22 Mr. Castor. Okay. It looks like my time is up, so we need to stop here.

1

2 [2:11 p.m.]

3 BY [REDACTED]:

4 Q It's 2:11 in the afternoon, we can go back on the record.

5 I want to circle back to some conversations from the prior round of questioning.

6 The comment was made that the U.S. Attorney's Office in Delaware couldn't override the
7 tax division's decision and I wanted to explore that a little more. If, not necessarily this
8 U.S. Attorney's Office, any U.S. Attorney's Office if they disagree with the tax division
9 maybe they can't just say, No, we're going to disregard what you say and move forward,
10 but they do, there's a mechanism for them to have your decision overridden, correct?

11 A Yes, there is.

12 Q What is that mechanism?

13 A They can go to the Deputy Attorney General's Office or the AG.

14 Q Okay. And the Deputy Attorney General or the AG can say tax division, I'm
15 going to grant the U.S. Attorney's Office the authority that they are seeking, right?

16 A Yes.

17 Q And if the tax division grants discretionary authority over a matter, there is
18 nothing to override, right, because in that case the U.S. Attorney's Office gets to decide
19 whether to bring charges or not?

20 A Yes, they are unlikely to complain, yes.

21 Q I want to turn back to Goldberg -- what's marked as exhibit 5, this is the
22 July 10th letter and I want to look at, I think we talked through a couple of the earlier
23 sentences in that third paragraph, but I want to look at the sentence that begins at the
24 end of the fifth line down that says, I was, it begins I was.

25 A Right.

1 Q It says, I was assured that I would be granted this authority if it proved
2 necessary and this authority is a reference to 28 U.S.C. section 515.

3 Do you have any reason to believe that Mr. Weiss was not being truthful when he
4 said he had been assured that he would be granted 28 U.S.C. section 515 authority if it
5 proved necessary?

6 A No reason to believe that.

7 Q And you can set that aside.

8 I want to talk a little bit about the interactions between Mr. Weiss and both the
9 U.S. Attorney's Office in the District of Columbia and the Central District of California that
10 came up a little bit in the prior round. I think there's a statement made the U.S.
11 Attorney's Offices declined to bring charges, and I want to explore that a little bit. To
12 the best of your knowledge, did U.S. Attorney Matthew Graves ever tell David Weiss that
13 he, meaning David Weiss, could not bring charges in the District of Columbia?

14 A No, that's not my recollection at all.

15 Q Okay. And what is your recollection?

16 A That night, I thought we had discussed this earlier, but that they decided not
17 to partner with him on the case. They didn't tell him he couldn't bring the case himself
18 in that district. They just decided they didn't want to partner their offices with David
19 Weiss.

20 Q And partnering is not the same as prosecuting a case, right? Somebody
21 can -- U.S. Attorney Weiss can still prosecute a case?

22 A Yes.

23 Q Even if U.S. Attorney Graves decided not to partner with him, correct?

24 A Right. My understanding is that he was saying he didn't want to partner,
25 that the U.S. Attorney's Office indeed said that they would facilitate, they give us a point

1 of contact or David Weiss a point of contact to bring the case if that's what they wanted
2 to do.

3 Q Okay. Do you know if Mr. Graves also offered to provide any
4 administrative support that Mr. Weiss might need?

5 A I don't know, but I assume most U.S. Attorney's Offices in this situation
6 would do that.

7 Q And Mr. Weiss never said that Mr. Graves said he would not provide such
8 administrative support, right?

9 A I don't believe he said that to me, no.

10 Q Okay. And looking at the Central District of California, do you know if U.S.
11 Attorney Martin Estrada ever told Mr. Weiss that he, meaning Mr. Weiss, could not bring
12 charges in the Central District of California?

13 A No, that's not my understanding.

14 Q What is your understanding?

15 A That, again, that he did not want to have his office partner on the case with
16 him. But my understanding is that David Weiss was free to bring them -- bring the
17 charges if he thought it was appropriate in L.A.

18 Q Do you know if in fact there are -- so Martin Estrada I'll represent to you was
19 confirmed by the Senate in September of 2022, so September of last year. Are you
20 aware that at the time that Martin Estrada was confirmed in September of 2022, Mr.
21 Weiss actually already had special assistant U.S. Attorneys already assigned to the Central
22 District of California?

23 A No, I'm not aware.

24 Q You weren't aware of that. Are you aware that there was a phone call
25 between Mr. Estrada and Mr. Weiss in early October of 2022?

1 A I'm not sure I'm aware of that. I know that Mr. Weiss was going to contact
2 the U.S. Attorney's Office, but -- it's possible. I have a vague recollection that there was
3 a contact, but I'm not sure about the timing.

4 Q Do you know if Mr. Weiss asked Mr. Estrada to provide administrative
5 support in the Central District of California?

6 A I don't remember whether he did.

7 Q Do you have any reason to believe that Mr. Weiss did not obtain any
8 requested administrative support from the Central District of California?

9 A No.

10 Q I want to --

11 [Discussion off the record.]

12 BY [REDACTED]:

13 Q I want to turn to section 515 authority briefly. What is, without bringing
14 out the statute, what's your understanding of what 515 authority is?

15 A It provides authority to -- when you're talking with regard to a Department
16 of Justice attorney, it provides authority for that attorney to go into a district and handle
17 civil or criminal cases here before magistrates, and to have authority that's in line with
18 what the U.S. Attorney would have in that district.

19 Q Does the tax division frequently request section 515 authority?

20 A Yes. Those requests come to me in the tax division with regard to tax
21 division personnel.

22 Q And so, are you familiar with the process for requesting section 515
23 authority, then?

24 A I'm familiar with what the process is in the tax division.

25 Q And can you describe that process?

1 A A memo gets written coming from the chief of the relevant geographic
2 section saying there's this case, throwing out some of the facts, and that the chief wants
3 to appoint a specific attorney to that particular case and usually it's in response to a
4 request from the U.S. Attorney's Office. And that memo comes to me with a draft letter
5 from me that gives a person 515 authority.

6 Q And in the earlier hour you said that this happens all the time. Is it fair to
7 say that this is a common thing that happens at the Department of Justice?

8 A In Main Justice components it is, where they are going out and doing cases
9 in U.S. Attorney's Office often without the involvement of the U.S. Attorney's Office in the
10 specific case.

11 Q And when -- would you describe the process for obtaining 515 authority as
12 burdensome, or is it a fairly fast process or do you have any way to evaluate that?

13 A The Tax Division, it's a fairly fast process.

14 Q About how long does it take? Can you estimate is it a week, maybe a couple
15 of days?

16 A As soon as they write the letter -- excuse me, draft the letter and draft the
17 appropriate memo that gets sent up to me. And whether the chief spend time thinking
18 about who the person is that should be assigned, I don't know. I assume they do. So
19 when it gets to me, it doesn't take very long for me to execute the memo so fairly
20 concise. And the format is pretty much the same for each letter. So once I decide
21 after reading the memo that it's appropriate to provide 515 authority I just quickly eyeball
22 the letter, make sure there are no obvious typos and have somebody sign off on it for me.

23 Q And that's with regard to the tax division specifically. Have you been
24 involved in the process when somebody has sought 515 authority from the Deputy
25 Attorney General's Office?

1 A Yes.

2 Q Is the process substantially similar?

3 A I think it's a little more extended process because -- at least my experience in
4 terms of the Deputy Attorney General's Office, often it is in a recusal type situation. So
5 first there needs to be a finding about whether recusal is justified under the Department's
6 rules and whether it should be the whole office or part of the office. And then there
7 needs to be another prosecutive office to take on the case. Sometimes it's the Main
8 Justice component, sometimes it is going to be the U.S. Attorney's Office. At that point,
9 you can issue the letters to the people handling the case.

10 Q Okay. And that's in a situation where one U.S. Attorney is recused from a
11 case?

12 A Right, right.

13 Q Therefore you have to find somebody else to fill in the gap effectively?

14 A Right.

15 Q In your experience, how often do you approve 515 requests? Or maybe a
16 better way to phrase it is how often do you actually deny 515 requests? Are they
17 usually approved or is it sometimes they are denied?

18 A They are almost always approved by me because that's what comes up to
19 me. The chiefs have made a decision that this is the appropriate person. In this case,
20 it's one that we should be supporting. And so, when I look at it, it's usually in line with
21 that. If I have a question, I'm more likely to call them up and ask them about it rather
22 than just deny it.

23 Q And is it your experience that similarly in the rest of the Department 515
24 requests are routinely approved?

25 A So my recollection going back many years in public integrity is it was done on

1 a fairly routine basis.

2 Q Just some kind of final questions here to wrap up. In this case, in the
3 Hunter Biden investigation in particular, do you have any reason to believe that President
4 Biden interfered in the investigation in any way?

5 A So let me just keep it at a very high level so we don't get into line here. I'm
6 not aware of any interference with the case on a partisan political basis.

7 Q Do you have any reason to believe that any of the line attorneys were
8 intimidated or were worried about working on this case because it involved the son of
9 President Biden?

10 A My expectation, based on my involvement with them on this case, is that
11 they were going to make the recommendations they thought were appropriate based on
12 the facts and the law.

13 Q We went through this earlier but one more time for the record.
14 Throughout your tenure at the Justice Department's Tax Division, have you made all
15 decisions without reference to political considerations?

16 A Yes.

17 Q And particularly with respect to the Hunter Biden investigation, have you
18 made all decisions without reference to political considerations?

19 A Yes.

20 Q To the best of your knowledge, has U.S. Attorney Weiss made all decisions in
21 the Hunter Biden matter without reference to political considerations?

22 A Yes.

23 Q To the best of your knowledge, has U.S. Attorney Matt Graves made all
24 decisions in the Hunter Biden investigation without reference to political considerations?

25 A I fully expect to answer yes, but I've had very little dealings -- I've had no

1 direct dealings with Matt Graves.

2 Q Understood. To the best of your knowledge.

3 A Right.

4 Q To the best of your knowledge, do you have any reason to believe that U.S.
5 Attorney Estrada -- I'm sorry, to the best of your knowledge in the Hunter Biden matter,
6 has U.S. Attorney Estrada made all decisions without reference to political
7 considerations?

8 A And I'm not aware of him letting political considerations interfere. But
9 again, I've never talked to Mr. Estrada, so I just want to make that clear.

10 Q To the best of your knowledge in the Hunter Biden matter, have the
11 employees of Mr. Weiss' office made all decisions without reference to political
12 considerations?

13 A Yes.

14 Q To the best of your knowledge in the Hunter Biden matter has assistant U.S.
15 Attorney Lesley Wolf made all decisions without reference to political considerations?

16 A I'm not aware of politics having an impact on the Hunter Biden case, no
17 partisan political considerations to my knowledge have factored into that case.

18 Q And that includes with respect to Lesley Wolf in particular?

19 A It includes everybody involved in the case.

20 Q And one last question on this line, to the best of your knowledge, has all
21 Justice Department Tax Division employees made all decisions without reference to
22 political considerations in the Hunter Biden matter?

23 A Yes.

24 [REDACTED]: Thank you. We can go off the record.

25 [Discussion off the record.]

1 BY MR. CASTOR:

2 Q 2:28.

3 You were asked whether you were aware of any political interference in the case.
4 And I believe you said you're not aware of any?

5 A I'm not aware of political interference in the case, right.

6 Q Are you aware of allegations that special treatment was afforded in this case
7 because the subject was the son of the President of the United States, and before that,
8 the leading candidate for President?

9 A The -- could you just restate that?

10 Q Are you aware of allegations -- the whistleblowers.

11 A Yes, yes, yes.

12 Q When the whistleblowers raised those allegations and we can go through
13 them, they went through a number of instances that they felt political favoritism was part
14 of the equation. And so, I guess the question is, is that the first time you heard about it
15 when the whistleblowers brought it up or were you aware as it was happening?

16 A I wouldn't accept the premise that there was political interference. No one
17 came to me during the course of my supervision on this case and said there's political
18 interference in this case.

19 Q Okay. Were you aware of investigator's plan to search an abandoned
20 storage unit at the end of December 2020.

21 Ms. Zdeb. That involves the ongoing investigation. He's not able to address
22 that.

23 Mr. Castor. Okay.

24 BY MR. CASTOR:

25 Q Are you aware of situations where defense counsel was notified prior to the

1 service of a search warrant?

2 Ms. Zdeb. That also involves the ongoing case and he can't address it.

3 BY MR. CASTOR:

4 Q Are you aware of before investigators were able to search the storage unit
5 that I mentioned that DOJ tax attorney Mark Daly and Lesley Wolf, the AUSA, the lead
6 AUSA on the case, wanted to inform the target, Hunter Biden's attorneys, about the
7 search of the storage unit?

8 Ms. Zdeb. It's the same objection because it is essentially the same question.
9 You're asking about an ongoing investigation.

10 BY MR. CASTOR:

11 Q When decisions like that were involved, Mr. Daly or Mr. Morgan, would they
12 seek approval up their chain of command before they would provide that authority?

13 A So I can try to answer that at a higher level. Generally speaking, the trial
14 attorneys working on a case would discuss the cases with their supervisors. Whether
15 they discussed every particular contemplated action or not, probably not, but
16 they -- that's typically what happens in a Tax Division or DOJ case.

17 Q So if Lesley Wolf communicated that Mr. Shapley or Mr. Ziegler that they
18 can't do investigative move X or investigative move Y because DOJ tax hasn't approved it,
19 is that the type of decision that would be made at Mr. Daly's level, Mr. Morgan's level, or
20 would that fall to their supervisor, or would that be you?

21 Ms. Zdeb. You're getting into very specific allegations about the ongoing case at
22 this point. If there's something he could say at a high level of generality about how
23 cases typically work in this respect, that's fine.

24 Mr. Castor. I tried to -- I framed it as a generic investigative move that would
25 need DOJ Tax's approval.

1 Ms. Zdeb. But the preamble to your question referred to specific people
2 assigned to this case and specific decisions in this case. If you want to ask him
3 hypothetically about some generic criminal prosecution.

4 BY MR. CASTOR:

5 Q What was Mark Daly's title?

6 A Senior litigation counsel.

7 Q And what was Jack Morgan's title?

8 A Trial attorney.

9 Q Would these types of decisions be made at the trial attorney level or the
10 senior litigation counsel level or would they be made at the supervisor level?

11 A Which kinds of decisions?

12 Q Decisions about investigative techniques or procedures, whether you're
13 going to search a storage unit, whether you're going to identify a particular person on a
14 search warrant?

15 A So this case was being run out of the Delaware U.S. Attorney's Office, David
16 Weiss was leading that. My experience generally on cases, there is discussions between
17 the prosecutors and with the agents and the prosecutors about investigator steps that
18 are contemplated, whether they should be taken or not, they talk about that back and
19 forth all the time. I don't think all those discussions get elevated.

20 Q Okay, fair enough.

21 On August 2nd, 2020, Lesley Wolf sent an FBI special agent an email where she
22 wrote, there should be nothing about political figure one, who is Joe Biden, in the draft
23 search warrant. Are you familiar with the search warrant in question that related to Joe
24 Biden?

25 Ms. Zdeb. That involves -- your question involves the ongoing investigation and

1 prosecution, and it is beyond the scope of what he's authorized to discuss.

2 Mr. Castor. In December of 2020, there was an email exchange between Lesley
3 Wolf and Joseph Ziegler regarding managing expectations with regard to timing. In
4 AUSA Wolf's email to members of the prosecution team she wrote that a warrant needed
5 to go through the Delaware U.S. Attorney's Office, DOJ Tax, possibly OEO, the Office of
6 Enforcement Operations, and definitely EDVA, who had never seen a case before. And
7 the question is, how often does a warrant such as this need to be reviewed by so many
8 different offices?

9 A A warrant such as this, what warrant are you talking about?

10 Q This again relates to the search warrant for the storage unit.

11 A So without commenting on this particular case, because I'm directed not to
12 do that, if documents are being sought from -- a search is going to take place of an
13 attorney's office, let's say, then -- and that's out of the district of where U.S. Attorney is,
14 then it would have to get viewed probably under the Department's practices and
15 procedures by OEO because attorney premises are highly sensitive and that was recent in
16 2020, there was recent new guidance about that limiting it. The U.S. Attorney's Office in
17 Delaware would have to be behind it and support it in order -- the U.S. Attorney's Office
18 involved. If it was going to be in a different district, then typically that district, or at
19 least most districts, in my experience, before they bring a search warrant and let
20 somebody bring a search warrant to a judge in their district, they review those things. If
21 it was a tax case, then it would probably implicate potentially tax procedures too,
22 because we have review and approval processes in place for search warrants involving
23 attorneys.

24 Q Would those types of procedures have come into play when decision was
25 being made whether to search Joe Biden's guesthouse?

1 Ms. Zdeb. He can't speak to the specifics of what may or may not have
2 happened in this case.

3 BY MR. CASTOR:

4 Q Are you aware the investigators were interested in searching Joe Biden's
5 guesthouse, they believed that relevant evidence existed at that location.

6 Ms. Zdeb. Same objection?

7 BY MR. CASTOR:

8 Q Are you aware that Lesley Wolf told the investigators there's no way we will
9 get that approved?

10 Ms. Zdeb. Same objection.

11 BY MR. CASTOR:

12 Q And the implication, of course, was they wouldn't get that approved because
13 it involved Joe Biden.

14 Ms. Zdeb. I don't know if that was a question. But if it was, it's the same
15 objection.

16 BY MR. CASTOR:

17 Q Are you aware that of that allegation being raised by Mr. Shapley and Mr.
18 Ziegler?

19 A I'm aware of something along those lines, yes.

20 Q Are you aware of it because it came out in their public testimony?

21 A Yes, yes, yes, or news reports, yes.

22 Q Or are you aware of it because in real time you were involved with that
23 decision?

24 Ms. Zdeb. He can't speak to that part of your question because it involves an
25 ongoing case.

1 BY MR. CASTOR:

2 Q Are you aware of why the investigators wanted to search the Biden
3 guesthouse?

4 Ms. Zdeb. He can't answer that, and you're free to ask as many questions like
5 this as you want, but I think you know that the scope of his authorization does not enable
6 him to talk about the ongoing investigation.

7 BY MR. CASTOR:

8 Q The testimony of special agents Shapley and Ziegler raised a lot of these
9 political concerns, they believe and they testified that the investigative activity was
10 curtailed for political reasons. Were you aware of these allegations in real time, or did
11 you only learn about them when they became public through the whistleblower
12 testimony?

13 A So I -- because I mentioned before, I'm not aware of partisan political
14 considerations playing a role in this case.

15 Q Are you aware that DOJ tax attorney Jack Morgan instructed the
16 investigators to remove Hunter Biden's name from a search warrant?

17 Ms. Zdeb. He's not authorized to discuss that.

18 BY MR. CASTOR:

19 Q Are you aware of that allegation?

20 A I'm aware that that was reported, something along those lines.

21 Q But were you aware of it in real time?

22 Ms. Zdeb. He can't answer that, Steve.

23 BY MR. CASTOR:

24 Q In the January 2023 meeting that you had in Delaware with Chris Clark, you
25 testified that that wasn't the meeting where Mr. Clark allegedly told the prosecutors this

1 is career suicide?

2 A I think I said that I didn't hear him say that at their -- that the that meeting,
3 to my recollection.

4 Q Were you aware that he said that at a meeting? Was that reported to you
5 in real time?

6 A I think you asked that question previously and my recollection is that it
7 doesn't sound familiar to me, but I know that there was contentious dealings between
8 Mr. Clark and prosecutors at various points.

9 Q Did you witness any of those contentions during your January 2023 meeting?

10 A Nothing more than average prosecutor defense attorney interaction.

11 Q Was Mr. Clark exhibiting brash behavior in trying to get the prosecutors not
12 to move forward?

13 Ms. Zdeb. At this point, we're getting into internal meetings and discussions
14 about the ongoing case, and he's not able to address that.

15 BY MR. CASTOR:

16 Q Did you witness Mr. Clark lean on Mr. Weiss about his legacy, that his legacy
17 would be defined by how he handles this decision?

18 Ms. Zdeb. Same, same objection. We're talking about meetings about the
19 ongoing case.

20 BY MR. CASTOR:

21 Q After the special agent report was prepared by Agent Ziegler and sent to the
22 Tax Division, according to whistleblower testimony, the Tax Division, under your
23 leadership, requested that Mr. Morgan or Daly prepare a 99-page -- or a memorandum
24 that ended up being 99 pages. Was that something that you tasked out.

25 Ms. Zdeb. That's getting into the ongoing case. He's not authorized to discuss

1 it?

2 BY MR. CASTOR:

3 Q And do you know who wrote that memorandum from the Tax Division.

4 Ms. Zdeb. He is not authorized to discuss --

5 Mr. Castor. I think that's a fair question. I mean who wrote a memo. I mean,
6 we're not talking about the content of the memo.

7 Ms. Zdeb. He hasn't said there was or wasn't a memo that was --

8 Mr. Castor. I don't think anyone disputes that DOJ Tax prepared a memo. I
9 mean the special agent report comes in, and then the Tax Division, I think he testified to
10 this earlier, ordinarily would then prepare a document. So I guess the question is who
11 prepared the document, was it Mr. Morgan, Mr. Daly?

12 Ms. Zdeb. Can we go off the record for a second?

13 Mr. Castor. Yes.

14 [Discussion off the record.]

15 Ms. Zdeb. I think at this point the question of what memos may have been
16 prepared when and by whom are getting into the internal process of the case, and he's
17 not going to address that.

18 BY MR. CASTOR:

19 Q From a process standpoint, what types of documents would be prepared by
20 the Tax Division lawyers?

21 A Working on a case?

22 Q Yeah. After the special agent report comes in from the IRS recommending
23 prosecution of a particular person or particular charges, then the Tax Division prepares
24 some paper, correct?

25 A Yes, but there as I laid out previously. There often is ongoing investigation

1 that takes place after the special agent's report and there may be also various legal
2 analyses that are done relating to potential charges themselves, relating to venue of
3 charges, relating to a number of different issues.

4 Q So you're not willing to answer the question about whether a 99-page memo
5 was prepared by DOJ Tax on this matter?

6 A I've been directed not to answer that question.

7 Q Okay. But presumably you know the answer to the question, if we
8 compelled you, you would -- you'd be able to provide a definitive answer on that
9 question?

10 A What?

11 Q If you were compelled and we were able to prevail?

12 A It's a metaphysical question, right?

13 Q Okay.

14 A Whether it exists or does not exist.

15 Q What's that?

16 A Whether something exists or doesn't exist.

17 Q Well really you are aware that it was prepared and exists.

18 A I can say, as I said before, that there's a common process that takes place,
19 and part of that is putting together a pros memo to point, and then review note, and then
20 a chief's note before it comes to me. That's the way the process generally works.

21 Q There's been some discussion that the 2014 and 2015 tax year charges fell
22 off the board because the statute of limitations ran. Are you aware of any mechanism
23 prosecutors have to recapture those tax years once the statute has run?

24 Ms. Zdeb. He can't speak to this specific case. If there's kind of a general
25 principle --

1 Mr. Castor. That could be a general question.

2 BY MR. CASTOR:

3 Q If the statute of limitation has run for 2 tax years, let's say hypothetically
4 2014 and 2015, the tolling agreement has expired, is there any mechanism that
5 prosecutors can somehow prosecute that?

6 A You've got baked 2014 and 2015 in here, so you're asking me the same
7 question it strikes me as what I've been directed not to answer.

8 Q The question is, and you're a DOJ Tax official so you're a good person to ask:
9 Once the statute of limitations runs on a particular tax year, is there a mechanism to claw
10 that back and get it back into the zone where it can be prosecuted?

11 A And like I said, it strikes me you're asking me the same question about this
12 ongoing case, that it's in connection with.

13 Q I'm really not, though. I'm just trying to understand are there ways to
14 move on tax case where the statute of limitations has expired after its run?

15 Ms. Zdeb. If there are ways to generalize about that that aren't specific to this
16 case, he can speak to that, but I don't know whether that's the case or not.

17 Mr. Goldberg. I think it is hard to generalize here. I think you need to know
18 specifically the facts, circumstances of a particular case. And then I might be in better
19 position to answering this question.

20 BY MR. CASTOR:

21 Q But do tax -- criminal tax lawyers have techniques that they can use to keep
22 alive allegations or, you know, tax-year charges that have expired?

23 A There's a case general -- if there is a case in which that identified before the
24 statute has lapsed, then often people can use a tolling agreement or attempt to search
25 for other affirmative acts that might provide a more lengthy period of time in which to

1 charge the case if you can find one that's further down the road than that. But short of
2 that, you would want to make a determination whether or not the case was viable prior
3 to the statute of limitations running. And if not, then you would focus on other charges
4 that might cover the same year or might cover other years that are better or properly
5 capture the offense.

6 Q In your experience, have you ever witnessed a case being revived after the
7 statute of limitations has expired?

8 A Well, once this statute has expired, then it's -- I'm thinking there are other
9 exclusions besides the 6 years, there may be time out of the country, there may be
10 foreign treaties that are used that can exclude the time and things like that, but that
11 would extend the statute. So those things exist and those are possible.

12 Q Did you have any communications with Mr. Weiss about Mr. Shapley and
13 Mr. Ziegler?

14 A About their --

15 Q Their involvement in the case.

16 A I don't think so, I don't recall that.

17 Q Are you aware that Mr. Weiss asked the IRS to remove them from the case?

18 A I don't know specifically what was said or not said.

19 Q So you're only aware from news reports?

20 A I'm aware that they were -- the case was transferred to another group, yes.

21 Q And did you have any input on that?

22 A That action I did not have conversations leading up to that action.

23 Q As we understand it, Mr. Weiss telephoned the leadership at IRS, specifically
24 Mr. Waldon. And Mr. Batdorf got involved, Mr. Batdorf is Mr. Waldon's supervisor at
25 the IRS. And a decision was made to take Mr. Shapley and Mr. Ziegler off the case. I

1 guess my question is, did DOJ Tax personnel have any involvement in that?

2 A Not that I'm aware of.

3 Q Okay. Have you had any communications with anyone at the IRS about this
4 case, any meetings with IRS officials?

5 A I did not have any meetings with anybody.

6 Q Other than the June 15th meeting we discussed?

7 A Yes, no, that's right. And I do recall that I -- that, Jim Lee asked me a
8 question about the case while the case was ongoing, yes.

9 Q Had you been in any meetings with Mr. Shapley or Mr. Ziegler other than the
10 June 15th meeting?

11 A I don't think so.

12 Q So that was the only time you met them?

13 A It's possible I met Mr. Shapley at an earlier stage before the Hunter Biden
14 case. I'm not sure.

15 Q How about same question but related to FBI? Did you have any meetings
16 with the FBI other than the June 15th meeting?

17 A No.

18 Q Do you know if any memos that your people prepared in DOJ Tax were
19 presented to Mr. Graves or Mr. Estrada?

20 A I don't -- I don't know the answer to that.

21 Q Okay. Is that something that would ordinarily happen?

22 A It wouldn't surprise me if some documentation was provided, but I don't
23 know.

24 Q So if a prosecution memo was prepared, that certainly could be shared with
25 the relevant U.S. Attorneys?

1 A That's kind of speculative. I'm not sure I understand -- you said if a
2 prosecution memo had been prepared.

3 Q Right. I mean you explained to us that after the special agent report comes
4 in DOJ Tax lawyers would analyze the situation. And you said a prosecution memo could
5 be prepared.

6 A Yes, right.

7 Q So if a prosecution memo is prepared, would that ordinarily be shared with
8 the U.S. Attorney's Office?

9 A Yes, it could be. Sure.

10 Q Who is the consumer I guess for that memo?

11 A In a regular tax case, it's the -- it's both internal to the Tax Division, but it's
12 also for the benefit of the U.S. Attorney's Office where they are going to prosecute the
13 case.

14 Q Okay. And do you know if any memos like that were shared with
15 Mr. Graves or Mr. Estrada?

16 A I don't. It's possible. I have a vague recollection that some
17 documentation was shared, but I'm not sure what it was.

18 Q Some documentation that had been prepared by the Tax Division?

19 A Right, or -- yes.

20 BY MR. CLERGET:

21 Q Mr. Morris (ph) testified that they had asked their leadership for support on
22 charging the 2014, 2015 tax years and that Director of Field Operations Batdorf was going
23 to call you about the IRS's view on the charges. Did you speak with Mr. Batdorf by
24 phone?

25 A No.

1 Q Ever?

2 A I don't recall ever talking to him by phone.

3 Q What about Mr. Waldon?

4 A I don't believe I've talked to him either.

5 Q Okay.

6 Mr. Castor. We're good.

7 [REDACTED]: Give us 2 seconds.

8 Mr. Castor. Yes.

9 [Recess.]

10 [REDACTED]: We're good.

11 [Whereupon, at 2:59 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

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit P

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5 COMMITTEE ON THE JUDICIARY,

6 U.S. HOUSE OF REPRESENTATIVES,

7 WASHINGTON, D.C.

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13 INTERVIEW OF: THOMAS J. SOBOCINSKI

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Thursday, September 7, 2023

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Washington, D.C.

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23 The interview in the above matter was held in room 2237, Rayburn House Office

24 Building, commencing at 10:02 a.m.

25

Present: Representative Jordan.

1 Appearances:

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3

4

5 For the COMMITTEE ON THE JUDICIARY:

6

7 CLARK ABOURISK, COUNSEL

8 STEVE CASTOR, GENERAL COUNSEL

9 DILLON CHEPP, COUNSEL

10 SEAN CLERGET, COUNSEL

11 BRITTANY HAVENS, PROFESSIONAL STAFF MEMBER

12 CAROLINE NABITY, CHIEF COUNSEL FOR OVERSIGHT

13 [REDACTED], MINORITY CHIEF OVERSIGHT COUNSEL

14 [REDACTED], MINORITY OVERSIGHT COUNSEL

15 [REDACTED], MINORITY STAFF ASSISTANT

16

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18

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20 For the U.S. DEPARTMENT OF JUSTICE:

21

22 SARA ZDEB, DEPUTY ASSISTANT ATTORNEY GENERAL,

23 OFFICE OF LEGISLATIVE AFFAIRS

24

25

1

2 For the FEDERAL BUREAU OF INVESTIGATION:

3

4 MEGAN L. GREER, ASSISTANT GENERAL COUNSEL,

5 OFFICE OF GENERAL COUNSEL

1 Mr. Castor. Good morning.

2 This is a transcribed interview of Special Agent in Charge Thomas Sobocinski of the
3 Baltimore Field Office of the FBI. Chairman Jordan has requested this interview as part
4 of the committee's oversight of the Department of Justice commitment to impartial
5 justice and integrity of the Hunter Biden prosecution of which numerous irregularities
6 have been reported.

7 Mr. -- or, Agent Sobocinski, would you please state your name for the record?

8 Mr. Sobocinski. Thomas J. Sobocinski.

9 Mr. Castor. And you are joined here today with agency counsel as opposed to
10 personal counsel?

11 Mr. Sobocinski. Correct.

12 Mr. Castor. Would agency counsel please state their names.

13 Ms. Greer. Megan Greer from the FBI's Office of General Counsel.

14 Ms. Zdeb. Sara Zdeb from the Department of Justice.

15 Mr. Castor. And you understand that agency counsel represents the Department
16 and the FBI, not you personally.

17 Mr. Sobocinski. I do.

18 Mr. Castor. And you're comfortable with proceeding that way.

19 Mr. Sobocinski. I am.

20 Mr. Castor. Okay.

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

24 Initially, a deposition subpoena had been issued for today, and we have
25 withdrawn that in lieu of today's voluntary transcribed interview. Obviously, if we don't

1 get very far and you're not able to answer the questions we have, we may have to revisit
2 the subpoena for a deposition.

3 My name is Steve Castor. I'm with Mr. Jordan's Judiciary Committee staff. I'll
4 have the staffers here in the room introduce themselves.

5 Ms. Nabity. Caroline Nabity with Mr. Jordan's staff.

6 Mr. Clerget. Sean Clerget, Mr. Jordan's staff.

7 Ms. Havens. Brittany Havens, Mr. Jordan's staff.

8 [REDACTED], Ranking Member Nadler's staff.

9 [REDACTED], Ranking Member Nadler's staff.

10 Mr. Chepp. Dillon Chepp, Mr. Jordan's staff.

11 Mr. Abourisk. Clark Abourisk, Mr. Jordan's staff.

12 Mr. Castor. I'll go over the ground rules and guidelines that we will follow during
13 today's interview.

14 Our questioning will proceed in rounds. The majority will ask questions first for
15 an hour. Then the minority will have a chance to ask their questions for an equal period
16 of time. We'll alternate back and forth. They'll actually come over and sit in these
17 seats to help the court reporter best capture what we're saying.

18 Ordinarily we take a break at the end of each hour if you need it, but it's entirely
19 up to you. We will only take breaks if you need them. The same goes for if you need
20 lunch, if it's going too long. It's up to you. A lot of times we power through.
21 Sometimes we don't. So it's your call.

22 If you need to confer with agency counsel, just let us know, and we'll just go off
23 the record.

24 There's an official court reporter taking down everything we say and make a
25 written record, so every now and then we need to prompt witnesses to give a verbal

1 response if you had just nodded your head and so forth.

2 We'll do our best to limit the number of people questioning you at once during
3 any given hour. Usually it's just one staff person. And if the members join us, of
4 course, we defer to the members to ask their questions. So then it would be a situation
5 where it's more than one person asking the questions. But that's the way it works with
6 the Members of our Congress.

7 We ask you, of course, to please speak clearly so the court reporter can accurately
8 make a record and so that the people at the end of the table can hear.

9 We want you to answer our questions in the most complete and truthful manner
10 possible, so we'll take our time. If you have any questions or if you don't understand
11 one of our questions, please let us know. Our questions may cover a range of topics.
12 So if you need clarification at any point, please let us know.

13 If you don't honestly know the answer to a question or do not remember, it's best
14 not to guess. However, if you do remember and you say you don't remember, that of
15 course is a problem when it comes to 18 United States Code 1001, which I'm sure you're
16 familiar with.

17 Witnesses that knowingly provide false testimony could be subject to criminal
18 prosecution for making false statements. You understand that, correct?

19 Mr. Sobocinski. I do.

20 Mr. Castor. And we say that to all witnesses, so certainly mean no disrespect of
21 somebody of your caliber here today.

22 We try to keep the information that we talk about during these sessions
23 confidential. We don't have anything like Rule 6(e) that makes it unlawful to discuss.

24 What we discuss, however, we do our best to keep it confidential. So to the
25 extent we mark exhibits, we will retain those exhibits. And sometimes if a witness

1 provides us a document and then we want to keep it, it gets a little awkward, but you
2 haven't provided us any documents. But just for the sake of mentioning it, we will
3 collect the exhibits.

4 That's the end of my welcoming remarks.

5 [REDACTED], do you have anything?

6 [REDACTED]: Not at this time. Thank you.

7 Ms. Zdeb. Steve, would you mind if I jumped in with a couple quick things --

8 Mr. Castor. Of course.

9 Ms. Zdeb. -- before you start your round?

10 Mr. Castor. Of course.

11 Ms. Zdeb. Thank you.

12 As you noted, Mr. Sobocinski is here voluntarily, and we really appreciate the
13 committee's willingness to proceed with a voluntary transcribed interview and in
14 particular the work that the staff did jointly with the Department and the Bureau to get us
15 to this point.

16 As you know, your inquiry implicates an ongoing criminal investigation. We've
17 talked about this. We've also talked about the fact that at this point Mr. Sobocinski is
18 going to be able to address questions that can be answered without compromising the
19 ongoing investigation and prosecution.

20 Specifically, the Department has authorized him to discuss U.S. Attorney Weiss'
21 authority, as well as the October 7th, 2022, meeting, subject to some constraints around
22 the ongoing investigation issue. There may be some additional information he can share
23 as well, depending on the questions and, again, consistent with our need to protect the
24 ongoing investigation.

25 We understand the committee may have a broader universe and does have a

1 broader universe of information that you're interested in. To the extent you have
2 questions that go beyond the scope of what he has been authorized to get into at this
3 juncture, we reiterate our willingness to continue the discussion with the committee on
4 those topics and our willingness to consider additional accommodations down the line.

5 That said, our goal today is very much to facilitate Mr. Sobocinski in sharing as
6 much information as he can, consistent with his authorization.

7 So I just wanted to put all of that on the record before we get started.

8 Mr. Castor. Okay.

9 EXAMINATION

10 BY MR. CASTOR:

11 Q Mr. Sobocinski, did the Department send you a letter --

12 A They did.

13 Q -- about what you can or can't speak to?

14 A They did.

15 Q And is that a letter that -- would that be helpful for us to have, or are we not
16 allowed to have that letter?

17 Ms. Zdeb. The letter is consistent with what I just described and what we have
18 talked about before. I'm not sure the letter adds anything to that. But if you're asking
19 for a copy of the letter, I don't have it with me today.

20 Mr. Castor. Okay.

21 Ms. Zdeb. But we can talk about getting that to you.

22 Mr. Castor. Okay.

23 Chairman Jordan. When did they send that to you?

24 Mr. Sobocinski. Yesterday.

25 Mr. Castor. And I understand you're not allowed to talk about ongoing matters,

1 and it would be helpful for us to know exactly what's ongoing. There's the tax charges
2 from 2014 and '15. The statute of limitations has expired for that, correct?

3 Mr. Sobocinski. I'm not -- as the FBI I'm not -- I have no general knowledge of
4 what the IRS charges are as far as when they lapse or when they don't lapse.

5 Mr. Castor. Okay.

6 Ms. Zdeb. And, Steve, I think -- we may well have a difference of opinion on
7 what does and does not relate to the ongoing matter. So what I can say is when
8 we -- when and if we get to those points, we may jump in and convey that that is a thing
9 that we believe involves the ongoing matters.

10 Mr. Castor. Okay.

11 Ms. Zdeb. But, again, we're happy to continue working with the committee
12 going forward.

13 Mr. Castor. Okay. But just at the top, I was just going to ask a couple questions
14 about is the 2014 tax matter, is that something you can help us understand about?

15 Mr. Sobocinski. At this point I'm not in a position to talk about that.

16 Mr. Castor. Okay. So that is -- even though the statute of limitations has
17 expired, you can't help us with that?

18 Mr. Sobocinski. Not today.

19 Chairman Jordan. Is that specifically in the letter saying you couldn't talk about
20 that?

21 Mr. Sobocinski. I don't recall the specifics, if it said that. It was a general
22 overview of what is ongoing or not. Those -- what were being discussed right there,
23 those are tax charges --

24 Mr. Castor. By the way, I started the clock.

25 Ms. Greer. I would just say, on the particular tax charges, I don't want to talk

1 past what information the witness may or may not have on that, particularly as it relates
2 to Mr. Weiss' authority. So if there are questions about his authority, the witness can
3 answer what he knows --

4 Mr. Castor. Okay.

5 Ms. Greer. -- regardless of the charge.

6 Mr. Castor. Okay.

7 BY MR. CASTOR:

8 Q But the fact that the 2014 and '15 tax years were subject to a tolling
9 agreement, you're aware of that, correct?

10 A What do you mean by that?

11 Q That the Department entered into an agreement with defense counsel to toll
12 the statute of limitations.

13 A I'm not aware of the specifics of any -- of that agreement.

14 Q Okay. You're aware it was discussed at a 6/15/22 meeting that you
15 attended, correct?

16 A Can you be more specific on that meeting?

17 Q Well, there was a June 15th, 2022, meeting --

18 A Correct.

19 Q -- at Department headquarters with DOJ Tax Division officials, Mr. Goldberg,
20 Mr. Daly, Mr. Morgan. You attended, I believe, and there was IRS personnel there as
21 well, correct?

22 A Correct. I now know which meeting you're talking about.

23 Q Okay. And so at that meeting, it's our understanding, that a discussion of
24 the statute of limitations expiring for the 2014, 2015 tax years was discussed. Is that
25 correct?

1 Ms. Zdeb. I'm sorry. Before the witness answers, the meeting you're
2 describing is outside the scope of his authorization --

3 Mr. Castor. Okay.

4 Ms. Zdeb. -- unless you have some basis to think that there was a discussion
5 about the issue of Mr. Weiss' authority at that meeting --

6 Mr. Castor. Okay.

7 Ms. Zdeb. -- in which case he's welcome to talk about it. But --

8 Mr. Castor. Okay. And we flagged that in our email, that we were interested in
9 that meeting, and that meeting was the subject of -- it was discussed in the Ziegler and
10 Shapley transcripts.

11 Ms. Zdeb. Right. And we understand. And that's an example of what I mean
12 when I said that we may just have to agree to disagree in the room today on our
13 respective views on what is and is not encompassed in the ongoing matter.

14 Mr. Castor. Okay.

15 Ms. Zdeb. But I also want to emphasize that Mr. Sobocinski is here to talk to
16 some of the issues that the committee has identified as being kind of a central interest
17 and focus, and I don't -- I don't want to spend too much time getting into what he can't
18 address since he is here to answer --

19 Mr. Castor. Well, I understand that. But I'm just trying at the top here to figure
20 out what I can and can't have productive Q&A with him on.

21 BY MR. CASTOR:

22 Q And so, as I understand it, the fact that the 2014 and '15 tax years expired,
23 you can't help us here today with facts relating to that?

24 A Yeah, I'm not in a position to talk about the ongoing investigation.

25 Q Okay. So, in your mind, that's considered part of the ongoing investigation,

1 even though the statutes expired?

2 A Without addressing that question directly, as the FBI, IRS tax charges are
3 not -- those are not my violations that I was investigating. So I'm not in a position to
4 discuss the minutia of that.

5 Q Okay. But during the 6/15 meeting, you did have some communications
6 with Gary Shapley, correct, sort of offline?

7 A Yeah, Gary was in the meeting. Mr. Shapley was in the meeting.

8 Q And did you speak with him on the sidelines of that meeting?

9 Ms. Zdeb. And, Steve, again, I'm sorry, but this meeting is outside the scope of
10 and particularly deliberations that may have happened at that meeting, discussions
11 around --

12 Mr. Castor. Okay.

13 Ms. Zdeb. -- the status of the investigation that may have happened at that
14 meeting.

15 Mr. Castor. Okay.

16 Ms. Zdeb. The Department views all of that as part of the ongoing matter.

17 Mr. Castor. Fair enough. But asking the witness whether he attended a
18 meeting doesn't implicate any ongoing investigation.

19 Ms. Zdeb. And he just answered that question.

20 Mr. Castor. Asking a witness whether he remembers whether Agent Shapley
21 was at the meeting implicate any ongoing investigation.

22 Asking whether the witness had communications with Agent Shapley at the
23 meeting, on the sidelines of the meeting, that doesn't implicate any ongoing
24 investigations, correct?

25 Ms. Zdeb. It all involves an ongoing investigation.

1 Mr. Castor. Okay.

2 Ms. Zdeb. He has answered those types of logistical questions --

3 Mr. Castor. Okay.

4 Ms. Zdeb. -- that you just asked him.

5 Mr. Castor. Okay. I'll just ask one more time. I don't want to be
6 argumentative here. I'm just trying to get the lay of the land here so we can be as
7 efficient with our time as possible. I've got a whole lot of questions about the
8 2014-2015 tax year. I've got a whole lot of questions about meetings that happened.
9 And I guess I'm not going to answer them because we've had this preliminary back and
10 forth.

11 BY MR. CASTOR:

12 Q So I'll just ask one more time. Do you recall having communications with
13 Agent Shapley at the 6/15/22 meeting sort of the sidelines of that meeting?

14 A I was in a meeting with a bunch of people. In a general sense I would have
15 talked -- I don't necessarily remember it, but it's not abnormal that I would.

16 Q Okay. So if Agent Shapley remembered something vividly and told us
17 about it, you would have no basis to suggest that was inaccurate, right?

18 A I'm not going to comment on what Agent Shapley said or didn't say about
19 that meeting.

20 Q Okay.

21 Sir?

22 Chairman Jordan. Can I just go back to the letter? You got the letter yesterday
23 from the Department of Justice. Who signed the letter?

24 Mr. Sobocinski. I don't know.

25 Chairman Jordan. Was it the Attorney General, was it the DAG, was it the

1 counsel's office? Who sent you the letter?

2 Mr. Sobocinski. I just don't remember who --

3 Mr. Castor. Was it FBI or DOJ?

4 Mr. Sobocinski. It was a DOJ letter.

5 Mr. Castor. Was it Weinsheimer.

6 Mr. Sobocinski. I don't remember who sent the letter.

7 Chairman Jordan. Special Counsel David Weiss' office?

8 Mr. Sobocinski. No.

9 Mr. Castor. Sara, do you know who signed the letter?

10 Ms. Zdeb. We are happy to get you a copy of the letter, but it was a letter signed
11 by the Department.

12 Mr. Castor. Okay. But you won't tell us who signed it.

13 Ms. Zdeb. It was Mr. Weinsheimer.

14 Mr. Castor. It was Mr. Weinsheimer. Okay. We got an answer there.

15 BY MR. CASTOR:

16 Q So sort of the next -- I understand the tax years 2017, '18, and '19 are part of
17 the ongoing investigation and you can't talk about that. Is that correct?

18 A I can't talk about the ongoing case.

19 Q Okay. The prospect of bringing FARA charges, is that something that is part
20 of the ongoing investigation?

21 A I cannot comment on anything about potential ongoing investigative activity.

22 Q Okay. If I ask you questions about FARA then, are you going to be able to
23 help us? I mean, if it's not part of an ongoing probe, then I would hope that the answer
24 would be yes.

25 A Are you asking about my understanding of FARA and what FARA charges

1 look like, or are you asking is it relating to an ongoing investigation?

2 Q Well, I don't know in if it's ongoing or not. That's the question.

3 Are the questions about Hunter Biden and FARA, is that part of the ongoing
4 investigation?

5 A I'm not going to classify what is and what isn't currently involved in a
6 potential ongoing investigation.

7 Q Okay. But if I ask you questions about Hunter Biden and FARA, are you
8 going to be able to answer them here today?

9 A Let's see.

10 Q Okay. Are you aware of any FARA investigation currently ongoing?

11 A Yeah. Once again, that is something I cannot talk about. You're asking
12 me about a potential ongoing case.

13 Q Okay.

14 All right. When did you -- you're currently the special agent in charge of the
15 Baltimore Field Office?

16 A I am.

17 Q And when did you commence those duties?

18 A July of 2021.

19 Q And how involved have you been in this particular case since you joined the
20 office?

21 A This, like every other -- all the other cases in Maryland and Delaware, I have
22 responsibility for as the senior leader for the FBI.

23 Q And is that the Baltimore Field Office's jurisdiction, Baltimore and -- I'm
24 sorry, Maryland and Delaware?

25 A It is.

1 Q The whole State of Maryland?

2 A Correct.

3 Q And as it relates to the Hunter Biden investigation, did you receive any
4 transition meetings or communications when you took over the office from, I believe it
5 was the special agent in charge, Boone?

6 A So when I came in, yes, I received updates, verbal and in written material,
7 reviewed written materials about what investigations were currently open.

8 Q And what were you told about this particular case?

9 A Because it's ongoing, I can't go into the specifics other than it existed and
10 that I was made aware of it.

11 Q And how often did you join prosecution team meetings on this case? Was
12 it regular or was it just a handful that you can recall?

13 Ms. Greer. Could we cabin to a time period perhaps to help him to start to
14 answer? Are you talking about when he first joined the Baltimore Field Office?

15 Mr. Castor. Since July 2021.

16 Chairman Jordan. Yeah.

17 Mr. Sobocinski. Yeah, I don't -- less than 12.

18 BY MR. CASTOR:

19 Q Okay. And would that include meetings in Delaware with the U.S. attorney
20 and Main Justice?

21 A Yeah. So let's talk about that.

22 So what do you mean by investigative -- what are you asking for in investigative
23 meetings?

24 Q Meetings with the -- investigative or prosecutorial meetings with the U.S.
25 Attorney's Office about this case, with Main Justice about this case.

1 A So I regularly meet with all of my team on a fairly regular basis. So
2 meetings with the U.S. Attorney's Office and my team in certain instances, I'm going to
3 say less than 20.

4 Q Okay. But I'm talking about specific meetings just about this case, like the
5 10/7 meeting that Mr. -- Agent Shapley identified.

6 A I don't have a real sense of what that number looks like.

7 Q Okay. And when you communicate with Main Justice -- I'm sorry -- FBI
8 headquarters, who at the headquarters do you ordinarily communicate with? Like if
9 headquarters is contacting you to ask about a particular investigation, how would that
10 communication work generally?

11 A Unfortunately, it runs the gamut. So depending on what I'm working, it
12 could be the deputy director. It could be assistant directors in charge of various lines of
13 authority that they have. It could be their follow-on agents. I mean, so it's a mixture
14 of folks that will contact me.

15 Q Okay. As it relates to this particular case, who at FBI headquarters would
16 contact you for updates and potentially give you guidance on the case?

17 A This case was managed out of our Criminal Investigative Division, and so it
18 would have been probably at a deputy assistant director level for the majority of it,
19 potentially a section chief level.

20 Q And who were those folks?

21 A The DAD at the time was Aaron Tapp. The section chief would have been
22 Joe Rothrock.

23 Q And how frequently did headquarters reach out to you about this particular
24 investigation?

25 A I don't know how -- whether I precipitated it or whether they called me.

1 It's fuzzy. I just don't know. We talked fairly regularly around this and other cases.

2 Q Okay. Was it any more common -- or any more frequently for this case
3 than any of your other cases?

4 A In the recent few months, it's gotten more and more communication.

5 Q Okay. But largely that communication is at the DAD level?

6 A Correct.

7 Q Have you had communications with the deputy director or anyone more
8 senior than the DAD?

9 A I have.

10 Q And how frequently?

11 A Yeah, I mean, the numbers for me are -- I just don't have a clear, consistent
12 number that you're looking for.

13 Q Okay.

14 A But it's something I talk to them about.

15 Q But did they have their pulse on the case?

16 A I can't comment on whether -- they absolutely had awareness of the case.

17 Q Uh-huh. Witnesses have testified -- and I'm sure you're aware -- Agent
18 Shapley and Agent Ziegler, that during the entire pendency of the investigation their
19 efforts to conduct what they considered ordinary investigative techniques were curtailed,
20 and sometimes they said they were curtailed by FBI officials.

21 Do you have any awareness of that?

22 A I'm not aware of that at all.

23 Q Okay. So to the extent they were curtailed by FBI officials, you wouldn't
24 know who that was or how that originated?

25 A I have no knowledge of FBI curtailing their investigative activity.

1 Q Okay. And when you have communications with Main Justice, different
2 from FBI headquarters, who is your point of contact that you normally speak with?

3 A So the way we work, I do not go direct with the Department of Justice.
4 Procedurally, in general, that's a headquarters function. I go to headquarters.
5 Headquarters then facilitates that communication with the Department of Justice.

6 Q Okay. So you don't ordinarily have incoming phone calls from Main
7 Justice?

8 A I do not.

9 Q Okay. So Stuart Goldberg doesn't call you?

10 A I'm trying to be as open as I can.

11 Q Sure.

12 A I don't know who he is.

13 Q Okay.

14 A And so then that's an easy one. But I don't want to get into specifics of,
15 like, is somebody from the Department talking to me about this case. I don't know that
16 person.

17 Q During the pendency of the case, did you have communications with the Tax
18 Division lawyers, Jack Morgan or Mark Daly? Is that something that happened at the
19 SAC level, at your level?

20 A Who are those people? Do you know -- can you describe their roles for
21 me?

22 Q They're lawyers in the Tax Division of Main Justice.

23 A So without going into specifics of the ongoing case, you brought up that
24 meeting that we had this discussion about --

25 Q Right.

1 A -- I don't have an ability to talk about. If they were in that meeting, then
2 they would have been in that meeting.

3 Q Okay.

4 A I may have met them there.

5 Q But outside of a meeting like that, you don't have regular communications
6 with the Tax Department officials?

7 A I do not.

8 Q Okay. Can you help us understand -- this particular case had IRS
9 investigators and had FBI investigators -- how that was split up and how the duties were
10 divided and how they work together?

11 A So, once again, cannot talk about this particular case, but I can talk about in
12 general how cases like this work.

13 Q Okay.

14 A And depending on what the thing we're looking at is, whether it's an
15 investigation or an intelligence operation, different agencies have different authorities.
16 The FBI regularly partners with these folks.

17 I think at a basic level we have task force officers. Those are officers, State and
18 local partners, that are given authorities for the FBI. They sit in our office. They work
19 our investigations.

20 We also have joint investigations where components are assigned to work a
21 similar case. They vary from -- all these cases vary. But in general you split up based
22 upon what your organization does most.

23 And so, hypothetically, if it was -- if this was a tax case, IRS is going to usually work
24 the tax component of a joint investigation. Terrorism, which is what I mostly worked my
25 career, you would then -- we would be in charge of the terrorism side charges.

1 Q Okay.

2 A And at some point they'd come together for prosecution, close the case,
3 move on, resolution.

4 Q Okay. But it's fair to say sometimes IRS criminal investigators are working
5 hand in hand with FBI agents to go interview witnesses and conduct investigative activity?

6 A Yes.

7 Q And when that's happened, is there any rules of the road about how those
8 duties are split, or do they just operate as a team?

9 A You know, in a general sense you want to record those information in one
10 place. So my hope is that before that meeting, that interview, or whatever happens,
11 they've agreed in advance that one of the persons is going to make the -- to record what
12 just was discussed. One person is going to take items, evidence, things like that.

13 Q Okay. Agent Shapley talked about a day of action, for example, that was
14 scheduled to occur in I believe it was December of 2020. And he spoke about how Joe
15 Gordon, an FBI official, and himself were on the ground in California and were getting
16 ready to go do interviews.

17 How would something like that, how would the duties be split?

18 A You know, so, once again, can't talk about that. I wasn't even in this
19 position during that frame.

20 Q Fair enough.

21 A But, yeah, we regularly send agents over. And from my current position
22 other levels would discuss in advance, "Hey, we're sending you to Milwaukee." "Why
23 are you going to Milwaukee? Why couldn't Milwaukee handle it if we are sending
24 agents out together?" I mean, at this point that's an agent-level decision on how that
25 usually gets split when they're doing it.

1 Q Okay. Now, if there's an investigative decision about whether they're going
2 to approach a witness cold, who makes that decision? Is that IRS or FBI or is that made
3 jointly, knock on a door and just try to get a witness in a candid moment to talk?

4 A Yeah, that's an agent decision.

5 Q Okay. And if there was a plan to talk to a particular witness -- I'm just
6 talking generally -- if there was a plan to talk to a particular witness and catch that
7 witness cold, if someone at FBI or a different -- or Main Justice tipped off that witness
8 that the FBI agent and the IRS agent were going to talk to cold, would you consider that
9 to be problematic?

10 A There are different strategies for interviews. And in my almost 30-plus
11 years of law enforcement, I've done different things.

12 Q But if the game plan was to catch a witness cold, knock on his door and see if
13 he's willing to talk, would you consider it problematic if someone else in the mix alerted,
14 say, the defense attorney for that witness that perhaps the FBI was going to knock on
15 their door the next morning?

16 Ms. Zdeb. Are you asking him to speculate on an actual thing that you believe
17 happened in this specific case?

18 BY MR. CASTOR:

19 Q I'm just saying generally. You know, you've been with the FBI how many
20 years?

21 A 25, going on 25.

22 Q So you have an incredible wealth of experience about best practices for
23 conducting investigative work, correct?

24 A At this point I'm dangerous enough to kind of know what I'm doing a little
25 bit.

1 Q So if the plan -- generally speaking, not talking about anything specific -- but
2 if the plan generally was to catch a witness by surprise, which you do from time to time,
3 correct, you try to get witnesses to talk to you, right, without the benefit of their lawyer,
4 without the benefit of too much opportunity to think things through, correct?

5 A Have I done that in the past? Sure.

6 Q But that's something the FBI and IRS criminal investigators do all the time,
7 correct?

8 A Interview people? Absolutely.

9 Q And try and take them by surprise and get them in a candid moment?

10 A You know, I've done hundreds of interviews, and there are a hundred
11 different ways I come about each one of those interviews.

12 Q But that's one of the regular ways, right?

13 A Trying to surprise people? It may very well be, but --

14 Q Maybe "surprise" is the wrong word, but just try to visit with them and see if
15 they'll talk?

16 A I and my agents every day are visiting with people trying to get them to
17 talk --

18 Q Right.

19 A -- and get information from the community.

20 Q And sometimes the game plan is try to get them to talk without them
21 knowing you're coming, correct?

22 A Sure, that's absolutely an option.

23 Q Okay. And if that was the plan with a particular witness -- generally
24 speaking -- and someone at DOJ or somebody else at FBI tipped that witness off, that
25 would not be a best practice, would it?

1 A You're asking me to speculate. There may have been a justifiable reason of
2 why that happened that I wasn't aware about in your hypothetical situation.

3 Q Okay. Do you know Agent Gordon that I mentioned? He was in the --

4 A Can I go off, have a moment here?

5 Mr. Castor. Sure.

6 [Discussion off the record.]

7 Mr. Sobocinski. Yes, I know Joe Gordon. I would ask that he is not an executive
8 in the FBI and that as best as we can we keep his identity as it relates to my testimony
9 here anonymous.

10 Mr. Castor. Okay. At the end of the interview, we'll give you a -- I'm going to
11 stop the clock here for recordkeeping purposes. At the end of the interview, the court
12 reporters, they'll turn it around pretty quickly, you can come in and review the transcript
13 for accuracy.

14 Mr. Sobocinski. Okay.

15 Mr. Castor. And agency counsel, those that are in the room, can come in and
16 look at the transcript. And if there's any inaccuracies, you can identify them for us. If
17 there's any proposed redactions, we'll take that into consideration.

18 And also, just when you're reviewing the transcript, if you realize that you got
19 something wrong or you remembered something, you can tell us. You can tell us at that
20 time.

21 And so if you or FBI, DOJ counsel thinks that a particular name needs to be
22 redacted, they can propose it, and then we'll consider it. A lot of times we're okay with
23 that redaction. Sometimes we're not.

24 With Agent Gordon in particular, he's testified for a different committee, so --

25 Ms. Greer. The committee did redact his name and not released his name,

1 however, so I think that's --

2 Mr. Castor. Oh, you already did that?

3 Ms. Greer. Yeah.

4 Mr. Castor. Is that true, Clark?

5 Mr. Abourisk. Correct.

6 Mr. Castor. Okay. All right.

7 Ms. Zdeb. And I think there were -- just on this point -- there were a few of the

8 Tax Division attorney names also fall into this category.

9 But appreciate the offer, and we're happy to look at that after the fact.

10 Mr. Castor. Yeah, just so you understand how the transcript review works.

11 Usually the court reporters give it to us pretty quickly too. They're awesome.

12 Anyway, we'll go back on the clock here.

13 Ms. Zdeb. Got to praise the court reporter.

14 Mr. Castor. Absolutely.

15 BY MR. CASTOR:

16 Q So Agent Gordon, he was under your purview?

17 A He was a supervisor that worked for me for a time, yeah.

18 Q Okay. And how long did he work for you?

19 A I think maybe a year.

20 Q Okay. And was he based in Wilmington?

21 A He was.

22 Q Okay. And he was one of the main agents on this case?

23 A He was a supervisor in the office.

24 Q How many folks are in the office up in Wilmington?

25 A Yeah, I can't -- we don't regularly give out the numbers of our office.

1 Q Okay. So you know the answer, but you're not going to tell me the
2 answer?

3 A I have a general sense of the answer.

4 Q Okay.

5 A I would say I would love more. But I don't have a --

6 Q So you know the answer, but you're not going to give me the answer. Is
7 that what you're saying?

8 A I have a general sense of the numbers, yes.

9 Q I want to turn our attention to the October 7th meeting.

10 A Uh-huh.

11 Q And we'll mark as an exhibit -- it will be exhibit 1 for us, but it was exhibit 10
12 for Agent Shapley's deposition.

13 [Sobocinski Exhibit No. 1

14 Was marked for identification.]

15 BY MR. CASTOR:

16 Q Is this the first time you've seen this document?

17 A It's not.

18 Q And when have you seen this document before?

19 A Sometime in the last week.

20 Q Okay. So these are contemporaneous notes prepared by Agent Shapley of
21 the IRS summarizing a meeting that happened on Friday, October 7th, 2022. And it's my
22 understanding you attended this meeting?

23 A I attended a meeting around that date, yes.

24 Q And do you remember who was in that meeting?

25 A Yeah, in a general sense I do.

1 Q Okay. And can you tell us who?

2 A So, yeah. Myself, would have been my assistant special agent in charge.

3 Q And who is that?

4 A She is not an SES employee, so right now I'm not going to give you her name.

5 Q Is that Agent Holley?

6 A I'm not going to discuss her name right now.

7 Q Okay. I mean, we sent a subpoena to her. She's slated to testify on
8 Monday. So, okay.

9 A The SAC for IRS. Other SACs --

10 Q And who was that?

11 A I believe it was Darrell Waldon.

12 Q Okay.

13 A And then other IRS employees. I don't have a -- I don't know the specifics
14 of who there was in there. I do believe Mr. Shapley was one of them. David Weiss,
15 the U.S. attorney, was in there, and then members of his staff. But, once again, it's just
16 a general sense of who they were. Specifics I don't recall from that.

17 Q And what was the purpose of the meeting?

18 A You know, the purpose -- why I showed up for the -- why I went to this
19 meeting is there had been a media leak reported in one of the papers, and I was there to
20 discuss the media leak.

21 Q What do you remember about the leak?

22 A That it was -- it appeared to reference ongoing investigative activity in this
23 case.

24 Q Do you remember what publication it was in?

25 A I believe it was The Washington Post.

1 Q And what was the gist of the article or the gist of the concern?

2 A That potentially somebody was working -- a law enforcement investigation
3 was talking to a reporter.

4 Q Did you have an idea who that was?

5 A Yeah, I didn't speculate at that point. It could have been quite a few
6 people.

7 Q Like who do you -- this case obviously has been the subject of a lot of
8 reporting and leaks, whether they're authorized or unauthorized. Who's talking to the
9 press on this case?

10 A Yeah, you're asking me to speculate. I don't know.

11 Q But you're not?

12 A I am not.

13 Q Okay. And, to the best of your understanding, nobody at the FBI is,
14 correct?

15 A I'm not aware of -- I can't speculate on who the leaks are.

16 Q Okay. So the meeting was called to talk about the leak?

17 A Yeah, to reference the leak and to make sure we were focused on the
18 investigation and moving it forward to a resolution.

19 Q Did U.S. Attorney Weiss, did he exhibit concern about the leaks?

20 Do you know who called the meeting? Was it a regularly scheduled meeting or
21 was it a --

22 A Yeah, I don't --

23 Q You don't remember?

24 A I don't have a sense of whether it was previously scheduled or it was we
25 were showing up because of that. My memory is it was -- I was there because of the

1 timing as it related to that leak.

2 Q But you drove up to Baltimore?

3 A Wilmington.

4 Q I'm sorry. You drove from Baltimore to Wilmington?

5 A Correct.

6 Q Did you drive specifically to Wilmington for the meeting, or did you have
7 business there that you were already scheduled to be there?

8 A Yeah, I don't know. I regularly go up. It's part of my -- I have teams there.
9 I try to go there regularly. I try to do as much -- to cram as much in as I can.

10 Q Okay. And do you remember any other purpose that the meeting was
11 called?

12 A Other than what I just talked about, no.

13 Q Yeah. Looking at -- let me just ask you one question.

14 FBI Form 302s are reports of interviews that FBI agents prepare, correct?

15 A Correct.

16 Q For the most part, do you think FBI 302s are reliable documents?

17 A I do.

18 Q And why are they reliable?

19 A Because it is by which the way the FBI records -- and has for some
20 time -- records interviews.

21 Q Okay. So FBI investigators are trained to interview witnesses, correct?

22 A Correct.

23 Q And write up the contents of their interview in a contemporaneous fashion,
24 correct?

25 A Correct.

1 Q And the same goes for IRS criminal investigators. They write up their
2 interview summaries and reports much in the same fashion, correct?

3 A Yeah, I can't comment on what their process is. But I think law
4 enforcement worldwide writes up interviews of --

5 Q And from your perspective the 302s are reliable because they're
6 contemporaneous, and they're written by a professional whose job it is to conduct
7 interviews and write reports about those interviews, correct?

8 A Yes.

9 Q Okay. So exhibit 10 here is a contemporaneous report, in effect, of the
10 October 7th meeting prepared by Agent Shapley. And Agent Shapley identifies in this
11 particular document that Mr. Waldon, the special agent in charge, asked him for this
12 report.

13 So, for the most part, this type of contemporaneous capture of a meeting is, in
14 essence, a reliable document, correct?

15 A I can't comment on the veracity of this. You have what looks like an email
16 chain. I really don't know who wrote it. I was not referenced in it. But I can talk
17 about what it states.

18 Q Uh-huh. But you don't have any evidence to suggest --

19 A No.

20 Q -- that Mr. Shapley didn't write this, correct?

21 A No. But we are in a conversation. You're asking me to be truthful, and I
22 just don't know the veracity and when this was written.

23 Q Okay.

24 A And I do see regularly emails that are manipulated in my course of business.

25 Q Okay.

1 A And so I just want to put that out there.

2 Q Okay. Fair enough. I mean, for the record, Agent Shapley testified under
3 oath. He brought this document to that deposition. And he articulated that he
4 prepared this email contemporaneously because his special agent in charge asked him to.

5 So with that sort of stipulated to, there's no reason that these notes would be
6 unreliable?

7 A Okay.

8 Q So you understand that, you don't have any evidence or suggestion that
9 these are unreliable?

10 A No. I appreciate your statement, yeah.

11 Q Okay. And so this is a two-page document, and it talks about six
12 enumerated items.

13 Number 2 on here is: "Weiss stated that he is not the deciding person on
14 whether charges are filed. I believe this to be a huge problem -- inconsistent with DOJ
15 public position and Merrick Garland's testimony."

16 You were in the meeting. Did that -- do you remember that occurring?

17 A I don't.

18 Q So you do not remember the U.S. attorney stating that he is not the deciding
19 person on whether charges are filed?

20 A Yeah, I do not.

21 Q Okay. Now, at this point in time in the investigation, who did you think had
22 authority to bring charges?

23 A David Weiss.

24 Q Okay. And if David Weiss wanted to bring charges outside of his
25 jurisdiction, who had authority to make that happen?

1 A David Weiss.

2 Q Okay. So if David Weiss brought the 2014-2015 tax cases to D.C., to the
3 U.S. attorney, Matthew Graves, whose call was it to bring those charges?

4 A Once again, I'm not aware of that discussion. I was consistently aware that
5 David Weiss had the authority in the U.S. to bring the charges where venue presented
6 itself.

7 Q Okay. Wherever he wanted? He could bring it in California? He could
8 bring it in D.C.?

9 A Correct.

10 Chairman Jordan. And on what basis did you understand he had that authority?
11 Because that's not normal. He can bring them in his district. On what basis did you
12 understand he had that authority?

13 Mr. Sobocinski. So from when -- the minute I got there in July of '21, it was
14 always the understanding and the communication between David Weiss and myself is
15 that he had that authority to bring it on behalf of the Department.

16 Chairman Jordan. So you believed that he had this authority when, where, and
17 whether?

18 Mr. Sobocinski. Yeah.

19 Chairman Jordan. Okay.

20 BY MR. CASTOR:

21 Q And so you are aware that charges were brought to Matthew Graves in D.C.,
22 correct?

23 A I am not.

24 Q So you don't remember being at any meeting or at any point during the
25 investigation where you learned that the U.S. attorney for D.C. denied David Weiss the

1 ability to bring charges?

2 A Without getting into the specifics of an ongoing case, it did come -- it was
3 brought to me at some point -- probably the summer that I arrived, maybe a little bit
4 later -- that they had been exploring where to bring charges, and one of those locations
5 was D.C.

6 Q Okay.

7 A I'm not aware of a declination. I'm not aware of what that -- that occurred
8 prior to me getting involved. But I was aware that there had been discussions.

9 Q Right. Well, I don't think it happened -- I think it happened during your
10 pendency that the 2014 and '15 tax charges were brought to D.C. But you don't
11 remember that?

12 A You know, as we started, the tax charges were IRS. And so for me and my
13 role, yeah, I didn't have visibility into that.

14 Q Okay.

15 Ms. Greer. Could we go off the record for just one second?

16 Mr. Castor. Okay.

17 [Discussion off the record.]

18 Mr. Sobocinski. So, yeah, I want to give you context on what we talked about,
19 what the cases look like. So I want to be as expansive as I can so you have an
20 understanding of this.

21 So for us, when it comes to charging decisions, that's not an FBI role. I always
22 assume that the U.S. Attorney's Office that I am working with has some authority to do it
23 in their venue. And if they don't, there are administrative ways in which cases are
24 brought to other districts in the U.S. That's something I've worked with regularly
25 throughout my career.

1 There are various ways that happens. We can transfer a case. I have a general
2 sense that David could go to -- Mr. Weiss could go to another district. He could ask to
3 have that joined. If it's not, then he goes back for an administrative authority to bring
4 the case on his own.

5 But it's administrative in nature. At no point did I think he did not have that
6 authority to do all of those steps with all that we were looking at.

7 Mr. Castor. So as I understand your testimony, you were unaware that in March
8 of 2022 -- this is after you, you know, this is after you joined the Baltimore Field Office, in
9 March of 2022 they brought -- the prosecution team brought the case to Matthew
10 Graves, the U.S. attorney for D.C., and asked him to prosecute the tax years of 2014 and
11 2015.

12 You're saying you're unaware of that?

13 Mr. Sobocinski. Once again, I can't comment on the specifics of an investigation.
14 But I know that from my role, I was looking to support David Weiss' office to bring a
15 resolution to this, whether it's charges or whatever it may be.

16 Mr. Castor. I mean, you have responsibility to this case. Certainly you were
17 curious whether this was going to be brought in D.C., in Delaware, in California, correct?
18 You were tracking that. You were managing that. You're the manager here.

19 Mr. Sobocinski. I was not curious as to, like, the minutia of this process. It's not
20 something that fell to me. I absolutely wanted to get a resolution in this investigation.

21 Chairman Jordan. You always thought that Mr. Weiss had the authority to bring
22 charges wherever and whenever he wanted to?

23 Mr. Sobocinski. Correct.

24 Chairman Jordan. You thought that the entire time?

25 Mr. Sobocinski. Correct.

1 Chairman Jordan. From July 2021 when you got there all the way through, you
2 thought he could bring them wherever he wanted to bring them?

3 Mr. Sobocinski. Correct. And that there was an administrative process that I
4 don't know the minutia of that the Department -- then he would work within the
5 Department to have that authority to do that within whatever venue this ultimately
6 resided in.

7 BY MR. CASTOR:

8 Q And do you ever remember David Weiss stating that he was denied by the
9 U.S. attorney in D.C. to bring those charges?

10 A Once again, I don't want to go -- I'm not going to -- I can't go -- I don't want
11 to go into deliberative process about what he did or didn't. It was my general sense is
12 I'm aware that there had been conversations with venues and then we were continually
13 looking to support him as he was trying to figure those venue issues out. But it was my
14 understanding that he had the authority -- ultimate authority to work through the
15 administrative process to bring these cases.

16 Q To bring a case in D.C.?

17 A To bring a case where he deemed appropriate.

18 Q If that's the case, why did he feel the need to ask for any special authority in
19 August of this year?

20 A You'll have to ask Mr. Weiss that.

21 Q Uh-huh. So when did you learn that the 2014 and 2015 tax cases which
22 had venue in D.C. weren't going to be able to go forward?

23 A Once again, I cannot comment on the specifics of the case. I will say I'm an
24 FBI agent. I'm not an IRS agent. Those charges solely were lied within IRS. And I was
25 looking on bringing the totality of this investigation to a close.

1 Q Right. But this is a high-profile investigation. It's the son of the President
2 of the United States. You were managing it. You were following it. Okay? You've
3 got to be able to tell us when you realized you can't bring the 2014 and '15 tax charges in
4 D.C. and how you learned that.

5 A I can't get into the minutia of the actual case. I will say if you've ever sat in
6 a room with IRS agents and lawyers talking about taxes, unless you're an expert and you
7 are engrossed in the minutia of that, they get very complicated.

8 Q Okay. Fair enough.

9 But he had millions of dollars in income from Burisma, right, for a no-show board
10 appearance. Okay? And that income was about to escape taxation because the
11 statute of limitations were expiring. I mean, you as the head of the relevant FBI field
12 office had to be tracking this, correct?

13 A Tracking -- when you -- by "this," what do you mean "this"?

14 Q That millions of dollars of income subject to the 2014 and '15 tax years were
15 about to expire that needed to be prosecuted, otherwise the statute of limitations would
16 be -- would lapse. You had to be tracking this. So what can you tell us about it?

17 A Without going into specifics of the actual investigation, I was focused on
18 bringing this case to a resolution.

19 Q Okay. I mean which case? Like the whole case or the tax part?

20 A I was focused on bringing cases -- everything -- you know, the hundreds of
21 cases I have, we want to get them to end. Whatever those charges ultimately end up is
22 not up to me as the FBI. I'm putting the evidence together, providing it to a prosecutor.

23 Q Okay.

24 A They're working those issues on what charges actually are brought.

25 Q Okay. At some point you learned that the 2014-'15 cases couldn't be

1 prosecuted in D.C. and couldn't be prosecuted at all. When was that?

2 A I'm not commenting on the specifics of ongoing cases.

3 [Outside interruption.]

4 Q Sorry.

5 A Yeah, I'm not going to comment on the dialogue of what we were discussing
6 as the case is --

7 Q Is it because you know and you're not going to tell me, or is it because you
8 don't know?

9 Ms. Zdeb. I think it's -- Steve, it's the reason we said earlier, the 2014 and 2015
10 tax years, and these questions get at issues that are outside the scope of what --

11 Mr. Castor. This is at the heart of what we're looking into, Weiss' ability to bring
12 charges in D.C., Weiss' ability to bring charges in California, his authority to do that. He
13 tried to do that, he tried to bring it in D.C., and he was denied. And I'm simply trying to
14 ask the witness when he learned that.

15 Ms. Zdeb. You were asking him about specific tax years, and I think he's spoken
16 to your question.

17 BY MR. CASTOR:

18 Q Well, I think we can stipulate that '14 and '15 are D.C. So, I mean, this is at,
19 like, the heart of our, like, interest, the heart of Weiss' authority.

20 So, I mean, I think we're going to be disappointed if you're not able to tell us about
21 that. And if you're not going to tell us about it, I'd like to know whether you know the
22 answer and you're just not telling us or whether you just don't know the answer.

23 A Are you asking me that question?

24 Q Yes.

25 A I am not going to specifically talk about prosecutorial decisions.

1 Q Okay.

2 A What charges are brought or not brought, that's up to the U.S. Attorney's
3 Office.

4 Q But my question is, do you know the answer of when you learned they
5 weren't bringing the case in D.C. for 2014 and 2015 tax years?

6 Ms. Greer. Can we pause, go off the record?

7 Mr. Castor. Sure.

8 [Discussion off the record.]

9 Mr. Sobocinski. Yeah, so as I mentioned earlier, I was around the tax portion of
10 this case. The minutia of what years, what not years had been discussed throughout
11 that process. I have no real direct knowledge of how they ultimately were resolved and
12 the time frame of when they ultimately resolved.

13 BY MR. CASTOR:

14 Q Okay. Are you aware that the 2014 and '15 tax years had a lot of money
15 coming in from Burisma?

16 A I cannot comment on ongoing aspects of this case.

17 Q And, again, do you know the answer to my question or do you -- and you're
18 not willing to tell me because of the direction from the Department, or do you not know
19 the answer?

20 A I have a -- can you rephrase that question for me?

21 Q I'm just wondering whether you know the answer to my question about the
22 2014 and '15 tax years encompass, like, millions of dollars untaxed income coming in from
23 Burisma, which he was sitting on the board in case you haven't -- are you aware that he
24 was sitting on the Burisma board?

25 A I have seen open-source media reporting that he sat on a Burisma board.

1 Q Okay. And he was paid a handsome annual fee to sit on that board. Are
2 you aware of that?

3 A I can't comment on what I know about his financial activity as it relates to
4 this investigation.

5 Q Okay. And is it because you don't know the answer to that or you're not
6 able to comment because it's an ongoing investigation?

7 A I'm not able to comment because it's an ongoing investigation.

8 Q Okay. Fair enough.

9 So my question about the 2014 and '15 tax years, when that statute of limitations
10 was about to expire, there's, like, millions of dollars in untaxed income that was just
11 about to go away. And I'm just asking you if you were tracking that.

12 A I had a very high-level sense of IRS charges. IRS and the U.S. Attorney's
13 Office were in the weeds on what that process would like and what the minutia of their
14 ability to charge would be.

15 Q Okay. But at some point there was a resolution that they're not charging
16 2014 and 2015 and they can't charge it because the statute has expired, correct?

17 A I can't comment on a charging decision by the U.S. Attorney's Office.

18 Q But did you know that was happening?

19 A I have an ongoing case. I cannot talk about aspects of that case that might
20 be continuing.

21 Q Okay.

22 Ms. Greer. Do you have a specific recollection that goes to the question?

23 Mr. Sobocinski. Yeah, I don't. You're asking me about tax years, and I go back
24 to I'm not -- I and my agents are not tax agents. The minutia of tax law is very
25 complicated. We have the -- there's a whole government entity. There's various

1 lawyers that specialize in this. I had a general sense of this.

2 Chairman Jordan. Yeah, but this is simple. He got a boatload of money and
3 didn't pay -- this wasn't complicated. This is, like, he just failed to pay the taxes on a
4 boatload of money he got. So this is as simple as it gets. And this has got to be the
5 highest profile -- well, one of the highest profile investigations your office is doing.

6 And Steve is asking a simple question. Did you know when they decided not to
7 do it?

8 Mr. Sobocinski. No, I have no direct date or knowledge of when any of those
9 decisions may or may not have happened.

10 BY MR. CASTOR:

11 Q But you know that the decision did happen, correct?

12 A When -- once again, I refer -- I'm not going to speculate on what they
13 decided as far as potential charges in an ongoing investigation.

14 Q But you knew, for example, they couldn't bring those charges in Delaware,
15 right?

16 A It is my understanding, based upon the U.S. Attorney's Office and
17 prosecutors making that determination, that Delaware was not the appropriate venue.

18 Q That they had to go to D.C. or California to do the tax charges, right?

19 A That they were actively exploring other locations.

20 Chairman Jordan. And you thought they had the authority to do so?

21 Mr. Sobocinski. Correct.

22 Chairman Jordan. You were always under that assumption?

23 Mr. Sobocinski. Correct.

24 Chairman Jordan. Which sort of begs the question Steve asked earlier. If they
25 already had it, why does he need it? If they already had the authority to bring it, which

1 you thought they did, why does he need the special counsel designation now?

2 Mr. Sobocinski. That's a conversation with somebody else other than me. I

3 was not a part of that.

4 Chairman Jordan. Okay.

1 BY MR. CASTOR:

2 Q You said that you weren't tracking these tax -- the tax part because you're
3 FBI, not IRS.

4 What were you tracking? Like, what part of the investigation were you tracking?

5 A I can't comment on ongoing portions of this investigation.

6 Q Okay.

7 A But I was regularly working with the U.S. Attorney's Office.

8 Q Okay.

9 Ms. Greer. At a general level?

10 Mr. Sobocinski. Meaning? Excuse me.

11 [Discussion off the record.]

12 Mr. Sobocinski. Yeah. So as I talked about earlier with moving forward, is that
13 regardless of what the U.S. Attorney's Office chose to charge, my team and I were
14 collecting information to be used however he deemed to use it for whatever specific
15 charges he wanted to use. I wanted to keep that momentum going so that we got to an
16 end point, whatever that end point would be.

17 BY MR. CASTOR:

18 Q Okay. And what were the venues that that end point could have been that
19 you were tracking so carefully?

20 A So I had awareness of previous discussions in D.C. and then I did have
21 awareness in L.A.

22 Q Okay. And then there was a point where Graves said no, correct?

23 A I'm not personally aware of that, of what actually happened.

24 Q Okay. Did you know that they stopped working towards prosecuting a case
25 in D.C. at any point in time?

1 A You know, that's a question for David Weiss. I don't know what his -- what
2 they were doing on their side.

3 Q But at some point you're managing this and you're thinking, "Hey, this case
4 that I'm managing, I'd like to bring it to a resolution," and that resolution is either going to
5 happen in D.C., Delaware, or L.A., right?

6 A That -- I -- well, first, it wasn't up to me, and I didn't -- I didn't care about
7 what venue we wanted to. I just wanted to bring it forward to resolve this case.

8 Q But you said you'd been in meetings, in 12 or 20 -- I forget the number -- but,
9 obviously, you were tracking where the cases were going to be, how they were going to
10 be put together, and where they were going to be brought, right?

11 A Yes.

12 Q Okay. And you knew it was either D.C., L.A., or Delaware, right? There's
13 no other venue I'm missing, is there?

14 A I can't go into the specifics of what DOJ and the U.S. Attorney's Office
15 explored as far as potential venues.

16 Q But as far as your awareness, those are the three venues, right?

17 A Those were three venues that were discussed.

18 Q Okay. And at some point D.C. dropped off the map, it wasn't an option,
19 right?

20 A I think the dropped off the map is clear.

21 Q Okay. And did you ever have any communications with David Weiss about
22 that?

23 A I can't go into specifics. But, once again, conversations with David Weiss
24 always were focused on he had the authority to bring this case wherever he felt the
25 venue was most appropriate.

1 Q Okay. And did David Weiss ever explain to you why he was just going to let
2 go of the 2014 and 2015 tax years?

3 A You know, I have no -- that was -- no, that was not a discussion. Taxes
4 were not a discussion that Dave and I regularly had. It was whatever the full case
5 resolution would look like. And so, yeah, the tax years was not something that David
6 and I regularly talked about.

7 Q Okay. Turning back to this exhibit 1.

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

10 2a: "I believe this to be a huge problem -- inconsistent with DOJ public position."
11 So you don't remember Weiss saying that at the 10/7 meeting?

12 A That he was not the deciding person?

13 Q Correct.

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

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

17 A Correct.

18 Q Okay. "Process for decision: Needs DOJ Tax approval first -- stated that
19 DOJ Tax will give 'discretion.' (We explained what that means and why that is
20 problematic)."

21 Do you remember that part of the discussion?

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

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

25 A There was, like, a bureaucratic administrative process he had to work

1 through, but I never viewed it as or talked about it as approval. I don't remember David
2 saying approval. It was solely a process that he had to work through.

3 Q And we've discussed a good bit that -- Shapley writes here: "U.S. Attorney
4 Weiss requested Special counsel authority when it was sent to D.C. and Main DOJ denied
5 his request and told him to follow the process."

6 Do you have any awareness of that?

7 A I don't.

8 Q Flipping the page.

9 "Mid-September they sent the case to the central district of California" -- Los
10 Angeles -- "coinciding with the confirmation of the new Biden-appointed U.S.
11 attorney" -- Martin Estrada.

12 Do you have any recollection of that being discussed at the meeting?

13 A Once again, I can't get into the specific conversations as it relates to the
14 ongoing case. But, yeah, I had a general sense that there were discussions in California,
15 as we talked about.

16 Q Okay. But my question was do you remember this being discussed at the
17 10/7 meeting?

18 A I don't, but it wouldn't be abnormal.

19 Q Okay. So you don't remember it being discussed, but there's no reason to
20 believe that it wouldn't if Shapley writes this up?

21 A In most of the meetings I was -- let me be really clear here. Most of the
22 meetings I was in with David and everybody else, it was the process of moving this
23 forward, that that's what my focus was, to move this case to a resolution.

24 Q What would a resolution look like in your mind?

25 A You know, the case is going to close, we're going to have charges or we're

1 not going to have charges. That's up to the U.S. Attorney's Office. But to do
2 everything within the FBI's power to get the evidence we need to have somebody
3 else -- the prosecutors -- make those charging decisions.

4 Q Okay. I want to jump down. Number 3 was: "They are not going to
5 charge the 2014/2015 tax years."

6 Do you have any recollection of that topic being discussed at this meeting?

7 A I'm not trying to be argumentative, but when it comes to the -- we talk about
8 whether this was simple or not.

9 Q Uh-huh.

10 A I have found in my time that every time IRS and tax attorneys talk, it
11 becomes overly complicated. And so for me, I have no general sense of tax years, when
12 and when we discussed those.

13 Q But there's -- fair enough. And I admit that's a point I'll concede there.

14 But, generally speaking, the issues with 2014 and '15 related to the Burisma
15 income, correct?

16 A I cannot comment on an ongoing case.

17 Q Do you know the answer, or are you just not --

18 A Do I know the answer of those years --

19 Q Yes.

20 A -- were there Burisma income?

21 Q Yes.

22 A I can't comment on that.

23 Q Okay. And, for example, in 2018, he was expensing sex clubs and
24 prostitutes. Are you aware of that allegation?

25 A I can't comment on any of that.

1 Q Okay. So, again, you don't -- you're not going to comment or you don't
2 know the answer? You know the answer and you're not going to tell me or --

3 A I'm not going to comment.

4 Ms. Greer. The question was, are you aware of the allegation?

5 Mr. Sobocinski. That -- I'm sorry? That I was aware of the allegation of
6 Burisma, that I was aware of the allegation of prostitutes, which --

7 BY MR. CASTOR:

8 Q Well, he expensed, like, a sex club on his 2018 tax return, and that, as you
9 can imagine, is a problematic deduction.

10 A I am aware of the allegation.

11 Q And there were a lot of deductions like that in 2018. And so if you're trying
12 to identify the different issues of the different tax years, 2018 is, like, there's a lot of
13 issues of that sort. I'm asking you whether you're aware of that.

14 A Once again, I can't talk about ongoing cases. However, I'm not in the
15 minutia of what --

16 Q Number 4 on here: "The FBI SAC" -- presumably that's you -- "asked the
17 room if anyone thought the case had been politicized."

18 Do you remember saying that?

19 A I do.

20 Q And what do you mean by that? I mean, in general that's somewhat
21 ambiguous. So can you tell us what you meant by that?

22 A Yeah. At the time I hope it wasn't ambiguous.

23 There was the media leak. Obviously, that was incredibly troubling to me and
24 any potential investigation that we were going to continue to do. I think -- I have a
25 general sense that that was part of it, is that this was being politicized.

1 I, at the time -- I did not think that it was. And so I wanted to go on record in the
2 room of the leaders who were involved in this investigation, I wanted to say I didn't, offer
3 my team the opportunity to do that, to say it there, and offer the other individuals in the
4 room this was the appropriate venue to bring that up and let's discuss it. Because if it
5 was, that was going to be a problem, and we needed to work through it because, for me, I
6 wanted to get this case resolved.

7 Q At that point were you aware that the day of action -- which, in fairness, was
8 before you joined the office, it was December 8th, 2020 -- that the day of action the
9 investigators, Joe Gordon, Gary Shapley, wanted to go talk to Hunter Biden?

10 And were you aware that somebody in the U.S. Attorney's Office or somebody in
11 the FBI tipped off the transition team, the political transition team? Were you aware of
12 that fact?

13 A I was not in this role at that time.

14 Q But were you aware of that fact, or is it the first time you're hearing about
15 it?

16 A Can I go off the record?

17 Mr. Castor. Sure.

18 [Discussion off the record.]

19 Mr. Sobocinski. Yeah. At some point when I came onto the job, I was aware
20 that there had been an attempt to interview Hunter Biden in California. The minutia of
21 what that process was, approvals, things like that, I was not directly involved in.

22 BY MR. CASTOR:

23 Q But would you agree -- and this will be my last question, my hour is up
24 here -- would you agree that if somebody had tipped off the transition team, the political
25 transition team, that that would have politicized the investigation?

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

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

7 Q Okay.

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

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

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

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

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

19 Q Okay.

20 A Because I -- because that -- like, that's what we do, and our job is to make
21 sure we are leading groups of people who feel that they're doing the right things.

22 Q Okay.

23 A And if you as a leader, no matter what your rank is, sitting in that room are
24 choosing not to do that, then that's of concern to me. That's what I wanted that space
25 to be, like, communication is really important to me amongst teams working cases like

1 this.

2 Mr. Castor. Okay. My hour is up.

3 Ms. Greer. Take 5 minutes?

4 Mr. Castor. Yeah, take as much time as you need.

5 [Recess.]

6 [REDACTED]. It is 11:26. And we can go back on the record.

7 Thank you again for joining us. I'm [REDACTED]. I'm the Democrats'

8 oversight counsel in this case.

9 EXAMINATION

10 BY [REDACTED]:

11 Q Mr. Sobocinski, I want to take a step back from where we were and talk
12 about your background. And I think at the end of the last hour you mentioned your
13 prior work as a Secret Service agent.

14 When did you actually -- when did you join the FBI?

15 A 1998.

16 Q Okay. And before you joined the FBI, were you working? Were you in
17 school?

18 A I was a Secret Service agent. And then before that I was a police officer for
19 a few years.

20 Q Okay. Where were you a police officer?

21 A Here in Washington, D.C., with the U.S. Park Police.

22 Q Okay. And then what was your first position with the FBI?

23 A I was a case agent in North Carolina.

24 Q Okay. And what kind of cases did you have? What were your
25 responsibilities?

1 A So when I first started, it was rural North Carolina. It was drugs, violence,
2 things like that.

3 9/11 happened, and then I found myself at the Pentagon for digging through the
4 rubble. And then my entire career was counterterrorism and working overseas on those
5 type of cases.

6 Q Okay.

7 A And working and living overseas on those type of cases.

8 Q And then you were actually named deputy assistant director of the FBI's
9 International Operations Division in 2019, right?

10 A Correct.

11 Q What did that position entail?

12 A I ran operations for -- FBI's worldwide operations, their employees, facilities,
13 hiring operations.

14 Q And that's a pretty big office, right?

15 A It was COVID, so it was even more complicated than I expected.

16 Q How many employees does that office have?

17 A You know, in a general sense, there are over a thousand, I think, worldwide.

18 Q Okay. And the annual operating budget is, like, \$170 million, right?

19 A Sounds about right.

20 Q Okay. So you had a lot of people and a lot of budget under your purview.
21 Is that fair to say?

22 A Correct.

23 Q Okay. And then you said that you were named special agent in charge in
24 Baltimore in July of 2021?

25 A Correct.

1 Q So not great at math, but that's about 25 years as a career FBI employee,
2 correct?

3 A Correct.

4 Q Okay. And it's fair to say that you've done everything from being a line
5 attorney -- or I'm sorry -- a line agent investigating matters to supervising line agents and
6 then actually managing pretty large components -- or large divisions?

7 A Yeah, that's fair.

8 Q Okay. Have you been awarded any awards or commendations during your
9 time with the FBI?

10 A I have.

11 Q What are those?

12 A Internally, monetary awards, letters of commendations. I've received
13 awards from various U.S. Attorney's Offices, from the Department of Defense, from the
14 CIA, from the State Department, and other foreign governments, partners, governments.

15 Q Okay. Is there anything you can tell us about that, or is that kind
16 of -- because I know you're doing counterterrorism.

17 A Yeah. No, I mean, that's pretty much a good summary of what that is.

18 Q Okay. Now I want to focus more on the Baltimore Field Office specifically.

19 A Sure.

20 Q The Baltimore Field Office is one of the larger field offices geographically
21 speaking. Is that right?

22 A It's considered one of the largest -- one of our large offices.

23 Q Okay. And I think you said earlier it's all of Maryland and all of Delaware is
24 the territory it covers?

25 A Correct.

1 Q How many -- I know you can't talk about specifics for number of employees
2 in an office, but can you talk about writ large how many employees the FBI Baltimore
3 Field Office has?

4 A Hundreds.

5 Q Hundreds. Okay.

6 Is it possible for you to estimate how many individual criminal matters the
7 Baltimore Field Office handles in a year?

8 A Hundreds. And they're rotating. I mean, regularly they open, they close,
9 they open, they close. So I would say as a general sense hundreds.

10 Q Okay. And that's in addition to counterintel work, right?

11 A Correct.

12 Q I want to introduce as exhibit -- I guess we're on exhibit 2, a February 6th,
13 2023, Baltimore Field Office press release entitled "Maryland Woman and Florida Man
14 Charged Federally for Conspiring to Destroy Energy Facilities."

15 We'll mark this as exhibit 2.

16 [Sobocinski Exhibit No. 2

17 Was marked for identification.]

18 BY [REDACTED]:

19 Q And I know this is a potentially an ongoing matter, so I'm not going to ask
20 you about anything that's nonpublic. I just kind of want to get a sense of the work that
21 your office does and the work that it did around this case in particular.

22 Are you familiar with this matter?

23 A I am.

24 Q And can you broadly describe what happened in this case?

25 A In general there were two racially motivated -- racially and ethnically

1 motivated individuals who were looking to conspire to destroy an energy station in and
2 around Baltimore.

3 Q Was this a domestic terrorism case?

4 A It was.

5 Q What role did the FBI play in disrupting this plot?

6 A Without getting into the specifics of what we did, we were -- this was our
7 investigation where we worked with our State and local partners to fully identify these
8 people and to be able to figure out what they were trying to do and then ultimately get
9 the evidence to charge them, working with the U.S. Attorney's Office in Baltimore.

10 Q And can you talk about, broadly speaking, the type of resources your office
11 had to devote to this case?

12 A Yeah, in a general sense this or anyone else who I've talked about. So
13 we've had case agents. We've had analysts, analytical support on this. There's
14 technology that we use that is incredibly time-consuming, cumbersome to go through.
15 There are surveillance assets.

16 We worked this one with multiple field offices throughout the U.S., working with
17 State and local partners to assist us with this, and then also with our local power industry,
18 had to work really closely with them.

19 Q Are you proud of the work that your team did on this case?

20 A I am. This is a good one, but this is just one that you're seeing about.
21 There's plenty that we're not talking about today, and there's even more that don't make
22 the news because we're able to disrupt them in other ways.

23 Q Can you estimate what percent of your office's work is focused on Delaware
24 as opposed to Maryland?

25 A Percentages are going to be fuzzy, but it's a smaller footprint for us, and it's

1 a -- geographically it's a smaller population, so it's -- Maryland definitely dwarfs it.

2 Q I want to turn back, I want to go, move on to the October 7th meeting that
3 we were talking a little bit about earlier, and I want to turn back to what was marked as
4 exhibit 1.

5 We walked through this email a little bit in the prior hour. I want to go through it
6 just a little -- in a little more detail.

7 So if you recall that number 2 on the first page of this -- "Weiss stated that he is
8 not the deciding person on whether charges are filed" -- you were asked about that
9 statement, and you said: I don't recall him saying that.

10 Do you recall that?

11 A Correct.

12 Q And you said: If he had said that, I would have remembered it.

13 Do you recall that?

14 A I do.

15 Q Okay. So I want to go through some of the other statements in here and
16 ask if you have a specific recollection, if you think you would have recalled them.

17 A Uh-huh.

18 Q Under 2b -- well, the very last sentence. I'm not going to try and do the
19 math there.

20 A Yeah.

21 Q But it says: USA Weiss requested Special counsel authority when it was
22 sent to D.C. and Main DOJ denied his request and told him to follow the process."

23 Do you see where it says that?

24 A I do.

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

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

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

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

7 Q Okay. Turning the page, it's Roman numeral v.1, I guess, it's the third bullet
8 down, it says: "He" -- which refers to Mr. Weiss -- "would have had to request
9 permission to bring charges in California from the Deputy Attorney General or the
10 Attorney General (unclear on which he said)."

11 Do you see where it says that?

12 A No -- oh, got it. Yep.

13 Q Do you recall Mr. Weiss saying that?

14 A No. Like, this, like several other meetings I have had with Mr. Weiss, there
15 was a process within the Department of Justice that he would have to go through to bring
16 charges outside of his assigned district, which was Delaware.

17 You know, we had high-level conversations of what that looked like. But as far
18 as seeking approval or permission, I don't ever remember that. And my memory of this
19 is that it was a process or a bureaucracy thing he moves through, not a permission or
20 authority issue.

21 Q And do you think that if he had been said that he needed to seek permission
22 or to obtain permission, that's something you would have remembered?

23 A Yeah, I would have thought I would have remembered something like that.

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

1 A Uh-huh.

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

3 A I do.

4 Q And do you recall anybody responding in the affirmative?

5 A No.

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

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

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

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

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

21 A No.

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

24 A I would have.

25 Q And if somebody had raised such a concern, what specific steps do you think

1 you might have taken in response to that?

2 A I would have tried to get a better understanding of what they thought.

3 Obviously, people can have different perspectives for things that are going on.

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

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

11 A He did not.

12 Q Okay. And so to the extent that there are I guess what could be described
13 as concerns expressed in this email, this email is the first time that you're hearing of that.
14 Is that fair to say?

15 A There are things in -- so I can't speak into the mind of Shapley, but I do -- you
16 know, there is one part in here where he talks about communication issues. That is
17 something I and my team regularly talked about in this group, which was, "Hey, we need
18 to communicate more. We need to make sure we're all on the same page."

19 So when we talk about the politicization of this, I'm also talking about
20 communication. I'm, like, "Hey, let's continue to talk. If there are problems, if there
21 are problems within your team, this is the venue to do that."

22 Q And is it fair to say that in a case like this where there's an IRS investigative
23 team, there's an FBI investigative team, there's the U.S. attorney from Delaware, a case
24 where there's a lot of players, I guess is the point, is communication something that can
25 be a challenge in these kind of cases?

1 A Yes.

2 Q Okay. And so it's not specific to this; it's this is a big investigation with a lot
3 of moving pieces. Is that fair to say?

4 A Correct.

5 Q Okay. I want to introduce -- I'm going to change subjects a little bit here.

6 You've said repeatedly that you were always under the impression that Mr. Weiss
7 had authority to bring charges, that there perhaps would be a process, an administrative
8 process, but that he had that authority.

9 Broadly speaking, what do you mean by an administrative process?

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

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

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

19 A Correct.

20 Q Okay. Are you aware that Chairman Jordan and other Members of
21 Congress wrote to Attorney General Garland about the scope of Mr. Weiss' authority
22 earlier this year?

23 A I have a general sense. I don't know if I read the actual letter, but I'm
24 familiar with, in general, with that.

25 Q And are you aware that Mr. Weiss responded directly to a number of these

1 letters?

2 A Yes.

3 Q Okay. I'm going to walk through those letters. And I know some of them
4 you may have seen. Some you might not have. So I'm happy to give you, as I walk
5 through them seriatim, if you need a minute to review, you have that.

6 A Great.

7 Q On May 25th, 2023, Chairman Jordan wrote to the Attorney General about
8 individuals from the IRS who testified before the Ways and Means Committee. That
9 letter was forwarded to Mr. Weiss, who responded on June 7th, 2023.

10 And I want to introduce that June 7th, 2023, response as exhibit 3.

11 A Okay.

12 [Sobocinski Exhibit No. 3

13 Was marked for identification.]

14 BY [REDACTED]:

15 Q Have you seen this before?

16 A Yeah, I believe so.

17 Q Take as long as you need to review.

18 A Yes.

19 Q Do you understand this to be a letter in response to questions about the
20 matter involving, among others, Robert Hunter Biden, or Hunter Biden as he's more
21 commonly known?

22 A I am.

23 Q Okay. And that's the matter to which Mr. Weiss was ultimately appointed
24 special counsel, correct?

25 A Yes.

1 Q The second paragraph of this letter reads, quote: "While your letter does
2 not specify by name the ongoing investigation that is the subject of the Committee's
3 oversight, its content suggests your inquiry is related to an investigation in my District.
4 If my assumption is correct, I want to make clear that, as the Attorney General has stated,
5 I have been granted ultimate authority for this matter, including responsibility for
6 deciding where, when, and whether to file charges and for making decisions necessary to
7 preserve the integrity of the prosecution, consistent with federal law, the Principles of
8 Federal Prosecution, and Departmental regulations."

9 Do you see where it says that?

10 A Do you have the page number?

11 Q Sorry.

12 A Oh, sorry. Got it. Yes, I do.

13 Q Okay. And specifically with respect to, "I want to make clear that, as the
14 Attorney General has stated, I have been granted ultimate authority for this matter," to
15 the end of that sentence, are you aware of any information that contradicts Mr. Weiss'
16 statement that he was granted ultimate authority over this matter?

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

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

19 A I do.

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

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

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

25 A I do.

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

4 A No. I believe that to be true.

5 Q Okay. And I want to turn to the very last paragraph of this letter, right
6 above the signature block.

7 Is says: "In February 2021, I was asked to remain as United States Attorney for
8 the District of Delaware to continue my oversight of the matter. Since that time, I have
9 fulfilled my responsibilities, consistent with Department practices and procedures, and
10 will continue to do so. Throughout my tenure as U.S. Attorney my decisions have been
11 made -- and with respect to the matter must be made -- without reference to political
12 considerations."

13 Did I read that correctly?

14 A You did.

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

18 A I'm not.

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

20 A I do.

21 Q So following Mr. Weiss' June 7th response, Chairman Jordan then wrote to
22 Mr. Weiss directly -- this was actually in response to a letter, this June 7th response was in
23 response to a May 25th letter to the Attorney General. Chairman Jordan then wrote to
24 Mr. Weiss directly.

25 Mr. Weiss responded on June 30th, 2023, and I'm going to introduce that as

1 exhibit 4.

2 [Sobocinski Exhibit No. 4

3 Was marked for identification.]

4 BY [REDACTED]:

5 Q And I'll give you a minute to review.

6 A Okay.

7 Q Have you seen this before?

8 A I have.

9 Q Okay. The third paragraph on the first page reads: "First, the Department
10 of Justice did not retaliate against 'an Internal Revenue Service ("IRS") Criminal
11 Supervisory Special Agent and whistleblower, as well as his entire investigative team...for
12 making protected disclosures to Congress.'"

13 Do you see where it says that?

14 A I do.

15 Q Are you aware of any information that contradicts this statement?

16 A I'm not.

17 Q Okay. Do you believe that to be a true statement?

18 A I have no -- nothing to disprove it.

19 Q Weiss' June 30th letter then quotes the statement that I read earlier from his
20 June 7th letter stating that he's been granted ultimate authority over this matter. He
21 then states that: "I stand by what I wrote and wish to expand on what this means."

22 So if you can turn to the following page. And I'm going to go through this top
23 paragraph sentence by sentence, but before I do that, I do want to note for the record,
24 you're not an attorney, correct?

25 A That's correct.

1 Q Okay. So -- but notwithstanding that, given your 25-plus years with the
2 Bureau and your time in law enforcement before that, it's fair to say that you've been
3 involved in discussions regarding whether to charge somebody, right?

4 A Uh-huh.

1 [11:48 a.m.]

2 BY [REDACTED]:

3 Q And those decisions sometimes involved discussion about what jurisdiction
4 an individual can be charged in, correct?

5 A Correct.

6 Q And that's generally known as venue, correct?

7 A Correct.

8 Q Okay. So turning back to this paragraph, the first sentence of the
9 paragraph reads, quote, As the U.S. Attorney for the District Attorney of Dela- -- for the
10 District of Delaware, my charging authority is geographically limited to my home district.

11 Do you see where it says that?

12 A I do.

13 Q What's your understanding of what that sentence means?

14 A That U.S. attorneys are appointed for a specific geographical area to
15 prosecute cases, and if various elements of a crime occur within that, they have the
16 authority to prosecute in that area, that district.

17 Q And then the second sentence for that reads: If venue for a case lies
18 elsewhere, common departmental practice is to contact the United States Attorney's
19 Office for the district in question and determine whether it wants to partner on the case.

20 What's your understanding of what that sentence means?

21 A That if a U.S. Attorney's Office, I think, comes to a resolution in a particular
22 matter and they find that venue either does not exist in their own district or the case
23 would be a stronger case in another district, they contact that district to work through
24 how that case would be prosecuted.

25 Q And specifically the term "partner." Are you familiar with that term as used

1 in this context?

2 A In a general sense.

3 Q What's your understanding of what that term means?

4 A That they would both have AUSAs assigned to the particular case.

5 Q Okay. And partnering is different than seeking permission, for example,
6 right?

7 A I believe it is.

8 Q Okay. And is it fair to say that partnering means that both of those U.S.
9 Attorney's Offices will work together on a case as opposed to one kind of ceding
10 prosecutorial authority to another?

11 A I believe so.

12 Q Okay. Have you been involved in matters in which one U.S. Attorney's
13 Office investigated a matter but partnered with another for purposes of prosecution?

14 A I have.

15 Q And that's not uncommon, maybe it doesn't happen in every case, but it
16 happens, right?

17 A Correct.

18 Q Okay. And is it fair to say that when a particular United States Attorney's
19 Office or an FBI field office begins investigating a matter, they might not actually know
20 where venue may ultimately lie, correct?

21 A That's correct.

22 Q And that's because, in investigations, you follow the facts where they lead,
23 correct?

24 A Correct.

25 Q Okay. Going back to this paragraph. The third sentence reads, If

1 not -- meaning if another U.S. Attorney's Office does not wish to partner on the
2 case -- quote, I may request special attorney status from the Attorney General pursuant
3 to 28 U.S.C. Section 515.

4 Do you see where it says that?

5 A I do.

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

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

9 Q And what's your understanding of that?

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

14 Q Okay. And just so we have a complete record, I'm actually going to
15 introduce the statute.

16 A Okay.

17 [REDACTED]: That'll be exhibit 5.

18 [Sobocinski Exhibit No. 5

19 Was marked for identification.]

20 BY [REDACTED]:

21 Q So 28 U.S.C. Section 515 is entitled "Authority for legal proceedings;
22 commission, oath, and salary for special attorneys."

23 And I do want to note this is special attorneys, not special counsel, right?

24 A Yes.

25 Q So it's different. It's two different provisions.

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

7 Did I read that correctly?

8 A Yes.

9 Q Okay. So this provision specifically permits anybody who's appointed as a
10 special attorney to conduct any kind of legal proceeding; it's not limited, correct?

11 A I believe so.

12 Q Which U.S. attorneys are authorized to conduct, quote, whether or not he is
13 a resident of the district in which the proceeding is brought, correct?

14 A Yes.

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

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

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

22 A It appears so, yes.

23 Q Okay. The last sentence -- going back to the June 30th letter. The very
24 last sentence of that third paragraph reads: Here, I have been assured that, if necessary
25 after the above process, I would be granted Section 515 authority in the District of

1 Columbia, the Central District of California, or any other district where charges could be
2 brought in this matter.

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

4 A I'm not.

5 Q Do you believe that to be a true statement?

6 A I do.

7 Q To your knowledge, did Mr. Weiss ever actually request Section 515
8 authority?

9 A Yeah, I'm not aware.

10 Q You don't know?

11 A I don't know.

12 Q And is it fair to say that Mr. Weiss would be the better witness to testify as
13 to that point?

14 A It would.

15 Q And are you aware that he's said he's willing to come before the committee
16 when he's able to?

17 A I am.

18 Q So finally, Senator Lindsey Graham -- and moving on from this
19 letter -- Senator Lindsey Graham, who is the Republican ranking member on the Senate
20 Judiciary Committee, wrote to Mr. Weiss on June 28th, 2023, and Mr. Weiss responded
21 on July 10th, 2023.

22 [REDACTED]: I want to introduce that as well as exhibit 6.

23 [Sobocinski Exhibit No. 6

24 Was marked for identification.]

25 BY [REDACTED]:

1 Q Okay. Have you seen this before?

2 A I have.

3 Q Okay. The first sentence of the third paragraph, which is on the first page,
4 it reads: To clarify an apparent misperception and to avoid future confusion, I wish to
5 make one point clear: In this case, I have not requested special counsel designation
6 pursuant to 28 CFR Section 600 et seq.

7 You see where it says that?

8 A I do.

9 Q That's the regulation that gives the Attorney General the authority to
10 appoint a special counsel, correct?

11 A I believe so.

12 Q Are you aware of any information that contradicts Mr. Weiss' statement that
13 as of July 10th, 2023, he had not requested that special counsel designation?

14 A I don't.

15 Q Okay. The letter continues, rather -- quote, Rather, I had discussions with
16 departmental officials regarding potential appointment under 28 U.S.C. Section 515,
17 which would have allowed me to file charges in the district outside my own without the
18 partnership of the local U.S. attorney. I was assured that I would be granted this
19 authority if it proved necessary. And this assurance came months before the
20 October 7th, 2022, meeting referenced throughout the whistleblowers' allegations.

21 Did I read that correctly?

22 A You did.

23 Q So you just, a couple minutes ago, already confirmed that you have no
24 information to contradict Mr. Weiss' statement that he was assured that he would be
25 granted 515 authority if it proved necessary. But looking specifically at the statement

1 that this assurance came months before October 7th, 2022, do you have any information
2 to contradict that statement?

3 A I don't.

4 Q And to the best of your knowledge, is that accurate based on --

5 A It is.

6 Q So looking quickly back at exhibit 1, which is that -- so the -- I'm sorry, the
7 Shapley email, that what I just read to you from that response to Senator Graham, that
8 would seem to directly contradict Mr. Shapley's statement that USA Weiss requested
9 special counsel authority when it was sent to D.C.

10 Do you see where it says --

11 A Yes, I do.

12 Q Okay. And it would likely seem to contradict the statement that he would
13 have to request permission to bring charges in California, correct?

14 A It does.

15 Q Okay. In -- turning back to the July 10th letter. In -- Mr. Weiss' letter
16 continues: In this case, I followed the process outlined in my June 30th letter and have
17 never been denied the authority to bring charges in any jurisdiction.

18 To the best of your knowledge, is it accurate that Mr. Weiss was never denied the
19 authority to bring charges in any jurisdiction?

20 A I have nothing to re -- personal knowledge to refute that.

21 Q Okay. So do you believe that to be an accurate statement?

22 A I do.

23 Q So in March of -- in March 2023, the Attorney General testified before the
24 Senate Appropriations Subcommittee on Commerce, Justice, and Science. Senator
25 Grassley, who is also on the Senate Judiciary Committee, asked the Attorney General to

1 address concerns that, if Mr. Weiss was not given special counsel authority, he might
2 need permission from another U.S. attorney to bring charges outside of the District of
3 Delaware.

4 The Attorney General responded, quote, the U.S. Attorney in Delaware has been
5 advised that he has full authority to make those kinds of referrals that you are talking
6 about or bring cases in other jurisdictions if he feels it's necessary, and I will assure you
7 that if he does, he will be able to do that.

8 To the best of your knowledge, was that an accurate statement by the Attorney
9 General?

10 A I believe so.

11 Q Okay. The Attorney General also told Senator Grassley that Mr. Weiss,
12 quote, has been advised that he is not to be denied anything he needs, and if that were to
13 happen, it should ascend through the Department's ranks, but I have not heard anything
14 from that office to suggest that they're not able to do everything the U.S. attorney wants
15 to do.

16 To the best of your knowledge, did any Justice Department official ever prevent
17 U.S. Attorney Weiss from taking any steps or from accessing any resources he requested
18 for this investigation?

19 A Not that I'm aware of.

20 Q Okay. Did anybody at FBI headquarters ever prevent U.S. Attorney Weiss
21 from taking any steps or accessing any necessary resources?

22 A Not that I'm aware of.

23 Q Okay. Did anybody else, to the best of your knowledge, ever prevent U.S.
24 Attorney Weiss from taking any investigative steps or from accessing any resources that
25 he might need for this investigation?

1 A Not that I'm aware of.

2 [Sobocinski exhibit No. 7

3 Was marked for identification.]

4 BY [REDACTED]:

5 Q Okay. I want to introduce as exhibit 7 remarks that Attorney General
6 Garland delivered on Friday, August 11th, 2023, in which he announced that he was
7 appointing Mr. Weiss as special counsel in the investigation concerning allegations of
8 certain criminal conduct by, among others, Robert Hunter Biden.

9 Do you know if you're familiar with those remarks?

10 A I am.

11 Q So not to make you count, but the eighth paragraph down -- and I realize this
12 is printed off from the website and I think the formatting's a little funky, but these are the
13 remarks as delivered.

14 In the eighth paragraph down, the Attorney General said, quote, On Tuesday of
15 this week -- which I will represent to you was August 8th, 2023 -- Mr. Weiss advised
16 me -- meaning the Attorney General -- that in his judgment, his investigation has reached
17 a stage at which he should continue his work as a special counsel, and he asked to be so
18 appointed.

19 To the best of your knowledge, is it accurate that Mr. Weiss first requested special
20 counsel status on August 8th, 2023?

21 A Yeah, I have no direct knowledge on when he requested that status.

22 Q Okay. But to the best of your knowledge, that's approximately the
23 timeframe? In other words --

24 A Yes.

25 Q So you don't have any knowledge of him having requested it, for example, in

1 March of 2023?

2 A I don't.

3 Q Okay. So August 2023 is approximately the right time?

4 A Sounds about right.

5 Q Okay. Do you recall how you learned that Mr. Weiss had requested this
6 special counsel status?

7 A I officially learned from the AG's remarks, but I had had a conversation
8 earlier in the day with Mr. Weiss where it was discussed but not confirmed that he was
9 going to be given the status.

10 Q Okay. The Attorney General's remarks continue in the following paragraph:
11 Upon considering his request -- meaning David Weiss' request -- as well as the
12 extraordinary circumstances relating to this matter, I have concluded that it is in the
13 public interest to appoint him as special counsel.

14 And I'm just going to -- to make a complete record, I'm going to introduce the
15 actual appointment order.

16 A Okay.

17 [REDACTED]: We'll mark that as exhibit -- it'll be exhibit 8.

18 [Sobocinski exhibit No. 8

19 Was marked for identification.]

20 BY [REDACTED]:

21 Q Have you seen this before?

22 A I have not.

23 Q Okay. Is it your unders- -- I'm sorry, I'll give you a second to review.

24 A I'm good.

25 Q Okay. So this is signed August 11th, 2023, correct?

1 A Yes.

2 Q And it's signed by the Attorney General?

3 A It is.

4 Q So -- and this appoints David Weiss as special counsel over the matter -- the
5 investigation and prosecutions referenced and described in United States v. Robert
6 Hunter Biden, and it provides the case numbers, correct?

7 A Correct.

8 Q Okay. So, in fact, Mr. Weiss first requested special counsel authority
9 approximately on or about August 8th, 2023. On August 11th, so roughly 3 days later,
10 the Attorney General granted him that authority, correct?

11 A Yeah, that's my general understanding.

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

15 A I don't.

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

19 A No, I don't.

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

22 A No.

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

25 A No.

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

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

8 Q Thank you.

9 I want to turn back to there was conversation earlier about trying to surprise a
10 witness, to conducting interviews, whether it might be advantageous to surprise a
11 witness. And I think you had said that you had -- as a former Secret Service agent
12 yourself, there are certainly certain particular considerations to be taken into account.
13 Do you recall that?

14 A I do.

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

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

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

24 A Correct.

25 Q Because if somebody who's carrying a gun shows up at the home of a

1 protectee, the instinct of the Secret Service officer would be to protect the protectee,
2 correct?

3 A Correct.

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

7 A Correct.

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

9 A Yes, it is.

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

11 A Yes.

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

15 A Correct.

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

17 A Correct.

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

20 A Correct.

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

23 A I have found that to be true.

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

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

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

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

6 Q Okay. All right. You spoke earlier -- in the earlier hour, we talked a little
7 bit about who has ultimate charging decision -- and I'm talking about within a case, not
8 different venues, but -- and you said that the ultimate charges are up to the prosecutors.
9 Do you recall that conversation?

10 A I do.

11 Q Okay. And, again, you're not an attorney, but in your experience, have you
12 been in situations where you thought that prosecutors -- that you hoped prosecutors
13 would bring charges that they ultimately decided not to bring?

14 A Yes.

15 Q And without getting into specifics, can you describe any of the circumstances
16 around those?

17 A Yeah. In a general sense, I mean, the FBI opens cases on people we
18 think -- criminal cases on people we think have broken the law. We put a lot of time,
19 effort, and energy into gathering the evidence. And when we get to a point where we
20 think there's enough evidence for an arrest and an ultimate prosecution, yeah, we
21 are -- you know, our goal is to get that there. But as I said, the U.S. Attorney's Office or
22 State prosecutors are the ones that make that ultimate decision, and they may have a
23 difference of opinion.

24 Q And is it fair to say that -- and I want to get back to that difference of opinion
25 in a second. But you said that you put -- your agents put a lot of work into these cases.

1 Is it fair to say that they in some cases get kind of personally invested in these cases?

2 A Yes.

3 Q And so if somebody spent a lot of time, a lot of energy working on a
4 particular case, they might be disappointed if a prosecutor decides not to bring a
5 particular charge, correct?

6 A Yeah, if they feel it should be, yeah, there is that.

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

9 A Yes.

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

11 A It is.

12 Q And why is that?

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

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

25 Q And they happen often?

1 A They happen often.

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

4 A Correct.

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

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

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

10 A Yes.

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

15 A Correct.

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

18 A Correct.

19 Q Okay.

20 A Can I say that my -- as I talk to my --

21 Q Yeah.

22 A -- communication earlier, my hope and what I try to lead and what the U.S.
23 attorneys and I talk about are that communication. And it's really important to have
24 that at that level so that there's no misunderstanding about what's going on. That is
25 something that I personally strive for and I hold my leaders responsible for that. But

1 there are always personalities, and sometimes that just doesn't happen, but it does
2 create problems when it doesn't.

3 Q And sometimes prosecutors are busy or overwhelmed and don't have the
4 time in the moment to sit down with an agent and explain a charging decision too,
5 correct?

6 A Sure.

7 Q There was a discussion earlier about whether the 2014 and 2015 tax cases
8 were open/shut. And I don't want to get into the specifics of that. I do want to note,
9 though, you are not a tax investigator, right?

10 A I am not.

11 Q And you've never done tax investigations?

12 A I have not.

13 Q Okay. And in general, that's actually not something that the FBI generally
14 would do, right?

15 A Correct. We would prefer to have the IRS do those cases.

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

19 A Yes.

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

22 A That is more than fair, yes.

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

25 A Yeah, to every case. Correct.

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

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

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

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

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

16 A Correct. Absolutely.

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

19 A I find that to be true.

20 Q Prosecutors like to win, right?

21 A Yes, they do.

22 Q Okay.

23 [REDACTED]: Just one second. I think we can wrap up my hour, but -- we can go
24 off the record. Thanks.

25 [Recess.]

1 [12:23 p.m.]

2 Mr. Castor. Back on the record. It's 12:23.

3 BY MR. CASTOR:

4 Q Go back to exhibit 1. Your recollection of the 10/7 meeting had a
5 component where -- discussing the leak -- had a component where you remember
6 discussing whether the case had been politicized, and then you remember talking about
7 coordination and communication issues. From your perspective, was that the only stuff
8 talked about at that meeting?

9 A That was the just of what I remembered from that meeting.

10 Q Do you remember how long the meeting was?

11 A No. It wasn't hours, but it wasn't like a 15-minute meeting.

12 Q Okay. Longer than an hour maybe?

13 A Yeah, give or take.

14 Q Okay. And you have no recollection of discussion about whether Weiss
15 stated that he's not the deciding person on whether charges are filed?

16 A I've never heard Weiss say that he was not the decider or anything other
17 than he had the authority to bring these charges.

18 Q Okay. And do you remember anything in that meeting about the fact that
19 D.C. had declined to bring a case?

20 A I don't remember that portion of this meeting, no.

21 Q So it's possible it came up or you just have no recollection of it?

22 A I was really focused on -- my memory of this meeting is of my concern over
23 the media leak and how to move this case forward.

24 Q How did you think the case needed to move forward?

25 A I just thought that we needed -- the U.S. Attorney's Office needed to use the

1 information he had to make a charging decision. And then short of that, what else
2 would the FBI need to bring them that would help him assist in whatever his decision
3 would ultimately be.

4 Q And at that point, what were the options for bringing the case in terms of
5 venue?

6 A The venue was what it always was, what has been talked about, is wherever
7 he felt that he ultimately had the -- was going to make that decision.

8 Q Okay. But at that point in time, the October 7th meeting, you didn't
9 believe that D.C. was off the table?

10 A Yeah, I don't have a sense of that. Without getting into specifics, I think
11 we've talked about California I think around this timeframe, it might have been that.
12 But that was -- what he -- what and who he was talking to was his decision. I was
13 looking for resolution.

14 Q When the case was presented to the U.S. attorneys in D.C. and California, do
15 you have any awareness who did that?

16 A No. It wasn't the FBI.

17 Q Was the FBI involved at all in the meeting?

18 A In the present -- not that I was aware of, in presentations, no. That's -- my
19 understanding of that that's an internal department process.

20 Q Do you know if it was U.S. attorneys from the Delaware office that did it or
21 the Tax Division?

22 A I don't know.

23 Q And then Shapley's contemporaneous notes from this meeting, number 6
24 states: Both us and the FBI brought up some general issues to include:
25 communication issues, update issues and, C, these issues were surprisingly contentious.

1 What do you recall from that discussion about issues being contentious?

2 A Yeah. I can't comment on what he stated, but, for me, it was -- I would
3 describe this as, you know, we were talking about something that was uncomfortable. I
4 mean, there was a media leak in an investigation. We were all -- my belief was that
5 we're all working towards the resolution of this case. And so areas that I had control
6 over were, hey, communication, let's talk more. Part of that was the politics comment,
7 or discussion that I brought up, and then way forward, how were the teams going to
8 continue to talk about this case for the things -- if and where there were more things we
9 needed to do on the investigation.

10 Q Where did the issues of contention lie? Was it IRS and the U.S. Attorney's
11 Office? Was it the IRS and the FBI?

12 A Yeah, I didn't use the word "contentious." I think you'd have to ask him
13 why he chose that.

14 Q Okay. But from your recollection, the communication issues, was that
15 communication issues between IRS and the FBI or was it between IRS and the U.S.
16 Attorney's Office? I mean, what was the nature of the communication issues?

17 A You know, I think that we as in -- we in general need to communicate -- it's
18 important for us to communicate more. And so I was just -- I reinforce over and over
19 again, there's this media leak, now more than ever we need to all be on the same page to
20 work an investigation that was and continues to be open so that we can move towards
21 that resolution.

22 Q Was Lesley Wolf at that meeting?

23 A I don't have a sense of her being there, but if somebody says she was, I
24 wouldn't disagree.

25 Q Did you ever witness U.S. Attorney Weiss admonish Lesley Wolf?

1 A Yeah, I'm not going to get into any comments of their internal discussions.

2 Q That wasn't the question. The question was whether you witnessed U.S.
3 Attorney Weiss admonish Lesley Wolf. You did, didn't you?

4 A I'm going to take -- I'm going to go off record here.

5 Mr. Castor. Okay.

6 [Discussion held off the record.]

7 Mr. Sobocinski. Yeah. I've never seen David Weiss admonish anybody.

8 BY MR. CASTOR:

9 Q Okay. Do you know if David Weiss communicated in front of you to Lesley
10 Wolf his frustration about the statute of limitations lapsing?

11 A No.

12 Q You didn't witness that?

13 A I have no memory of that.

14 Q You have no memory of that. Okay. But if someone said you did, then
15 maybe you did?

16 A Depends on the circumstances. I don't want to speculate.

17 Q Okay. Did anyone at the FBI, to your awareness, express concern to David
18 Weiss or the Department of Justice that a special counsel needed to be appointed or
19 David Weiss needed special counsel authority?

20 A Yeah, I'm not in a position to talk about ongoing issues within the
21 Department as it relate -- or in the Bureau as it relates to this case.

22 Q That's one of the core things we -- we're here today to talk about is David
23 Weiss' authority and whether he needed special counsel authority and so forth. So --

24 A Yeah. I appreciate that. But I'm being very clear that I as the leader of
25 the field office running this investigation am clear that David -- it was my understanding

1 that David Weiss had the authority, and at no point did I ever differ from that. There's
2 never been anything in my view that changed that.

3 Q Right. According to Shapley's testimony, Joe Gordon told him that his field
4 office thought they should push this case to be given special counsel authority. Do you
5 have any awareness of what Joe Gordon was referring to?

6 A I have no knowledge of that.

7 Q Okay. To the extent Joe Gordon was representing that his office, meaning
8 the Baltimore office of the FBI, was pushing for that, that didn't include you?

9 A Yeah, I have no idea what Joe Gordon meant by that.

10 Q Okay. Are you aware of any documents that Joe Gordon prepared or
11 advocacy that he put together for -- around the special counsel topic?

12 A No. I have no memory of him putting anything together about that.

13 Q We have testimony that in May of 2022, FBI Supervisory Special Agent Joe
14 Gordon reportedly told IRS Supervisory Special Agent Shapley that, my leadership is
15 wondering why your leadership isn't asking for a special counsel in this investigation.

16 I know that's a similar question, but do you have any awareness of that type of --

17 A I don't.

18 Q At any point in time, were you wondering why IRS wasn't pushing for a
19 special counsel?

20 A That's not something that I was -- that's an IRS issue.

21 Chairman Jordan. Let me ask you this. So U.S. Attorney Weiss sent the
22 committee two pieces -- two letters this summer, and I want to see how you reconcile it.
23 Because you've been very clear that you said that he had authority to bring charges
24 wherever. And he said that in his June 7th letter to the committee -- maybe you had
25 chance to review this -- I've been granted ultimate authority over this matter, including

1 responsibility for deciding where, when, and whether to file charges.

2 Are you familiar with that letter?

3 Mr. Sobocinski. I am.

4 Chairman Jordan. And then he wrote me -- wrote the committee 3 weeks later,
5 and said, I stand by what I wrote, but I want to expand on what this means. My
6 charging authority is geographically limited to my home district.

7 Which one is accurate?

8 Mr. Sobocinski. So one is the January 7th, and what was the other one?

9 Chairman Jordan. Oh, excuse me. June 7th, June 30th.

10 Mr. Sobocinski. Yeah. I have no personal knowledge about -- about him
11 writing that. I was not involved in this. So the best of my knowledge, both were -- he
12 was truthful in both. I have nothing that disproves that to me.

13 Chairman Jordan. But the first one is -- the first letter on June 7th is the one
14 that, I guess, would give you the reason to believe what you've said now multiple times,
15 which is that you thought he had ultimate authority to bring charges where he wants.
16 The letter on June 30th, where he says my authority is limited to my home district is -- it
17 can't be both of them. So -- but you said all along you felt he had the authority to bring
18 it. There was no distinction there. That's what I'm trying to reconcile.

19 Mr. Sobocinski. Yeah. You know, my interpretation of these letters are he's
20 expanding upon and providing more information to help you -- that would help you
21 understand what his intent was. That's the bureaucracy, the nuance of what he thought
22 his authority was. And in general, the intent of both letters confirms with my belief,
23 which is he had the authority to bring the case.

24 Chairman Jordan. Well, obviously, he didn't, because it says his charging
25 authority is limited to his home district, and 3 weeks earlier, he had told us, I've been

1 granted ultimate authority -- can't be any stronger language -- including responsibility for
2 deciding where to file charges.

3 So he got ultimate authority to file charges wherever he wants. That's a lot
4 different than I can only do it in my home district.

5 Mr. Sobocinski. Yeah. I refer you to Mr. Weiss to get a more clear answer on
6 that.

7 Chairman Jordan. We're going to ask him too. But we've got you today, that's
8 why I'm asking.

9 Mr. Sobocinski. Yeah.

10 BY MR. CASTOR:

11 Q Have you had any communications with Mr. Weiss about this?

12 A About -- specifically "this" --

13 Q About your testimony here today.

14 A He knows I'm testifying.

15 Q And you had a conversation with him about your testimony here today?

16 A That I am going to be testifying, not about the contents of the testimony.

17 Q When did you talk to him about that?

18 A You know, without going into specifics of an investigation, I'm continuing to
19 lead an office that is working with David Weiss and his team on multiple issues. I talk to
20 him regularly.

21 Chairman Jordan. Did you have any conversations him or anyone else at DOJ
22 regarding the correspondence that was just cited in the June 7th, 2023, letter to the
23 committee and the June 30th, 2023, letter?

24 Mr. Sobocinski. No.

25 BY MR. CASTOR:

1 Q Did you have any communications with him about the 10/7 meeting?

2 A Yes.

3 Q And what were they?

4 A As it relates to his author- -- A, that it existed. I think it was -- yeah, that we
5 knew we were in a room together talking about it. I don't remember specifically
6 going -- yeah, I have not gone back with him and outlined certain things or --

7 Q Like, when did you have that conversation?

8 A Yeah, I have no -- it wasn't like it stuck in my mind. I talk to David Weiss
9 and potentially folks in his office regularly.

10 Q Yeah. Just when did you talk to him about the 10/7 meeting?

11 A Obviously, on 10/7, and maybe it would have come up in some other
12 meeting as the leak and the whistleblowers unfolded. I mean, I still had a case to
13 manage.

14 Q Have you talked to him about the 10/7 meeting in the last couple weeks?

15 A Not that I'm aware of.

16 Q The fact that you've got to come to Congress to testify about
17 the -- potentially the 10/7 meeting?

18 A Yeah, I think he had awareness in that, yeah.

19 Q Like, when's the last time you talked to David Weiss?

20 A Sometime this week. It might even have been yesterday.

21 Q Okay. You talked to him yesterday, did you tell him you were coming to
22 testify here today?

23 A He knows. Whether I told him yesterday or another date, I think it's pretty
24 well out there that I'm here today.

25 Chairman Jordan. But you talked to him about the 10/7/22 meeting after the

1 whistleblowers' testimony went public, the transcript went public?

2 Mr. Sobocinski. Yeah. I don't have a sense of when I would have or that it was
3 a specific thing.

4 Chairman Jordan. But it's recent?

5 Mr. Sobocinski. I don't have a sense of that. I mean, I am talking to David
6 about moving this case forward and what does my team need to do to move this case
7 forward as a resolution. That's my sole focus on this.

8 BY MR. CASTOR:

9 Q But what Agent Shapley says in his notes and his testimony is pretty different
10 than what you're saying here today. And first, you said you didn't remember, and then
11 you said if it did -- if it did happen, you would have remembered. But I'm just wondering
12 whether you had any conversations with David Weiss to the extent -- to the effect of can
13 you believe what Shapley is saying?

14 A I don't believe I had that type of conversation with David Weiss.

15 Q Okay. But you would agree what you're saying about the 10/7 meeting and
16 what Shapley's saying about the 10/7 meeting are pretty different?

17 A They are.

18 Q Have you had any conversations with anybody else about the 10/7 meeting
19 and, specifically, how your recollections differ from Shapley's?

20 A Yes.

21 Q Who?

22 A Various members of the team I was working with.

23 Q Okay. Anyone that was in the meeting?

24 A Probably. I mean, the sense was I wanted to make sure that if my team felt
25 that there was any difference in -- if they view this differently, then that becomes an

1 operational matter for me to want to get -- getting resolution. And that's what I was
2 focused on. So not as a he said/she said; as a, hey, did I miss -- did I miss something that
3 you think that may have happened that's going to prohibit or interfere with how we're
4 going to conduct this investigation.

5 Q If Gary Shapley's version of events, if that did happen, would that have
6 interfered with the way you're conducting the investigation?

7 A What about his --

8 Q If what Gary Shapley said happened on October 7th in his contemporaneous
9 notes, if it went down that way, would that impact how the investigation --

10 A I mean, he said a lot. Do you want to identify line by line what you mean?
11 Or is there a general sense of what -- there's a lot in his email.

12 Q I mean, it's two pages. It's not that much.

13 So if Weiss had stated that he's not the deciding person on whether charges are
14 filed -- I mean, if Weiss had said that -- you say you don't remember that. If that was
15 said, would that impact the way this investigation was handled?

16 A If Weiss didn't have authority to bring this case forward, yeah. Absolutely,
17 that would have impacted this case from where I sat at that moment in time.

18 Q Okay. Did you have any communications with Ryeshia Holley about this?
19 Did you tell her what you were going to say when asked about the 10/7 meeting?

20 A Here in this -- here? No.

21 Q She's aware you were coming today to testify?

22 A She's my direct support. I talk to her every day. She's got dozens of very
23 complicated cases that she's leading. And so, yeah, I talk to her every day, and she's
24 very much aware that I'm here today and she's here on Monday.

25 Ms. Zdeb. And I believe the committee made the two subpoenas public, which

1 included the dates.

2 BY MR. CASTOR:

3 Q So I'm just asking you whether you had communications with Ms. Holley
4 about what you were going to say about the 10/7 meeting?

5 A As -- you know, as my direct support, when this kind of percolated up, she
6 was somebody that I had a conversation about my concerns about authority of, hey, of
7 prosecution, can we do it, do you have a differing opinion of it? When it came to the
8 subpoena and the testimony, no, we've been fairly clear on not having those
9 conversations.

10 Q Okay. Did you have any communications with Weiss or Holley about, hey,
11 what Gary Shapley's saying happened didn't happen?

12 A I don't have a concrete mem- -- like a date and a time where I've done it but,
13 yes, I have said that because that is a difference of opinion than what I remember from
14 that meeting.

15 Q Okay. And you had that with Holley and Weiss?

16 A Yeah.

17 Q Any other witnesses? Or any other people involved with the 10/7
18 meeting?

19 A Yeah, not necessarily with the 10 -- not that I'm aware of with the 10/7
20 meeting, but in general with my investigative team, I want to make sure that
21 if -- something like this would have been important for us. And so leading a team of
22 investigators in an open case, if all of a sudden somebody found out we don't
23 have the -- there's not an authority issue, yeah, that's going to be an issue. So yeah, we
24 talked about it in that sense.

25 Q Do you have regular communications with Lesley Wolf?

1 A No.

2 Q Do you have regular communications with anyone in the U.S. Attorney's
3 Office other than the U.S. attorney?

4 A Mostly the U.S. attorney and others are very remote.

5 Q Okay. Have you talked to anyone else in the office about this 10/7
6 meeting?

7 A No.

8 Q Just Mr. Weiss?

9 A [No verbal response.]

10 Q I want to go back to testimony from both Ziegler and Shapley about what
11 they have represented their FBI counterparts felt, to see if it rings any bells.

12 Ziegler testified: I recall discussions with our FBI counterparts on the case, the
13 same issue, and I thought they were just trying to raise the special counsel issue up
14 through their leadership. On that note, I just want to let you guys know that the way
15 the FBI and their leadership -- their leadership was very, very involved in this
16 investigation. I heard of multiple times that they were reporting up to their leadership,
17 meeting with their leadership, they had to -- they had to advise them on this.

18 And I'm just, you know, wondering whether that rings any bells.

19 A No.

20 Q So -- and you would have been part of that leadership, right? The FBI
21 counterparts Ziegler's talking about, that would have been people that report to you,
22 right?

23 A I can't speculate on what he meant by that.

24 Q But it would have been folks that reported to you, right?

25 A I have no idea who he was referencing.

1 Q Okay.

2 A I am an FBI official within Baltimore. Yeah, I mean, that's obviously why I'm
3 here.

4 Q Right.

5 A But I have no idea what he meant by that.

6 Q But, I mean, the testimony is that Gordon told Ziegler that they raised it
7 through their chain of command for at least half of the time the case was going on.
8 That's you.

9 A I have no direct awareness of that.

10 Q And were you aware whether Gordon had, you know, previously, prior to,
11 you know, under your predecessor, had expressed any --

12 A I'm not aware of that.

13 Q Okay. And did your predecessor, Ms. Boone, did she tell you about the
14 interest in getting a special counsel appointed by any of the folks in your office?

15 A She had left the FBI months before I took the role. So I had no direct
16 conversation with her about any operational matter within the FBI.

17 Q Okay. So you didn't have a real transition with her?

18 A No.

19 Q When did you become aware that the U.S. Attorney for Central District of
20 California wasn't going to be able to bring charges?

21 A Yeah, I have no direct awareness of that to this day other than you say that.
22 I was aware that there were conversations out there.

23 Q And so that was a big part of, you know, Shapley and Ziegler's testimony,
24 that that's become public. Was that the first time you heard that?

25 A No. I had known -- I knew that David Weiss and attorneys were talking

1 with California.

2 Q But you didn't know the resolution of that matter?

3 A Uh-uh.

4 Chairman Jordan. Back up a second, Steve.

5 Mr. Castor. Sure.

6 Chairman Jordan. When you took the position in '21, summer of '21, who
7 briefed you up on the case then?

8 Mr. Sobocinski. Would have been employees within the division; supervisors,
9 case agents.

10 Chairman Jordan. Some of the people that work for you now?

11 Mr. Sobocinski. Uh-huh.

12 Chairman Jordan. Okay.

13 BY MR. CASTOR:

14 Q Do you remember who that was?

15 A I don't.

16 Q Okay. Was it Joe Gordon?

17 A It very easily could have been, but I don't have a direct memory of that.

18 Q Do you remember how many FBI officials were working on this case as a -- as
19 one of their primary duties? Are we talking two? Are we talking 20?

20 A When you say officials, we have a -- we in the -- we have a very -- I'm the
21 only FBI official in Baltimore, so it would be solely me. Employees is a different answer,
22 and as we talked about, I'm not going to get into the specific numbers.

23 Q Somebody like Agent Gordon, like, how many folks were in his -- similarly
24 situated to him?

25 A Yeah, so he's a supervisor. We have dozens of squads throughout

1 Maryland and Delaware. On each squad, in general, there are 8 to 10 agents and
2 analysts, other support staff working that.

3 Q Was Agent Gordon highly respected?

4 A Yeah, I thought so.

5 Q So you had no reason to disbelieve his trustworthiness?

6 A Yeah. I'm not going to get into the specifics of that. But Joe Gordon, as
7 we talked about, retired and he retired in good standing as an FBI supervisor.

8 Q Okay. So I mean, if he retired in good standing as an FBI supervisor, he's
9 inherently a reliable person, right?

10 A I would hope so.

11 Q I want to turn to the June 15th meeting. Do you remember, you know,
12 who attended the meeting? And if you don't, I can give you some names and maybe
13 that jogs your memory.

14 Ms. Zdeb. Didn't we go over this in your first round?

15 Mr. Castor. A little bit, yes.

16 Mr. Sobocinski. Once again, I'm not in the position to talk about the specifics of
17 that meeting.

18 BY MR. CASTOR:

19 Q Okay. If I ask you, like, who was there or who wasn't there, can you tell
20 me?

21 A No. I mean, I was there. And there were FBI employees and DOJ
22 employees.

23 Q Okay. Was there U.S. Attorney's Office employees from Delaware?

24 A Yes.

25 Q Okay. And do you remember Jack Morgan and Mark Daly gave a pretty big

1 presentation?

2 A I'm not going to go into the specifics of what transpired in that conversation.
3 But once again, I don't know those -- the names of those people don't ring a bell to me.

4 Q Okay. But two Tax Division lawyers made a presentation?

5 A I'm not going to go into the specifics of that.

6 Q Okay. But you know the answer to my question, you're just not willing to
7 go into specifics, or you don't know the answer to my question?

8 A You had U.S. Attorney's Office, you had FBI, you had IRS, and you had DOJ
9 officials in there discussing what is still an ongoing case.

10 Q Okay. But in terms of among that group, whether any subset of that was
11 doing a huge presentation?

12 A There -- obviously, when you get a group of people in a room to discuss an
13 ongoing case, you're talking about things.

14 Q You remember who called that meeting?

15 A I don't.

16 Q Okay. Do you remember what the purpose of the meeting was?

17 A To discuss an ongoing investigation. But in general -- I mean, I'm not -- I'm
18 literally not trying to be evasive. I want you to know that my role in that meeting was
19 continually to be -- to essentially corral or provide input in a way that provided the FBI
20 and what we represented to bring this to resolution.

21 Q Fair enough. It was just represented to us that you were -- you were -- you
22 asked a lot of pointed questions, it was represented to us, of the Tax Division lawyers,
23 that, you know, you were not necessarily a protagonist to the presentation that the tax
24 lawyers were making, you were asking some tough questions.

25 A So once again, I'm not going to talk about the specifics, but I do -- but

1 my -- but I was trying to move this forward. And I'm trying to get resolution and work
2 with a team of very different individuals to move a case forward.

3 Chairman Jordan. Was this case moving slow? You said like at least --

4 Mr. Sobocinski. Yup.

5 Chairman Jordan. -- three dozen times you wanted to get this thing to
6 resolution. And so that sort of suggests that it wasn't getting to resolution and you
7 thought it should be moving a little faster pace.

8 Mr. Sobocinski. I would have liked for it to move faster.

9 BY MR. CASTOR:

10 Q It was represented to us that at that meeting the FBI special agent in charge
11 asked several questions about the tax case and presented rebuttals to DOJ tax attorneys
12 who were presenting on the defenses raised by Hunter Biden's defense lawyers. Does
13 that ring any bells?

14 A Yeah, I'm not going to get in the specifics of the content of what those
15 conversations were.

16 Q But earlier you said that when it came to the tax charges, you were -- that
17 was not your bailiwick, is my term, but that, you know, the FBI was not experts with tax
18 matters?

19 A Yeah, I am not an expert with tax matters.

20 Q But, you know, it was represented to us that you were presenting rebuttals
21 to the DOJ tax attorneys. And so I'm just trying to see if there's anything you remember
22 from that back and forth.

23 A I'm not going to get into the specifics of that, but I will just reiterate once
24 again is that all my conversations were about moving this forward.

25 Q Do you remember having -- I'm not asking for the content, but do you

1 remember having that back and forth?

2 A I'm not going to get in discussion about that. I'm just giving you what my
3 motivation was during that meeting.

4 Ms. Greer. Can we go off the record for 1 minute?

5 Mr. Castor. Yes.

6 [Discussion held off the record.]

7 Mr. Sobocinski. So, yeah, getting back to that meeting, you know, my focus on
8 that was trying to bring a variety of folks together, leaders and other entities, in a way
9 that, like, this isn't -- I'm not going to say overstepped my boundary, but I was definitely
10 talking about something that I would have much preferred another organization to bring
11 up. It wasn't being brought up, so I as just a general investigator wanted to ask
12 questions so that I could help at least understand what I thought was a very complicated
13 process to move it forward, so that when we came out of that meeting, that wasn't just a
14 meeting to have a meeting, that that was a meeting with clear understanding of where
15 we were going to move forward on it and what the -- in particular what the FBI and my
16 team's role and things that we needed to do to continue to move this forward.

17 BY MR. CASTOR:

18 Q Okay. Do you remember telling Special Agent Shapley during a break in
19 that meeting that the issues raised by DOJ tax that might result in not charging are
20 nonsense?

21 A I'm not going to go into the specifics with the individual conversations with
22 anybody in that meeting. But in -- as the chairman said, I was focused on moving the
23 case to a resolution.

24 Q Okay. And again, sorry to ask this. It seems like you hate when I ask this
25 question. But do you know the answer and you're not going to tell us here, or do you

1 not know the answer about whether you used the term "nonsense" to Shapley in relation
2 to characterizing the DOJ tax lawyers' presentation?

3 A I have no recollection of using the word "nonsense."

4 Q Okay. Or a similar word, expressing frustration or crankiness about the
5 presentation you were seeing?

6 A I was in a room full of tax lawyers and other investigators focus on very
7 intricate tax laws. That is not some place I enjoy being. It took much longer than what
8 I expected. But literally, it could have lasted a half an hour; it felt like forever. And I
9 was focused on trying to bring it together so that a layman like me and my team could
10 then understand what we needed to do and what the team needed to do to continue to
11 move this forward and not just have a meeting to have a meeting.

12 Q Okay. At that point, was it just the tax charges that were on the table?

13 A I can't get into the specifics of what was discussed during that meeting.

14 Q If it were just the tax charges, what would be the FBI's role in that? Like, if
15 they decided to just pursue the tax charges, would the FBI still be involved?

16 A Can I go off the record?

17 Q Sure.

18 [Discussion held off the record.]

19 Mr. Sobocinski. If it was just a tax charge, the FBI wouldn't be -- the FBI wouldn't
20 be there.

21 BY MR. CASTOR:

22 Q Okay. Let's go back to the 10/7 meeting. In Shapley's contemporaneous
23 notes, on the first page of the exhibit, under B, process for decision, the email states that
24 Weiss needs approval first from DOJ tax.

25 Was that your understanding, that before Weiss was going to bring a case, that

1 part of the administrative approval process inside of DOJ required him to get the okay
2 from the Tax Division?

3 A So I want to start with one thing. You keep saying contemporaneous notes.
4 This is an email that appears to be written hours after that. So I know it's semantics but,
5 for me, contemporaneous notes are something that's generated as it's ongoing. And so
6 for me, I want to say that this was more of a -- I would describe this more of a summary
7 email than contemporary notes. And then, I'm sorry, if you could give me that question
8 again.

9 Q Well, let me -- now that you raise that, did you take any notes during that
10 meeting?

11 A I did not.

12 Q Did you write any emails about what happened in the meeting?

13 A Not that I'm aware of.

14 Q Okay. So going back to the first page -- and this is from the notes prepared
15 the same day that the meeting happened. These notes are the same day the meeting
16 happened, right, Friday, October 7th?

17 A Yeah. I'm not fighting you on this. This is an email that appears --

18 Q Okay.

19 A -- that you keep referring to the notes. I don't remember him in a room
20 with a laptop taking these as this was ongoing. And that would have been abnormal if I
21 saw that amongst investigators, so --

22 Q But it's not abnormal to type up summaries of meetings?

23 A And send emails, absolutely not.

24 Q Okay. So this is the type of, you know, record that would expected to be
25 produced in the ordinary course, right?

1 A Yeah, an email of record, yes. But to keep calling it contemporaneous
2 notes is just not -- you know, I'm just telling you I disagree with that assumption of that,
3 not that it's an email.

4 Q Okay. So I'll just refer to it as an email prepared the same day the meeting
5 happened.

6 A Sure.

7 Q Under the 2.b.i., the needs DOJ tax approval first, states that Weiss needs
8 approval first. Did you understand that he had to go on a tax case to get the approval of
9 the Tax Division officials?

10 A The word "approval" is -- I've never felt that he needed approval. He's -- it
11 was my understanding he had the authority to bring whatever he needed to do. There
12 was administrative charge -- or administrative process, not within DOJ, but also within
13 tax. I don't know the intricacies of that, but it definitely seemed very cumbersome.

14 Q But going back to the June meeting with the DOJ tax lawyers, it's obvious
15 that if you're having like a really long meeting and the DOJ tax lawyers are making a huge
16 presentation and you're rebutting them, you know, it's obvious that these DOJ tax
17 lawyers have a role here. I mean, isn't that fair to say, and they've got to clear this
18 before Weiss can prosecute it?

19 A I have no idea what -- when you say "clear this," I don't know what that
20 looks like. I mean, obviously, DOJ has multiple specialty attorneys, trial attorneys that
21 are involved in a wide variety of cases.

22 Q But you'd agree that Weiss had to get approvals, whether they were
23 administrative or whether they would be a foregone conclusion, that he needed to
24 get -- he needed approvals to bring charges outside of his district, right?

25 A I am not -- approval is not what I thought. He needed some type of

1 author -- some type of something within the Department of Justice. I don't know what
2 it was. Approval means, to me, that's more like, hey, I can say no. I never thought that
3 anybody was there above David Weiss to say no.

4 Q Okay. Do you know if he needed to go through that exercise if he was
5 going to bring the tax charges in Delaware? Did he have to come to Main Justice in
6 Washington D.C. and have that type of meeting?

7 A I, unfortunately, have had experience with this in multiple districts where
8 the process when you work with IRS is there are multiple back and forth within IRS, then
9 there are multiple sideways within the Department to IRS tax attorneys. And it is a
10 circular thing that just keeps churning and churning for long periods of time.

11 Q And just given your substantial experience on that, what's your view of like
12 the DOJ Tax Division? Do they need to sign off on it? Do they need to concur? Like,
13 how do you get through that hurdle? It's obviously a hurdle if you have to come to D.C.
14 and sit in a long meeting.

15 A Yeah, in a general sense, not this case, yes, I think there is an approval
16 process in place, I think different than this. I think this one was clear in all of our
17 discussions that that approval had been delegated to Mr. Weiss. He's had the ability to
18 do it. And then it was just the movement of whatever the specific issues were back and
19 forth to get to that point.

20 Q Do you think the DOJ Tax Division lawyers were trying to convince Mr. Weiss
21 not to bring the tax charges?

22 A I couldn't comment on that.

23 Q Okay. But you know the answer to that question, right, because you were
24 in the meeting and it was long?

25 A I'm not going to talk about the specifics of what was going on amongst those

1 deliberations.

2 Q Okay. But it's not something you forget. It's something you know the
3 answer to and you're not able to tell me here today?

4 A I'm not going to say that either way of whether -- I'm just not going to
5 comment on that.

6 Q Okay.

7 Mr. Castor. We can go off the record.

8 [Discussion held off the record.]

9 Mr. Castor. So when I asked you if you know the answer and you're just not able
10 to tell me, is it because you don't remember or is it because you believe the Department
11 won't let you?

12 Back on the clock here.

13 Ms. Greer. Do you know what the precise question is?

14 Mr. Sobocinski. Yeah, no. Let's get that question again.

15 BY MR. CASTOR:

16 Q So at the June 2022 meeting, there was -- it's been related to us -- I wasn't in
17 the meeting -- so it's been related to us that the Tax Division lawyers presented a huge
18 presentation, that you asked some pointed followups, some rebuttals, that on the
19 sidelines you mentioned that you thought it was nonsense or words to that effect.

20 And so I asked you about that. And you said that you're unable to comment on
21 that because -- due to the ongoing investigation, due to the instructions from the
22 Department.

23 And my follow-up question was, okay, do you know the answer, and you're not
24 willing to tell me because of the instructions, or do you not know the answer?

25 A I have very limited more information I could get if given authorization by the

1 Department, but it would not be specifics, nor would it be -- it would be context.

2 Q Okay.

3 A And I do not believe it would in any way get you where you wanted to go
4 with the question, like get the answers you're wanting.

5 Q After it became public that Gary Shapley was going to come to Congress and
6 he gave, I think, an interview on CBS in the -- at the end of May before his congressional
7 testimony, who did you discuss that with?

8 A My team within Baltimore, probably folks within the Criminal Investigative
9 Division. Definitely David Weiss.

10 Q And what was the nature of your conversation with David Weiss?

11 A I need to go off the record for a minute.

12 Mr. Castor. Okay.

13 [Discussion held off the record.]

14 Mr. Sobocinski. Yeah. In general, it was concerns about how this was going to
15 affect the ongoing case and were there issues we needed to take into at least from the
16 FBI side to move forward.

17 BY MR. CASTOR:

18 Q After Shapley's testimony became public in June, did you have any
19 conversations with David Weiss about that?

20 A We acknowledged it, but it wasn't -- I mean, we didn't sit there with the
21 transcript going back and forth. We both acknowledged that it was there and that it
22 would have had -- it had an impact on our case.

23 Q Okay. Did any of your conversations with David Weiss, you know, have
24 anything to do with like, can you believe what Shapley's saying, this is totally 100 percent
25 untrue?

1 A I don't remember that level of it.

2 Q If it was --

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

9 Q If what Shapley and Ziegler had testified to was totally fictitious, totally false,
10 totally off base, you would concede you probably would have a conversation with David
11 Weiss about, can you believe these guys are just making up all these facts?

12 A Yeah, I'm not going to go into specifics of what I had or had not as it relates
13 to them. My focus with David was how are we going to move this case forward.

14 Q And likewise, then they testified in July before the Oversight Committee.
15 What types of conversations did you have with David Weiss about that?

16 A Once again, it was -- I'm not going to get into specifics, but in general it was,
17 okay, David, where are we going? Let's move this case forward. What do you need
18 from the FBI and my team that will enable us to continue to move a case?

19 Q Okay. But those conversations didn't involve, can you believe Shapley and
20 Ziegler are totally lying about this?

21 A Yeah, I'm not going to comment on what his opinions was, and I don't
22 remember having what you just said with him.

23 Q You don't remember that?

24 A Yeah, I don't.

25 Q Okay. Presumably, you would remember it if you and Weiss had like a big

1 conversation about, everything Ziegler and Shapley are saying is totally false, they're
2 making this stuff up?

3 A As you're probably aware that -- you know, I joined the FBI 25 years ago. I
4 joined for a reason: to protect the American people and uphold the Constitution. I've
5 been to war. My family's been in bad places. My kids have been evacuated from war
6 zones or quasi-war zones. I've been in some bad things.

7 Q This is --

8 A I've accepted that. No, no, this is important to me. And so when you ask
9 what I remember, what I not, I am solely focused on two things, and they're not mutually
10 exclusive. The first thing is, like every investigation, I want to get to a resolution in a fair,
11 apolitical way. The second thing, and it's becoming more important and more relevant,
12 is keeping my folks safe. And the part that I never expected is keeping their families
13 safe. So that, for me, is becoming more and more of a job that I have to do and take
14 away from what I was -- what I signed up to do, which was investigate and do those
15 things.

16 So when you talk about potential frustrations with communication, I am
17 personally frustrated with anything that places my employees and their families in
18 enhanced danger. Our children, their children didn't sign up for this.

19 Chairman Jordan. No, and we certainly appreciate that and your service to our
20 country. And there's no place for those kind of threats and that kind of thing. But I'll
21 just point out, Mr. Castor has faced the same kind of thing when -- as our chief counsel a
22 few years ago during the impeachment proceedings that Democrats brought against
23 President Trump. So no place for any of that. We appreciate what you do.

24 BY MR. CASTOR:

25 Q So again, you know, the question was, if Shapley and Ziegler are fabricating

1 this entire thing, you probably would have had a conversation with somebody about that.
2 Have you had a conversation with anybody about Shapley and Ziegler fabricating the gist
3 of what their testimony was?

4 A I'm not going to go into speculative content of what I -- I was frustrated with
5 some --

6 Q No, I didn't ask you to speculate. I just said, did you have any conversations
7 with anybody? First I said Weiss, and now I'm expanding it to anybody, about
8 like -- about saying that Shapley and Ziegler are just lying about everything?

9 A No. I've never said those words.

10 Q Okay.

11 Ms. Greer. I would just note for the record, I don't think the witness has stated
12 that they are lying about everything either.

13 Mr. Castor. Okay.

14 BY MR. CASTOR:

15 Q Are you -- I'm going to turn to some of the allegations that the agents were
16 obstructed in their investigation. So if you can help us, we appreciate it. If you can't,
17 I'll probably ask you if you know the answer and don't want to tell me or that type of
18 thing.

19 In August of 2021, that's after you became the special agent in charge of the
20 Baltimore field office, correct?

21 A Yes.

22 Q Okay. Shapley and his team told prosecutors about other interviews they
23 would like to conduct, and they were denied. Are you aware of that?

24 A Can we go off the record?

25 Q Okay.

1 [Discussion held off the record.]

2 BY MR. CASTOR:

3 Q All right. Do you need me to repeat the question?

4 A I do.

5 Q So in August of 2021, after you became the special agent in charge of the
6 Baltimore field office, Shapley and his team told prosecutors about other interviews that
7 they wanted to conduct, and they were blocked from doing that. Do you have any
8 awareness of that?

9 A Yeah, I'm not going to talk about ongoing investigative activity.

10 Q If you were permitted to talk about ongoing investigative activity, would you
11 be able to answer that question?

12 A In a general sense.

13 Q You would be able to answer it?

14 A I would be able to respond differently.

15 Q In September, Lesley Wolf emailed Shapley and his team saying, I do not
16 think you are going to be able to do these interviews as planned, adding that they would
17 require approval from the DOJ Tax Division.

18 Was that a fact you were aware of?

19 A Once again, it's ongoing investigative matters.

20 Q If David Weiss had complete authority to do -- to bring the cases that he
21 wanted, but yet investigators still had to get DOJ Tax's permission to do like basic
22 investigative steps, aren't those contradictory?

23 A Yeah, I think it's semantics and word choice. I think it was clear to me, as
24 I've stated over and over again, is that I believed and still do that David Weiss had the
25 authority to bring the charges. There was administrative process that people may have

1 referred to as approval within the IRS. I don't know. I don't know what the IRS -- I
2 mean, because that's -- there are ways things rise up. I'm aware of that in a general
3 sense and then they're referred via prosecution reports to prosecutors to prosecute. I
4 don't know what that looks like in the IRS. And so that might be the word choice they
5 use in this, but I am not aware of approval --

6 Chairman Jordan. You've dealt with other tax cases before?

7 Mr. Sobocinski. Yes.

8 Chairman Jordan. Numerous?

9 Mr. Sobocinski. More than I would have liked.

10 Chairman Jordan. Yeah. I mean, I can appreciate that. But again, you've said
11 so many times you were looking to get this resolved as quickly as possible. And yet you
12 tell us time and time again you don't how the process works to get it resolved. So those
13 seem to be contradictory to me.

14 If you wanted this resolved, you would think -- and you've dealt with the IRS time
15 and time again in cases, you would sort of know how the process works to get to
16 resolution. So I don't know how you can say both things, which you've said numerous
17 times here to the committee.

18 Mr. Sobocinski. Yeah. And I've also said that it's a very complex internal
19 process. I don't expect IRS to understand the internal processes of the FBI either. And
20 so for me it is I knew they had things they had to work through, as I've worked with them
21 previously, and I know that takes a long time.

22 Chairman Jordan. Yeah. But this was -- this was not -- this was a pretty darn
23 important case. Again, we can have the court reporter at some point figure out how
24 many times you've said you want to get to resolution as soon as possible. I asked you
25 was this case going slow, and you said yes. So that -- I think all that would, I think,

1 would compel you to say, how does this thing actually work? And you would think you
2 would know that because you've dealt with all kinds of cases, working agents at the FBI
3 with agents at the IRS before, but yet you don't know how process works and/or you
4 won't answer Mr. Castor's questions when he gets into how that process worked.

5 Mr. Sobocinski. So I understand what my role was and what I needed to do as
6 the SAC of the FBI to move that process and continually talked about ways in which or if
7 there was things we needed to do within my control. I had a general sense of what
8 other individuals needed to do, but I also knew that I as the FBI SAC didn't have a role in
9 that and there was no administrative way for me to interject myself into that.

10 Ms. Greer. Can we go off the record for 1 minute?

11 [Discussion held off the record.]

12 BY MR. CASTOR:

13 Q So back to my question. Lesley Wolf emailed Shapley and his team saying, I
14 do not think you're going to be able to do those interviews, adding that they would
15 require approval from DOJ Tax Division.

16 How do you reconcile on one hand David Weiss says he's got authority to
17 do -- charge whatever he wants, but on the other hand, basic interview steps -- you know,
18 basic investigative steps, such as conducting interviews, appear to be blocked?

19 A I wasn't a participant of that. I have no awareness of that.

20 Q You have no awareness of that?

21 A [No verbal response.]

22 Q In October, Wolf emailed Shapley and his team saying that it will get us into
23 hot water if we interview the President's grandchildren, after investigators determined
24 that talking to grandchildren was pertinent to the investigation. Were you aware of
25 that?

1 A Once again, this line does appear that I am unable to -- because this is an
2 ongoing case, I am unable to talk -- to answer that question.

3 Q Okay. So, generically speaking, if you're working a tax case and there's a
4 deductions claim for children's education, is it fair to go and interview the beneficiary of
5 that deduction?

6 A Once again, thankfully, I don't work tax cases. I work adjacent to them.
7 And you'd have to ask the IRS that.

8 Q Okay. Were you aware that they were blocked from interviewing the
9 grandchildren?

10 A Yeah, I'm not in a position to talk about investigative steps and what did or
11 didn't happen.

12 Q Do you know the answer to that question or are you just not able to talk
13 about it?

14 A I have an answer to that question.

15 Q You know the answer to that question?

16 A I have an answer to that question from my -- from where I sit in this chair.

17 Q Okay.

18 A But I'll go back to there's nothing nefarious in what that answer would be,
19 and there's nothing in my answer that would bear on whether David Weiss had authority
20 to or not bring this case forward or the investigative steps in this case forward.

21 Q Were you aware of the instance where a search warrant was going to be
22 executed on a storage unit?

23 A Can you be more -- like in this case?

24 Q Yes.

25 A I'm not going to talk about ongoing things in this investigative matter.

1 Q So Hunter Biden had a storage unit, and there was a request for documents
2 that everybody knew was in the storage unit. And so there was a plan to monitor the
3 storage unit and see if anybody from the Biden camp went to look for it. And if they
4 didn't look for it, that would be telling that they weren't complying with the records
5 request.

6 Do you have any recollection of that? Was that during your tenure?

7 A Do you have a date?

8 Q I don't have a date handy. But I'm just asking you whether that was
9 something that you remember happening during your tenure?

10 A Well, I think the first step is if we have a date, I could tell you whether it was
11 during -- whether it's something happened in my tenure.

12 Q Fair enough. Do you remember that?

13 A Once again, I'm not in a position to talk about ongoing investigative steps.

14 Q Okay. Once again, do you know the answer to the question and you're just
15 not willing to talk about it, or would you need to rack your brain a little bit more and have
16 your memory jogged?

17 A No. I think that I -- this is going to be a repetitive process where I am going
18 to say I'm unable to answer that question because of an ongoing investigative matter.
19 You're asking me yes or no questions. So obviously, all of these are going to a resolve to
20 a different answer than that.

21 Q Okay. Were you aware on the day of action, which was before your tenure,
22 okay, this is December of 2020, there were specific guidelines given to the investigators
23 about what they can and can't ask witnesses they were going to go interview? Were
24 you aware of that?

25 A Once again, I can't comment on any investigative activity in this case.

1 Q If investigators were told that they couldn't ask about President Biden or
2 couldn't ask about what 10 percent for the big guy meant, if that happened, do you think
3 that would have an impact on the investigation?

4 A I have no comment. I don't know what that really -- what that is.

5 Q You don't know what what is?

6 A What you're asking me. I have no idea the context of what that is. I don't
7 know what you're referencing. And if it is an ongoing investigation, I'm going to be
8 unable to discuss it.

9 Q Okay. In the runup to the day of action, U.S. Attorney's Office, specifically
10 Lesley Wolf, provided instruction to Agent Gordon and Agent Shapley and other agents
11 that were going to be participating in the day of action, that they were prohibited from
12 asking questions about Joe Biden. They were prohibited from asking questions about
13 what 10 percent for the big guy meant.

14 Do you -- if that's the case, do you believe that impacts the integrity of the
15 investigation?

16 A You know, first off, that didn't happen. That was before my tenure.
17 And --

18 Q It didn't happen or it didn't happen during your tenure?

19 A So two issues. The date you referenced was before I was in this position.
20 The second thing is you keep referring to the day of action. What do you mean by that?

21 Q So in 2020, it was an election year, they were -- the agents told us they were
22 prevented from taking any overt acts until after the election. After the election, they
23 wanted to go and interview people, take overt action. They wanted to go to Hunter
24 Biden's house in California and see if he'd be willing to talk to them. They wanted to go
25 visit Rob Walker in Arkansas, see if he was willing to talk to them. Turns out Rob Walker

1 was willing to talk to them. So they got some information out of Rob Walker.

2 But they had a day of action planned. That's how they characterized it. It was
3 December 8th, 2020. And in the runup to the day of action, they were given all these
4 guidelines about you can't ask about Joe Biden, you can't ask about 10 percent for the big
5 guy.

6 And so what I'm asking you as a real experienced FBI person, whether you have a
7 problem with that type of limiting apparatus being placed on the investigation?

8 A So once again, wasn't there during that timeframe. I'm not in a position to
9 talk about any investigative steps that may or may not. However, it's a regular course of
10 levels of authority within an organ -- within the FBI of when we do or do not authorize
11 certain investigative steps. And so I can't opine to this parti- -- I'm not going to opine to
12 this particular one, but in general, I regularly have conversations and make decisions on
13 investigative steps that agents may be or other employees may be conducting.

14 Chairman Jordan. Were you comfortable with the proposed plea agreement?

15 Mr. Sobocinski. Yeah, that's a U.S. Attorney's Office decision. DOJ.

16 Chairman Jordan. I understand it's their decision. I'm asking were you
17 comfortable. You told us you weren't comfortable with the pace of the investigation.
18 I'm asking, were you comfortable with the plea agreement as proposed to the judge?

19 Mr. Sobocinski. This is an ongoing case. And so with that, I'm just going to
20 defer my personal opinion on that.

21 Chairman Jordan. You can give us a personal opinion on the pace of the
22 investigation, but you can't give us a personal opinion on what was going to be the
23 outcome of the investigation. And you've said, again, at least a dozen times, probably
24 multiple times, that you were focused on resolving this case. And I'm asking -- that was
25 your focus, you said it time and time again -- were you comfortable with how it was going

1 to be resolved if the judge had not declined?

2 Ms. Zdeb. I think the distinction between those two personal opinions is that he
3 has been providing his personal opinion on the pace as it relates to the questions that he
4 has been asked about some of the meetings and the issue of his authority which he is
5 authorized to discuss. But questions about his personal view on a potential plea
6 agreement relates directly to the underlying investigation, and it's not within the scope of
7 what he has been authorized to talk about today.

1 [1:28 p.m.]

2 Chairman Jordan. This plea agreement was put forward. The whole country
3 knew about the plea agreement. I'm just asking the guy who did the work, the guy who
4 oversees the people doing the work, what he thought of it. That seems like an entirely
5 appropriate question, particularly in light of the fact he was willing to tell us he was not
6 comfortable with the pace of the investigation.

7 Mr. Sobocinski. This isn't resolved. I mean, this is an ongoing issue that I am
8 currently managing, and I do not think it's appropriate for me to discuss my opinion of
9 that right now.

10 Mr. Castor. I went 1 minute over last time, so I will stop short 1 minute.

11 [REDACTED]. For the record, I think I stopped 10 minutes early last time.

12 Chairman Jordan. You can keep doing that.

13 [Recess.]

14 [REDACTED]. It is 1:40 in the afternoon. We can go back on the record.

15 BY [REDACTED]:

16 Q Before I get going, Mr. Sobocinski, did you have something you wanted to
17 say?

18 A Yeah, I did.

19 So with majority counsel, when they were talking to me about my meetings with
20 David Weiss, I think -- I continue to have this case as an ongoing investigation, but I am
21 running an office that has ongoing cases with David.

22 And so I don't want to give it the perception of we are having these one-off
23 conspiratorial conversations about anything. He is my main point of contact for the
24 prosecution's office in Delaware. My team is working with him. Our teams are
25 working together every day. I talk to him regularly about our ongoing cases. And so I

1 just want to make sure that that's the intent of what those meetings look like.

2 I also to be clear, I did not talk about what I was going to -- my testimony here
3 today with him or anyone else about that.

4 Q Thank you for that.

5 I want to talk -- elaborate a little further on something you said in the prior hour
6 about exhibit 1, which is the Shapley October 7th email.

7 You said -- made the point earlier about the distinction between
8 contemporaneous notes and a summary written up after the meeting, right?

9 A Uh-huh.

10 Q And you said that, to the best of your recollection, Mr. Shapley was not in
11 there taking notes during the meeting. Is that fair to say?

12 A Yeah, I can't comment of whether he was taking notes. I don't have a
13 distinct memory of him with a laptop open creating this email.

14 Q Okay.

15 A And so that's really more what I was meaning.

16 Q And so he wasn't taking notes on the computer at least?

17 A Not that I'm aware of.

18 Q Okay. And you would have probably remembered that, if he'd had a
19 computer open in front of him?

20 A Yeah, if he had. In the Federal Government, that's still pretty rare.

21 Q Okay. Do you know if anybody else had a computer open and was taking
22 notes?

23 A Not that I'm aware of.

24 Q Okay. And this meeting was largely in person, right? There was not -- it
25 wasn't partially over Zoom, was it?

1 A No, I believe everybody was in the room.

2 Q Okay. In the prior hour you said -- and I think the chairman picked up on it
3 as well -- you said that you wanted to keep the case moving forward.

4 Do you recall saying that?

5 A I do.

6 Q You said that a couple of times?

7 A I have.

8 Q What does that mean, keep the case moving forward?

9 A So the FBI, we have more than enough work, and what we do is really
10 important. And so for me it is about prioritizing our time and the time and energy of
11 what the FBI does.

12 And so for me when we open a case is we don't open them up forever. There's a
13 variety of reasons why we want to get to a resolution.

14 And so for me, without going into specifics, I -- but I will when I talk about this
15 case, which is what does the FBI need to do or provide to a prosecutor that's going
16 to -- they're going to use and they need as far as information to bring the case to
17 prosecution or not.

18 Q Okay. And actually you just said there are a variety of reasons you want to
19 bring the case to a resolution, and that's across all cases, right? Not just this case, it's
20 every case that you work on?

21 A Correct.

22 Q And what are those reasons? You don't have to give me the exhaustive list,
23 but can you explain some of them for the record?

24 A Yeah. In general what we do is we arrest bad people who are doing bad
25 things. And that may be anything from white collar crime, like what we're talking about

1 here today. It's nation-state actors coming after us. It is, especially in Maryland and
2 Delaware, it is violent folks killing people on a regular basis.

3 And so it's really important for us to get involved and to get involved quickly and
4 have that immediate impact to protect the American people and save lives.

5 Q And if a case -- when a case is going forward, you have resource -- I mean
6 people, employees -- that are tasked to it that then maybe can't be working on other
7 matters as well, right?

8 A Correct.

9 Q And so it may be the case that you also want to move a case forward
10 because you have other matters that you need to focus on?

11 A Correct.

12 Q Okay. Over the course of your 25 years with the FBI, you've worked with a
13 number of different U.S. Attorney's Offices, correct?

14 A Correct.

15 Q So you've worked with -- now you work with Maryland?

16 A Correct.

17 Q And you work with the U.S. Attorney's Office in Delaware?

18 A I do.

19 Q You've worked with the U.S. Attorney's Office in Washington, D.C.?

20 A I have.

21 Q Any other jurisdiction that I'm not thinking of? North Carolina, I guess?

22 A Yeah. Two or three in North Carolina, EDVA, a couple in New York. And
23 then when I was overseas there were dozens more that I would work with that had
24 international nexus.

25 Q And is it fair to say that each office -- each U.S. Attorney's Office that you've

1 worked with has had a different approach to how it handles cases?

2 A Yeah, I think there was -- the approach was always the same, the intent was
3 the same, but they had different cultures.

4 Q What do you mean by different cultures?

5 A I think just really in a concrete way. Some were slower; some were faster.

6 Q Okay. So some office maybe are more deliberative. They take a longer
7 time to mull over decisions. Is that fair to say?

8 A Yes.

9 Q And how would you describe the pace at, for example, the U.S. Attorney's
10 Office for Maryland?

11 A They're fast.

12 Q They're fast?

13 A Uh-huh, they're responsive.

14 Q So they make decisions quickly?

15 A Uh-huh.

16 Q And Washington, D.C.?

17 A Fast -- yeah, they're in the middle. I'll say they're in the middle.

18 Q Okay. Are there any jurisdictions that you've worked with that you'd
19 consider a little more deliberative, like they take a little longer to make a decision?

20 A Delaware would fall under that.

21 Q Okay. And that's in all the cases that you work on with Delaware. Is that
22 fair to say?

23 A It is.

24 Q Okay. Thank you.

25 I want to go back to the discussion about the Tax Division meeting. And I

1 know -- I understand you can't get into the specifics of that meeting, so I'm going to try
2 and stay away from that. But if you can answer a question, I don't want to put you in a
3 position you can't answer.

4 A Uh-huh.

5 Q There was a suggestion made that there was a -- some presentation made by
6 the Tax Division attorneys.

7 Do you recall that suggestion being made by the Republican staff?

8 A I do.

9 Q Okay. And the claim was that that was because the Tax Division had to
10 clear the charges. Do you recall that?

11 A I believe that's what he said.

12 Q Okay. So in that case would it be logical for the entity that has to clear to
13 provide a presentation to try and persuade somebody?

14 A Yeah. Taking it out of the context of that case, sure, that sounds -- that's
15 the process, you're trying to persuade somebody.

16 Q Right. But if you actually had sign-off authority, you wouldn't need to
17 persuade anybody, right? If you were the ultimate decisionmaker, you wouldn't need to
18 persuade anybody?

19 A Yeah, I don't -- I think they're not mutually exclusive. I think that, at least
20 now in the environment we live in, yes. So for me, in particular, I'm the SAC. I can
21 make a decision, and people are going to have to live with it.

22 Q Right.

23 A My hope is that not only am I providing information as to why I'm making
24 that decision, but I'm also getting my employees the ability to give their counternarrative
25 of what that is.

1 And so two things. There's, one, for them they are -- they have an
2 understanding of my thought process and so what I -- my expectations; and, two, I
3 actually am still learning, and so I do get information that changes my mind.

4 Q Okay. And so in that case you might actually solicit that information
5 because, for example, you want to know what the weaknesses in an investigation might
6 be, correct?

7 A Correct.

8 Q And that might help you formulate a stronger case. Is that fair to say?

9 A Correct.

10 Q Okay. I want to move on to a discussion about leaks. And you talked
11 earlier about the concerns about -- around the October 7th meeting and potential leaking
12 in that case. But I want to talk about just leaks, take a step back and leaks more
13 generally.

14 Are you familiar with the term "law enforcement sensitive information"?

15 A I am.

16 Q And what's your understanding of what that term means?

17 A It is one of several classification levels.

18 Q It's not actually classified material, right, necessarily?

19 A Wow, now you're going to get me in -- I better not fail this test.

20 You know, there's top secret, compartmented secret, confidential, and law
21 enforcement sensitive is the bottom of those four.

22 Q Right. And you don't need to be in, for example, a SCIF to do law
23 enforcement sensitive information?

24 A That's correct.

25 Q Okay. Law enforcement sensitive information often encompasses

1 information about ongoing investigations, right?

2 A Correct.

3 Q So information maybe isn't classified, but it could still be law enforcement
4 sensitive?

5 A Correct.

6 Q And is it fair to say that the FBI works to keep such things close-hold or
7 works to keep them from being broadly released even if the information itself isn't
8 actually classified?

9 A Yes.

10 Q Why is that?

11 A As it relates to ongoing cases, I mean, we're doing certain things in our
12 investigations against people that we don't want them to know about what we're doing.
13 And so for us, twofold. It is -- it keeps what we're trying to do protected, but then also
14 there are safety issues with that information getting out and potentially could have
15 negative consequences on our employees.

16 Q And is it fair to say that if the information gets out, your employees could be
17 at personal risk?

18 A Yeah. Some of this, yeah.

19 Q Okay. And is it fair to say that if that information got out, it could actually
20 compromise the investigation?

21 A Yes.

22 Q How so?

23 A In a perfect world, people don't know we're investigating them. That's why
24 they -- unless they're engaged in immediate violence, we watch them and gather
25 evidence that's going to enable us to work with the U.S. Attorney's Office or State and

1 locals to prosecute them. And if people know we're watching them, they have a
2 tendency to stop doing that.

3 Q Okay. And so it actually might prevent you from completing an
4 investigation or it might prevent prosecutors even from obtaining a conviction. Is that
5 fair to say?

6 A Yes.

7 Q Okay. And is it fair to say that the release of information about ongoing
8 investigation also creates a risk that the reputation of the individuals involved in the
9 investigation -- I'm not talking about the agents, but, like, the witnesses or the targets or
10 even the subjects -- that those reputations could be impacted even if ultimately there are
11 no charges brought?

12 A Correct.

13 Q So that's another reason that the FBI works to keep that type of information
14 from being broadly released?

15 A It is.

16 Q Okay. Without getting into the -- and I'm not asking about this case
17 specifically, but over the course of your career, have you ever worked on an investigation
18 where there were leaks of information to the press?

19 A I don't recall ever being an investigator investigating the leaks, but I've been
20 involved in investigations that had information leaked about what I was doing.

21 Q And has that impacted those cases in those situations?

22 A Yeah. Yeah, me personally, without going into details, it was a
23 counterterrorism case and a foreign government, and specific things about what we were
24 doing and descriptions of things about us was released at a time I was investigating
25 people that had killed Americans and were very interested in probably harming more

1 Americans and now to include myself. So, yes, I was very upset by it.

2 Q So those are pretty serious?

3 A That was not a happy day.

4 Q And that sounds like a pretty serious leak. But even leaks in -- I don't want
5 to say lesser cases, but cases that don't necessarily involve counterterrorism, that can still
6 potentially impact the case.

7 It can also impact how agents work together on a case, right? Could it
8 potentially sow distress among a case team?

9 A Yeah, I think that's fair.

10 Q Okay. When a leak occurs, does the FBI conduct an investigation to
11 determine what happened?

12 A The FBI, amongst many, the executive branch entities will do that
13 investigation. But yes.

14 Q Okay. And that investigation sometimes takes -- could take a long time to
15 complete, right?

16 A Correct.

17 Q And while that investigation is ongoing, it's possible that the person or the
18 persons who did the leaking, if they still have access to the information, could continue to
19 leak more information, right?

20 A Yes.

21 Q Okay. So there are circumstances in which a concern about a leak might
22 justify removing an investigative team, for example, to protect the integrity of the
23 investigation?

24 A Yeah, in a general sense I could see that happening.

25 Q Okay. And ultimately when the FBI or whoever is investigating the leak

1 determines the source of the leak, there are likely to be ramifications for the individual
2 involved, correct?

3 A Correct.

4 Q For example, somebody who leaks sensitive information to the media could
5 lose his or her security clearance, right?

6 A Yes.

7 Q And FBI employees are required to maintain a security clearance to do their
8 jobs, right?

9 A Yes.

10 Q Do you know if IRS investigators are likewise required to maintain a security
11 clearance to do their jobs?

12 A I don't know, but I would assume so.

13 Q Okay. So if they are, if someone is at risk of losing his or her clearance and,
14 accordingly, his or her job, then it would make sense for them to try to take steps to
15 prevent that from happening, correct?

16 A Yes.

17 Q Moving on, are you familiar with the term "sensitive investigative matter"?

18 A I am.

19 Q Sometimes abbreviated as a SIM, correct?

20 A Uh-huh.

21 Q What's your understanding of what a SIM is?

22 A SIM is a category of or a designation that we give to certain investigative
23 matters that put a higher level of scrutiny or oversight approvals, process in motion.

24 Q Are you familiar with the FBI's Domestic Investigations and Operations
25 Guide?

1 A I am.

2 Q Sometimes referred to as the DIOG, correct?

3 A Yes.

4 Q Can you explain for the record what the DIOG is?

5 A DIOG is based upon the Attorney General guidelines that dictate how the FBI
6 does what it does and our authorities. The DIOG then goes into more granular detail on
7 how we do things, the process of doing things, and then the corresponding authorities
8 that we need to do the things we do.

9 Q I'm going to introduce section 10 of the DIOG. This is the section on
10 sensitive investigative matters. And I should say I think the DIOG itself -- the current
11 DIOG is law enforcement sensitive. This is the 2021 version, which is available online.

12 [Sobocinski Exhibit No. 9

13 Was marked for identification.]

14 BY [REDACTED]:

15 Q And I'm not going to ask you about the whole thing. I think it's 17 pages as
16 printed.

17 A Okay.

18 Q Okay. Just on the very first page, under "Sensitive Investigative Matters,"
19 the overview section, that very first paragraph on that first page says that: "Certain
20 investigative matters should be brought to the attention of FBI management and
21 Department of Justice officials because of the possibility of public notoriety and
22 sensitivity."

23 Do you see where it says that?

24 A I do.

25 Q What's your understanding of what "public notoriety and sensitivity" means?

1 A I think things that would, if the general public knew we were doing them,
2 would raise concern.

3 Q And I want to be clear here. This says that -- this sentence says certain
4 matters should be brought to the attention of management. It does not say that they
5 require additional approval from management, right?

6 A It does not say that.

7 Q Okay. It does. And then it says: "Assessments and predicated
8 investigations involving 'sensitive investigative matters'" do have "special approval and
9 reporting requirements," right?

10 A You have now lost me. Where are we on this?

11 Q The second sentence of the first paragraph.

12 A Okay. Yes.

13 Q Continues on, and it defines -- under 10.1.2.1, there's the definition of a
14 sensitive investigative matter, and I'm just going to summarize it quickly.

15 Among other things, it says members of the news media, religious and domestic
16 political organizations, academic -- matters with an academic nexus. And it also says the
17 activities of a domestic public official or domestic political candidate and, quote, "any
18 other matter which, in the judgment of the official authorizing the assessment, should be
19 brought to the attention of FBI HQ and other DOJ officials."

20 Do you see where it says that?

21 A I do.

22 Q Is all of this generally consistent with your understanding of what a SIM is?

23 A It is.

24 Q Okay. And then in the next paragraph it says that, while the definition of a
25 SIM generally pertains to the behaviors and/or activities of the subject, target, or subject

1 matter, quote, "This definition does not, however, prohibit a determination that the
2 status, involvement, or impact on a particular witness or victim would make the
3 Assessment or predicated investigation a SIM," right?

4 A Uh-huh.

5 Q So, in other words, a matter could be classified as a SIM even if the target is
6 not -- the subject of the investigation is not necessarily a protected person. It's if one of
7 the witnesses or somebody that's potentially involved in it could be enough to trigger the
8 SIM designation. Is that fair to say?

9 A Yes.

10 Q Okay. Who actually designates a matter as a SIM?

11 A Yeah, that's a bureaucratic question. I think the authority, depending on
12 what the case type is, resolves at different levels.

13 I think, with everything, it comes into a first-line employee, a special agent, an
14 intelligence analyst, or other employee. They recognize this as a potential.

15 Sometimes it's very clear-cut. So then they look within the updated version of
16 DIOG and make a decision and put it into, like, essentially a chart and say, "Okay, I need
17 to do that," depending on what level of investigation it is.

18 And then other times that it's not as clear-cut. And so you may bring in your
19 supervisor. You may bring in our chief division counsel, which is the lawyers within a
20 field office. Sometimes that, the discussions go to headquarters, OGC. And at times
21 we discuss that with the U.S. Attorney's Office as well on occasion.

22 But the approval -- the actual approval really depends on what's the facts of the
23 individual case and then what's the case type and what we're being asked to do.

24 Q And regardless of who actually signs off on the designation or makes the
25 designation, the FBI is required to notify both FBI headquarters and DOJ leadership that

1 that designation has been made, right?

2 A Yes.

3 Q Okay. So the investigation into Hunter Biden was opened in
4 November 2018, correct?

5 A I don't have a -- I don't know what the date was.

6 Q Okay.

7 A I do know that it was years ago.

8 Q I'll represent to you that it was in -- according to the testimony from Mr.
9 Shapley, it was November 2018.

10 In 2018 -- in November of 2018, the Department of Justice was under the
11 leadership of first Attorney General Jeff Sessions and then Acting Attorney General Matt
12 Whitaker, correct?

13 A Give me the years again.

14 Q November 2018. So we're looking at -- it would have been right around the
15 midterm elections?

16 A Yeah, that sounds about right.

17 Q Okay. And both Attorney General Jeff Sessions and Acting Attorney
18 General Matt Whitaker were appointees of President Trump, correct?

19 A I believe so.

20 Q Okay. And then Attorney General Bill Barr was confirmed by the Senate in
21 February 2019, if you recall?

22 A That sounds about right.

23 Q Okay. And Attorney General Barr was appointed by President Trump as
24 well, correct?

25 A Yes.

1 Q So any notifications, for example, about a sensitive investigative matter,
2 2019, 2020, those would have ultimately gone up to Attorney General Barr, who was a
3 President Trump appointee, right?

4 A Yeah. I don't know the internal process of where the -- how that
5 notification goes within the Department.

6 Q But he was the head of the Justice Department?

7 A Yes.

8 Q I want to turn to section 10.1.3, which I realize this would be easier if it had
9 page numbers, but take that back to FBI leadership. It's on the -- I think it's on 10-4.

10 A Okay.

11 Q And about halfway through, so under section 10.1.3, there's a list of factors
12 regarding the authorization of SIMs.

13 And then immediately after that list of factors there's a short paragraph, and it
14 says: "In the context of a SIM, particular care should be taken when considering
15 whether the planned course of action is the least intrusive method if reasonable based
16 upon the circumstances of the investigation?"

17 Do you see that?

18 A I do.

19 Q What's your understanding of what that means?

20 A I think the difference with this one is "particular care." I mean, in general
21 least intrusive method is the way we work our cases. We want to do this as
22 unintrusively as we can. When it becomes a SIM, it's just highlighting that you need to
23 even do more for that, that it's more important.

24 Q Okay. I want to move on from the DIOG and turn to the Justice
25 Department Tax Division's Criminal Tax Manual. And I know this is probably not

1 something you've reviewed before because you are not a tax -- you don't do a lot of tax
2 investigations. But we'll have -- we'll walk you through the document.

3 A Sounds good.

4 Q And this will be exhibit 10.

5 [Sobocinski Exhibit No. 10

6 Was marked for identification.]

7 [REDACTED]: I've got too much paper in front of me.

8 And we're going to look at 9.4.9.3.3.3, which is at the bottom of the page and on
9 to the next page. There's got to be a better way to do this.

10 Ms. Zdeb. Which is the --

11 [REDACTED]: Oh, I'm sorry. I actually just gave you the IRS. We're going to look
12 at both of them, but if I can pull those back.

13 Mr. Sobocinski. Okay.

14 [REDACTED]: That is the IRS manual. This is the DOJ manual.

15 Ms. Greer. What's that number?

16 [REDACTED]: So this will be exhibit 10 and the next one will be -- end up being
17 exhibit 11. I'm sorry about that.

18 BY [REDACTED]:

19 Q All right. So we are looking at section 1.05[3][b]. This is "Exclusive
20 Authority Retained by the Tax Division." And this is from the DOJ's Criminal Tax Manual.

21 So the section immediately above this -- this is 1.05[3][a] -- provides U.S.

22 Attorneys with authority to execute search warrants in tax investigations, but that's

23 qualified by the following section, which is 1.05[3][b], which provides that the Tax

24 Division, meaning the Tax Division of the Department of Justice, "retains exclusive

25 authority to approve a search warrant that is directed at offices, structures, or premises

1 owned or controlled by the following," and then there's a list.

2 Do you see that list?

3 A I do.

4 Q Okay. Number two on that list is a lawyer, correct?

5 A It is.

6 Q And number four on that list is a local, State, Federal, or foreign public
7 official or political candidate, correct?

8 A Correct.

9 Q And so in the case of both an attorney -- and I will represent to you that the
10 storage unit in Virginia was owned by an attorney, Hunter Biden -- or controlled by an
11 attorney or property owned by a political official -- such as, for example, a garage owned
12 by the then Vice President -- that would -- to execute a search warrant on either one of
13 those, the Tax Division would have to clear that search warrant, right?

14 A Yeah, I'm not going to comment on the specifics of the investigation.
15 However, yeah, Hunter -- my awareness is Hunter Biden is a lawyer and Joe Biden is the
16 President of the United States.

17 Q And if you turn the page to page 23 -- it's just the back side of the papers I've
18 given you -- it lists a number of factors that the Tax Division should consider before
19 approving a warrant. Do you see where it has that list that's in the paragraph itself?

20 A Got it.

21 Q The third factor is "whether the particular evidence at issue can be secured
22 without a warrant (i.e., whether a search warrant is the 'least intrusive means' to obtain
23 the evidence)" correct?

24 A It does.

25 Q And so the Tax Division is required to consider if, for example, a subpoena

1 that an individual could voluntarily comply with might be an option.

2 A Yeah, I think that would fit the definition of least intrusive.

3 Q Or I guess there are --

4 A Or less intrusive.

5 Q Or they could just ask for it without a subpoena, right?

6 A Yes.

7 Q Okay. So under this the Tax Division is -- this is a guideline that's been in
8 place for a long time, and in the case of property owned by an attorney or a public official,
9 the Tax Division must sign off on it, and the Tax Division must consider less intrusive
10 means, right?

11 A It does appear to say that.

12 Q Okay. Now we're turn to the Tax Division's -- the IRS guidelines.

13 [Sobocinski Exhibit No. 11

14 Was marked for identification.]

15 BY [REDACTED]:

16 Q And we're not going to spend a long time on this, but we're going to look
17 quickly at 9.4.9 -- I'm sorry, that is not where I'm going to go quickly -- at 9.4.9.3.3.3.

18 A Okay.

19 Q I think I can see why you get frustrated in tax meetings.

20 A Right. It's all becoming clear. Yeah.

21 Q This section -- have you ever reviewed this before?

22 A I have not.

23 Q Okay. So paragraph 1 of this section says that the DOJ, Tax Division retains
24 exclusive authority to approve search warrants directed at offices, structures, or premises
25 owned or controlled by a lawyer or a Federal official, among others, right?

1 A Okay. Where is that on this?

2 Q So that is on -- we have the wrong number in front of us.

3 A Okay.

4 Q I will represent to you that the IRS manual mirrors the Tax Division Code.

5 And actually we'll come back to this because there's a line that I do not have printed off
6 here.

7 A Okay.

8 Q Sorry.

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

12 A In a general sense, yes.

13 Q In a general sense.

14 And the Tax Division in particular has to consider less intrusive means?

15 A Outlined in these memos -- or in these manuals, yes.

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

18 A Correct.

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

21 A Correct.

22 Q And can you explain briefly what your understanding is of attorney-client
23 privilege material?

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

1 included in that.

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

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

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

10 Q Okay. That attorney -- or I'm sorry -- that agent could potentially be
11 removed from the investigation. Is that right?

12 A I think that's one logical step.

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

15 A I would think so.

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

18 A Yeah, I think so.

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

21 A Yeah, I believe so.

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

25 A Yes.

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

3 A Correct.

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

8 A Yes.

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

11 A Correct.

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

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

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

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

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

1 determinations can be relooked at.

2 Q Can this process sometimes take some time?

3 A Yes.

4 Q And sometimes it can take a lot of time?

5 A Yes.

6 Q Because I think you just talked through about five or six different steps,
7 correct?

8 A Correct.

9 Q And the goal of this process is to ensure that any privileged information is
10 sequestered, correct?

11 A Correct.

12 Q This is a pretty typical process when a search warrant is executed for
13 property belonging to an attorney, correct?

14 A Yes.

15 Q There's nothing unusual about it?

16 A No.

17 Q And the goal is not to slow down the case, right?

18 A Yeah. This is a mandated process that we have to go through.

19 Q Okay. The goal, as I said, is to protect privileged information?

20 A Correct.

21 Q All right. I want to get back now to something that you talked a little bit
22 about in the earlier hour, but I want to explore it a little more.

23 This investigation has been fairly prominent in the press. Is that fair to say?

24 A Yes.

25 Q And just taking a step back, if you had to put a number on it, how many

1 investigations do you think you've worked on during your time with the Bureau? Is it
2 hundreds, thousands?

3 A It would be -- I've touched thousands of cases.

4 Q Okay. In your experience, has this investigation received more press
5 attention than others you've worked on?

6 A Yes.

7 Q Can you -- do you have anything further to say on that?

8 A Yeah. I think that this investigation, without going into specifics of the
9 investigation, is something that people regularly bring up to me. I am outward facing.
10 I go to media events. I work with State and local partners. People talk and bring this
11 case up. And then in talking with other FBI employees, SACs in particular, they get
12 similar questions about this.

13 Q Have the names of the FBI employees working on this case been made
14 public?

15 A They have.

16 Q And has that had -- is it common for employees' names or agents' names to
17 be made public?

18 A Yes and no. I mean, we are affiants on various processes that go into court.
19 You get to a certain level like myself where I am giving press releases and press
20 conferences. But as a general rule we're not in the media. Most of my 25 years
21 nobody would know who I was.

22 Q In fact, it's fair to say that -- well, thinking about kind of line agents as
23 opposed to supervisors. But the FBI generally works to keep agents' names out of the
24 public eye?

25 A Correct.

1 Q Why is that?

2 A There's a variety of reasons, but I think the main ones are our anonymity of,
3 like, our faces. We're investigating cases, and so if people know who we are and it's
4 during the workday, they kind of know we're doing something for what we do.

5 And then, secondarily, that's becoming more and more prevalent, is there has
6 been a massive increase in personal threats against FBI personnel and the facilities.

7 Q And on that note, in this particular case have the agents or other employees
8 working on it suffered any personal impact based on the fact that their names have been
9 in the press and that this is a very public-facing investigation?

10 A I'm not going to talk about individual people, but in general, yes. There's a
11 large grouping of people, as I talked about earlier, that their names are now out there,
12 and then on social media things are being directed at them. We can handle that. But
13 when their identities, their families, things towards their families, that has absolutely
14 increased.

15 Q And so in this case individuals' families have actually been the target of
16 threats?

17 A I'm not going to get into the specifics of that. I mean, like, there's legal
18 definitions of threats and all that other stuff. I will say the sense of the employees and
19 especially the sense of their families is, yes, they feel threatened.

20 Q Do you have concerns for their safety?

21 A I do.

22 Q Are you taking any steps -- and I don't want to compromise any law
23 enforcement protected information -- but are you taking steps to protect your
24 employees? Do you feel the need to do that?

25 A Yeah, them and family members.

1 Q So there are very specific things that you're doing to ensure the safety of
2 those involved?

3 A Yes.

4 Q Okay. And your name has also been in the press. Your name was on the
5 letter that Chairman Jordan publicly released. Have you personally faced any impacts
6 from this investigation?

7 A Yes.

8 Q Are you comfortable describing any of those?

9 A You know, as a general sense of -- you know, we do this job for a reason.
10 We are -- you know, I have a goal. I talk about the process. I'm trying to move things
11 forward. That's a -- it sounds very administrative and bureaucratic, but it's not.

12 I mean, I wanted to do this job to protect people in an apolitical way to keep this
13 country safe. And that changed throughout the career of what that looked like and
14 expanded into counterterrorism and more worldwide operations, and that was a great
15 opportunity that the Bureau gave me and I'm proud to do it.

16 But for the first time in recent years I have people coming up to me recognizing
17 me or showing up at events and questioning my personal ethics and the ethics of the
18 team and the ethics of the FBI. It's just different. We can handle that. Like I said, I'm
19 comfortable with that. It's when you start looking at family members that it becomes
20 more disconcerting.

21 Q Do you have any concerns for your safety?

22 A Sure.

23 Q Do you have concerns for the safety of your family?

24 A I do.

25 [REDACTED]: We can go off the record.

1 [Recess.]

2 Mr. Castor. Back on the record. It's 2:23.

3 BY MR. CASTOR:

4 Q You mentioned that Shapley's email wasn't what you considered
5 contemporaneous notes, and you said you didn't know -- you didn't see him taking notes
6 at the meeting. Is that right?

7 A I don't have a remembrance of him with a -- of anybody with a laptop.

8 Q But if he had contemporaneous notes, would that be more reliable than this
9 email?

10 A I don't know.

11 Q But you did take issue with the terminology "contemporaneous." And so I
12 guess my question is, if there was a snapshot in time, like if he had notes, is that
13 something that you would find more valuable than his email?

14 A Not necessarily. They might be the exact same thing. I just don't know.

15 And you just kept using "contemporaneous notes." I just wanted the record to
16 show that it was an email, and it appeared to be hours after that meeting. And so for
17 me that was not contemporaneous --

18 Q But if it were --

19 A -- and it didn't appear to be notes.

20 Q -- if it were contemporaneous, it would be better?

21 A No, I don't know.

22 Q Do you think it was reasonable for any attendee in the 10/7 meeting to
23 conclude that U.S. Attorney Weiss wasn't the deciding official?

24 A Yeah, I can only speak for myself, and I believed him to be the -- I went in
25 believing he was the deciding official, and I left believing the same.

1 Q But the question was, do you believe it would be reasonable for other
2 attendees in the meeting to determine otherwise?

3 A Yeah, I'm not going to comment on what they -- I don't know what they
4 heard, speculate on that, or how they perceived the conversation.

5 Q Right. But if the tax years couldn't be charged in 2014 and 2015, and that
6 was announced at the 10/7 meeting, doesn't that call into question whether David Weiss
7 had ultimate authority?

8 A You know, I'm not going to comment on ongoing discussions of this case. I
9 will say in a general sense the meetings I'm involved with are discussing things about
10 cases throughout them, and you're not at the end until you're at the end.

11 Q You said a number of times that the case was moving very slowly, you had
12 concerns about that, that your focus was bringing the case to resolution. You also said
13 that you talk to David Weiss all the time.

14 So I'm wondering, what did you do to bring the case to resolution as the top FBI
15 official here?

16 A So without going into specifics about this particular case, what I do in every
17 case is try to identify if there are any barriers or things that need to be done that's within
18 the responsibilities of FBI Baltimore, which is what I -- which incorporates Delaware, and
19 if there are, identify them, assign folks to work that, and then move that forward and get
20 the prosecution the information they needed to make that decision.

21 Q But you were concerned about the pace, and you were concerned about
22 bringing the case to resolution, and you talk to Weiss all the time, but you never had
23 discussions with David Weiss about bringing the case in D.C. and what the impediments
24 were to doing that?

25 A That was David's decision to make. And whatever decision he made that

1 was going to get us there, that's the decision I was going to live with.

2 Q But you never had discussions with Mr. Weiss about his efforts to bring the
3 case in D.C.?

4 A I'm not going to discuss my -- you know, the ongoing deliberative discussions
5 about this. But it is David -- I new it was David Weiss' decision to make that decision.
6 It wasn't mine.

7 Chairman Jordan. It was his decision, but did you recommend it? What did you
8 recommend?

9 I see how investigations work. You guys are doing the investigating. You're
10 looking at the facts, the evidence, and you're making recommendations to prosecutors.
11 Did you recommend that he go to D.C. particularly about these particular tax years that
12 Mr. Castor is talking about?

13 Mr. Sobocinski. I --

14 Ms. Zdeb. I'm sorry. He can answer that question if there's a way to do so
15 without getting into particular deliberations around charging decisions or the ongoing
16 investigation.

17 Mr. Sobocinski. Yeah, I recommended he make whatever decision with
18 whatever venue he needed to do to move it.

19 Mr. Castor. But if you're so focused about bringing the case to resolution, it's
20 hard to believe you didn't have a conversation with him like, "David, what are you going
21 to do? Are you going to bring it in D.C.? Are you going to bring it in Delaware? Are
22 you going to bring it in California?"

23 Chairman Jordan. Or all three.

24 Mr. Sobocinski. My conversations were, like, bring it, and I'm in control of giving
25 him the information he needed to bring it, and it was up to him to bring it where he felt

1 he had the best opportunity or the venue to do that.

2 BY MR. CASTOR:

3 Q I mean, at some point -- and it was way earlier than October 7th, 2022 -- the
4 investigators have told us that there were no other investigative actions needed to bring
5 the case.

6 So if that's the case, then for you to bring the case to resolution it would seem
7 that you would be talking to U.S. Attorney Weiss and trying to figure out, like, where's the
8 case going to be brought, since nothing else has to be done.

9 A Not going to get into the weeds back and forth with David Weiss. My thing
10 was, "Do you need anything from the FBI that would help you make your prosecutorial
11 decision?" And it's with him.

12 Q Like, if you're hyperfocused on bringing the case to resolution, if you're
13 hyperfocused on the fact that the case was moving slowly, and you talked to Weiss all the
14 time, it just seems hard to believe that you didn't know they brought the case to D.C. and
15 it was denied, that they brought the case to California and it was denied.

16 A Is there a question?

17 Q Yeah. It's hard to believe. Like, so you have no recollection of talking to
18 David Weiss about bringing the case to D.C., having it be denied? No recollection of
19 talking to David Weiss about bringing the case to the Central District of California and
20 having it be denied?

21 A Once again, I'm not going to discuss the internal deliberative process. But I
22 will state, once again, I believed, and I still believe, David Weiss had the authority to bring
23 the charges.

24 I, as the SAC for the FBI, was responsible for providing him information and
25 evidence for the things that I was involved in. And if there were things he needed as it

1 related to whether he was going to make the prosecution decision and the venue he was
2 going to choose, that was up to him.

3 Q Do you remember when you came on board in 2021 there was -- we've been
4 told David Weiss was hyperfocused on the statute of limitations running out, and he
5 admonished Lesley Wolf in front of, we're told, you and other people that you need to
6 bring this case, we need to bring this case before the statute expires.

7 Do you have any recollection of that?

8 Ms. Zdeb. And we've already gone over the fact that he can't get into specifics of
9 any internal deliberations that may or may not have occurred about investigative and
10 prosecutorial decisionmaking on this case. It's the same response as the last time you
11 asked that question.

12 BY MR. CASTOR:

13 Q Yeah, the question is, I'm just asking, do you remember the Weiss-Wolf
14 discussion in front of you about the statute of limitations expiring?

15 A And I'm going to be consistent. I'm not going to talk about the deliberative
16 discussions we had on -- which is now -- which is an open investigation, which I'm still
17 leading, and I still have a team that's out there doing this to move this forward to get --

18 Q Isn't there a way to bring charges on these -- on the statutes that have
19 expired?

20 A I'm not going to -- that's a decision for the U.S. Attorney's Office and IRS to
21 discuss whether things have expired or not and whether you're allowed to use that in
22 court right now, whether it's a legal charge.

23 Q Okay. You said you were doing your best to push the case forward. Can
24 you just tell us, like, specifically what you were doing, other than attend meetings? Like,
25 what were you doing from a leadership standpoint to get your -- to get this initiative

1 moving, to bring this case to a close?

2 A Once again, I'm not going to talk about the deliberative process. But it's a
3 general sense of -- as the chairman mentioned, I'll say -- I'm going to say it again -- which
4 is I had a -- we, the FBI, had a role in this investigation.

5 I asked -- I have a clear understanding of what that role was. I asked if there was
6 things that needed to be done within what the FBI's purview was, made in general
7 communication about if there was anything needed, and that's what that was.

8 And so things that needed to be followed on with other entities or decisions by
9 other people, I wish the FBI SAC had that authority to make things happen, but,
10 unfortunately, we don't.

11 Chairman Jordan. When did you first learn of the FD-1023 form?

12 Ms. Zdeb. That's also outside of the scope of what he's authorized to get into.

13 Chairman Jordan. I'm not asking him to get into it.

14 I'm just asking, when did you learn of it?

15 Ms. Zdeb. And I'm indicating that he is not authorized to answer questions
16 about the 1023.

17 Mr. Weiss has said in a recent letter that that is part of an ongoing investigation,
18 and so the Department is not able to authorize this witness or any other witness to speak
19 about anything having to do with a 1023 at this point.

20 But, again, the Department is happy to continue these discussions, and to the
21 extent we can share additional information at some future date, we are happy to
22 continue talking.

23 Chairman Jordan. Can I ask this? Have you reviewed the 1023 form?

24 Mr. Sobocinski. As counsel just stated, I'm not able to answer that question.

25 BY MR. CASTOR:

1 Q Do you know the answer or do you -- do you know the answer to that
2 question?

3 A As counsel stated, I'm not at liberty to discuss that 1023.

4 Q You don't have to discuss it by saying you know the answer to the question.

5 A You're asking for a response that means -- you're asking me a question.
6 You're asking for a response. That's a discussion I cannot --

7 Q Well, either you read it or you didn't read it, and then you know the answer
8 to that question.

9 A Yeah, I'm not at liberty to talk about that.

10 Chairman Jordan. What about the laptop? When did you first become aware
11 of that?

12 Mr. Sobocinski. Once again, there is an ongoing criminal investigation and I'm
13 not at liberty to discuss that.

14 Chairman Jordan. How about the -- was the Baltimore Field Office in any way
15 involved with the memorandum from the Richmond Field Office regarding radical
16 traditional Catholics?

17 Mr. Sobocinski. Not that I'm aware of. And -- yeah, not -- what are you
18 referencing?

19 Chairman Jordan. It's been in press reports about the memorandum put out of
20 the domain perspective of the Richmond Field Office. Other field offices we've
21 subsequently learned were involved. Originally we were told by the FBI it was just the
22 Richmond Field Office. I'm just curious if Baltimore had any involvement with the
23 development of that product.

24 Mr. Sobocinski. I have no awareness into that.

25 Chairman Jordan. Okay.

1 BY MR. CASTOR:

2 Q Any communications you had with David Weiss or anyone involved with the
3 10/7 meeting about the veracity of the whistleblower's testimony?

4 A No. I'm not going to get into, like, specifics of what that looked like. But
5 in general, regardless of what they said, usually they were doing -- somebody was
6 providing information to motivate folks. And so for me it was the results of it. What
7 do I -- it's out there. Something is there. How's that going to affect us? How do we
8 move forward?

9 Q But you didn't have any discussions about the veracity of the testimony
10 being true or false?

11 A Yeah, I'm not going to get into the specifics of that.

12 Q And who, again, did you have those discussions with among the 10/7
13 meeting participants?

14 A You're saying -- by your question, you're saying I answered that I had
15 discussions. I'm not saying that. I'm saying I'm not going to be discussing that, those
16 aspects of that meeting.

17 Q I thought you did tell us that you had discussions, at least with David Weiss,
18 about the whistleblower testimony. Certainly you've had it with ASAC Holley.

19 A The purpose of that meeting -- part of that meeting was to discuss the
20 whistleblower. When you say specifics of it --

21 Q At the 10/7 meeting?

22 A Correct. When you say specifics, I'm not going to get into specifically what I
23 said or didn't say and with who and with the team.

24 Did I -- obviously, I've said in general that's what at least my intent of that meeting
25 was because I was concerned that it was jeopardizing what was and continues to be an

1 ongoing criminal investigation. And so I was looking to get those folks together so that
2 we could attempt to continue to get a resolution on that.

3 Q But you're not providing any testimony here today that you raised veracity
4 issues with anyone following the publication of the whistleblower testimony?

5 A Yeah, I'm not going to go into specifics of what I did or didn't say in that
6 meeting like that.

7 Q Are you aware of anyone calling into question the veracity of the testimony?

8 A Yeah, I'm not going to speculate on other people's opinions.

9 Q No. I'm just asking if you're aware.

10 A I'm not going to speculate on that.

11 Q So you're not aware?

12 A I'm not going to speculate on that.

13 Q I'm not asking you to speculate. I'm saying, are you aware of anyone calling
14 into question the veracity of the testimony?

15 A Want to go off the record?

16 [Discussion off the record.]

17 Mr. Sobocinski. Yeah, as we've talked about earlier, this is all over the media.
18 So I've seen media reporting on whether this was or wasn't true. And so, yeah, I'm
19 aware of those conversations.

20 Chairman Jordan. Did you have any conversations with U.S. Attorney Weiss
21 about -- we briefly touched on this, I think, the first hour -- about the two pieces -- the
22 two letters he sent to the committee, the June 7th letter and the June 30th letter, where
23 he said he had ultimate authority to determine where, when, and whether to file
24 charges? And then he follows up 3 weeks later and says, I can only do charges in -- bring
25 charges in the Delaware U.S. attorney's district.

1 Did you have any conversation with him about those conflicting things? And it's
2 been in the press that the Attorney General said one thing. David Weiss seems to
3 indicate two different things there. Any discussions with Mr. Weiss about that issue?
4 Mr. Sobocinski. I'm not going to go into specifics. However, I think the
5 Attorney General, David Weiss, and these two letters to my -- you know, and I just saw
6 them -- all fit. I don't see differences in the three of those.

1 [2:39 p.m.]

2 Chairman Jordan. But that's not what I asked. I said, did you have any
3 discussions about what Mr. Weiss conveyed to the committee, what's been reported in
4 the press about this concern, whether he could bring charges anywhere, when, where,
5 and whether, or whether he couldn't and was limited to his U.S. attorney's district?

6 Mr. Sobocinski. So I -- as to the letters, I'll take those piece -- the letters, I never
7 had conversations with David about his letters. Beforehand, he may have made -- I'm
8 not -- in a general sense, he may have made reference to them. I saw them in the media
9 like a lot of other people.

10 And then the second piece is his -- in a general sense, he's been consistent with
11 he's had authority to bring this case, where the venue -- whatever venue that is, if he
12 chooses to bring the case forward.

13 Chairman Jordan. Well, it took him three letters to tell us that he had -- you
14 know, to be consistent. So, I mean, I've done a lot of correspondence with the agencies
15 over the years, 17 years. Steve and I have written the DOJ and the FBI tons of time, and
16 this was the most unusual correspondence. So it's been anything but consistent. You
17 can describe it that way, but that is certainly not the case. Because he wrote a third
18 letter to Senator Graham and said something different in that letter as well 2 weeks after
19 the June 30th letter.

20 And I'm just asking, did you have a discussion with him regarding -- not the letter
21 specifically, but about that issue and whether he had been consistent and whether he had
22 this authority? Even the Attorney General said in his August 11th statement, as I said
23 before, David Weiss has always had the authority to do this. So that's what -- I keep
24 coming back to that fundamental question: If he always had the authority, why does he
25 need it now?

1 And I can't -- you can't give us an answer. You've been trying, but -- maybe
2 you've been trying, but you haven't given us one. I want to know what the answer to
3 that question is. And we'll ask the Attorney General when he's here in a week and a
4 half, but I kind of like to know what you know.

5 Mr. Sobocinski. Yeah, I refer to the -- I think the Attorney General is an
6 appropriate person. The FBI does not have a role in that designation.

7 Chairman Jordan. As I've said before, Mr. Weiss would be permitted to continue
8 his investigation, take any investigative steps he wanted, and make the decision whether
9 to prosecute in any district.

10 Well, obviously he didn't have that authority or he wouldn't need special counsel
11 authority. So how is it all consistent?

12 Three different things he's said to Congress, two to our committee, one to Senator
13 Graham. And then this statement on August 11th. It makes no sense to anyone with
14 common sense. And I'm asking the guy who ran the investigation. And you say it's
15 consistent? It's anything but.

16 Mr. Sobocinski. So I appreciate that. But it is -- I felt and still believe that David
17 Weiss had the authority to bring a case forward, whether -- what determination or
18 what --

19 Chairman Jordan. Well, that's different. That's different. A case forward is
20 different than I can bring a case in any jurisdiction I want to bring it. That's different.

21 Mr. Sobocinski. Then I'll use your words. I still think and thought then and
22 throughout this investigation that he had the authority delegated to him to bring this case
23 forward in any prosecutorial district within the Federal system of the United States of
24 America.

25 Chairman Jordan. Do you think it was -- do you think that he needed special

1 counsel designation?

2 Mr. Sobocinski. That's a decision that you're going to have to refer to the DOJ on
3 that one.

4 Chairman Jordan. And we will. We'll ask them. But we have you here today.
5 I want to ask you. You've been willing to answer about the pace of the investigation,
6 given us somewhat of an answer on another question about how the plea agreement
7 worked.

8 I'm asking you: Do you think the special counsel designation was warranted
9 after 4.5 years?

10 Mr. Sobocinski. I'm not a lawyer, and I don't think it's appropriate for me to give
11 my opinion on that. It's an ongoing case that I'm continuing to work.

12 Chairman Jordan. And that's to speed up the resolution of this case, which you
13 talked about numerous times, or slow it down?

14 Mr. Sobocinski. My goal is to make this thing go fast. If that's one thing you get
15 after this testimony is I am trying to move this as fast as we can using all of the effort
16 we -- all of our authorities to do that in a professional and apolitical way.

17 Chairman Jordan. Has your involvement and your investigation changed now
18 that there's a new distinction for the U.S. attorney as special counsel? You guys still
19 investigating?

20 Mr. Sobocinski. I'm going to have to go off the record on that.

21 [Discussion held off the record.]

22 Mr. Sobocinski. Yeah, without getting into specifics, I still have -- I'm still leading
23 a team of agents that have an ongoing investigation.

24 Chairman Jordan. So 6 weeks ago, there was a plea agreement, which would
25 indicate the investigation was complete. Both sides decided here we're going to take

1 this to the court. Plea agreement.

2 What new things are you investigating?

3 Mr. Sobocinski. I am not at liberty to discuss the ongoing investigation.

4 Mr. Castor. You ever discuss with David Weiss what a mess this case has
5 become?

6 Mr. Sobocinski. I'm not going get into direct -- you know, I'm not going to go into
7 the details of what David Weiss and I did or didn't say as this thing's moving forward.

8 Mr. Castor. I mean, you're trying to bring the case to a close you said, but you
9 have a case involving the President of the United State's son. It just seems that this case
10 presents some unique challenges that have never really been dealt with before by a
11 Justice Department. And just asking about your discussions with David Weiss about
12 navigating that.

13 Ms. Zdeb. And he, the witness, is not authorized to talk about the ongoing case,
14 his discussions and deliberations on the ongoing case.

15 BY MR. CASTOR:

16 Q Are you happy with, are you proud with the way the case been conducted
17 from an investigative standpoint?

18 A I'm not going talk about the details. When I'm talking about the
19 performance of my employees, yeah, I am -- they have worked hard on this matter.
20 They continue to work hard, regardless of what obstacle has come in front of them, with
21 potentially great personal issues being brought up. So yeah, I'm proud of their actions.

22 Q A lot of the investigative techniques that they tried to implement were
23 blocked by, whether it be the Tax Division or the U.S. Attorney's Office in Delaware. Do
24 you have concerns about that?

25 A I'm not going to agree or disagree with that statement. I'm not at liberty to

1 talk about the ongoing investigative matter.

2 Q Do you think the volume of issues raised about that type of thing has been a
3 little bit larger than any other case you've been involved with?

4 A No.

5 Q So this is an ordinary case for you?

6 A You want to talk about cases, I'll talk about what we're doing in a general
7 sense every day. I mean, I've got hundreds of cases that are going on.

8 Q Having the U.S. attorney like tip off the defense counsel --

9 A And so I'm continually managing this. And so my team is continually
10 managing it. Let's look at today, or the last week, I've had guns pulled on agents. I've
11 had agents that are going into buildings this morning attempting to arrest -- no, this is
12 important. You're asking me how this is in context of what my life looks like and what
13 this office looks like. That's what we're doing every day. I have folks that are going
14 after foreign nation-state actors, spies that are trying to do bad things with us today, this
15 week. We're doing those things.

16 And so, for me, I think that's important that this is in perspective of what my office
17 and the team in this office are doing every day. And so, yes, this is important, but it is
18 also important to recognize everything else that they're doing and putting their, you
19 know, family lives, their personal safety, you know, out there every day.

20 Chairman Jordan. You ever have a case where the subject of the investigation's
21 defense counsel tells you if you continue to press charges, they're going to put the
22 President of the United States on the witness stand?

23 Mr. Sobocinski. You know, as it relates to other cases, no. And I don't know
24 that -- you know, as it relates to this case, I don't know anything about that.

25 Mr. Castor. You haven't had any discussions with defense counsel, have you?

1 Mr. Sobocinski. I'm going go off the record.

2 [Discussion held off the record.]

3 Mr. Sobocinski. No, I have not.

4 Chairman Jordan. Were you aware that defense counsel had made that threat?

5 Mr. Sobocinski. I had no direct conversations with defense counsel.

6 Chairman Jordan. We didn't ask that. I said, are you aware that that
7 was -- that was something they had conveyed to the U.S. Attorney's Office?

8 Ms. Zdeb. To the extent that is true, which we are not saying whether it is or
9 whether it isn't, but that relates directly to the ongoing case, and he's not authorized to
10 talk about it.

11 BY MR. CASTOR:

12 Q You'd acknowledge notifying defense counsel of a pending search warrant
13 would be a problem in an ordinary investigation?

14 A I'm not going to talk about the specifics of this case, but there are moments
15 in time. Every case is different. And there are times I've done that and been aware of
16 that previously.

17 Q That you've notified defense counsel in advance of an upcoming search
18 warrant? I mean, the whole purpose of a search warrant, correct me if I'm wrong, I'm
19 not an FBI official, but the whole purpose of a search warrant is to go in and grab
20 evidence because you're afraid it's going to get away. Someone's going to throw it
21 away, right?

22 A The purpose is to gather evidence, correct.

23 Q Right. But you're concerned that you can't just ask for it voluntarily. You
24 need to go in and take it, right? That's why you have to go to court and get a search
25 warrant.

1 A The search warrant allows us to legally get evidence. Each situation is very
2 different. There are reasons why we may go through defense attorneys. There are
3 reasons why we go directly to the subject of cases. So each case is very different.

4 Q Okay. So as a general matter, you don't have any issue with notifying
5 defense counsel of a pending search warrant?

6 A As a general matter, I hope that the investigative team was reviewing the
7 facts of that particular investigation, and they are doing what they need to do to keep
8 agents safe as well as balancing getting the evidence we need.

9 Mr. Castor. Let's go off the record.

10 [Discussion held off the record.]

11 Mr. Castor. Go back on the record.

12 Mr. Sobocinski. Sure.

13 BY MR. CASTOR:

14 Q What can you tell us about the removal of the investigative team from the
15 case?

16 A I'm not going to talk about any administrative actions with this investigation.
17 And I'm not going to -- I'm also not stipulating that I know that that's true or not true.

18 Q Okay. Are you aware that Shapley and Ziegler have said that they've been
19 taken off the team?

20 A I've seen that in media reporting.

21 Q And have they been taken off the team?

22 A I'm not going to comment on administrative matters relating to this
23 investigation.

24 Q How does it work? The IRS has said that this is a DOJ decision. How does
25 it work, in theory, taking investigators off a case that don't belong to Justice Department

1 components?

2 A Yeah. In theory, I couldn't tell you that. I know from an FBI perspective, I
3 think I have sole authority on who I designate to be the investigators on cases. There's a
4 variety of reasons why or why not they would be on there, but I -- from the FBI's
5 perspective, I think that solely resides with me.

6 Q And the person you communicate with from IRS standpoint is Waldon. Is
7 that correct?

8 A Waldon is the correspon- -- was at the time the SAC for a certain amount of
9 time, but I'm -- and so he was my counterpart.

10 Q Did you have any communications with Waldon about taking Shapley and
11 Ziegler off the case?

12 A I'm going to go off the record on that.

13 [Discussion held off the record.]

14 Mr. Sobocinski. Yeah, I've had maybe three or four conversations with him. So
15 without getting into specifics, I think the last one would've -- I think the last time I talked
16 to him was that October meeting.

17 BY MR. CASTOR:

18 Q Okay. Do you have any idea why Lesley Wolf has been taken off the
19 pleadings?

20 A Once again, I'm not going to talk about ongoing personnel matters.

21 Q Do you know the answer?

22 A I'm not going to talk about ongoing personnel matters.

23 Q That's not the question. I said, do you know the answer? I guess you're
24 not going to answer my question, right?

25 A Based on guidance from the Department, I'm not allowed to discuss

1 ongoing --

2 Q I'm not asking you to discuss. I'm asking you if you know the answer. Do
3 you know why Lesley Wolf was taken off the pleadings?

4 A I don't -- you're asking me to -- I don't know that your statement is factually
5 correct.

6 Q Okay. Well, I don't think her name's on the pleadings, is she?

7 You -- sorry.

8 Chairman Jordan. In the Attorney General's statement on August 11th, you said
9 on Tuesday of that week, August 8th, Mr. Weiss advised me that in his judgment, his
10 investigation has reached a stage at which he should continue his work as special counsel
11 and asked to be so appointed. What stage of the investigation are you in?

12 Mr. Sobocinski. I'm not at liberty to discuss where I am in this case. We've
13 acknowledged there's an ongoing criminal investigation.

14 Chairman Jordan. But that's not what the Attorney General said. He
15 said -- there's a statement David Weiss asked him about. He says we're in a stage where
16 I need to be special counsel.

17 I just would kind of like to know, are we in the beginning stage, in the middle
18 stage? Are we in the I don't know what's going on? What kind of stage are we in?

19 Mr. Sobocinski. I'm not at liberty to discuss the ongoing investigation.

20 Chairman Jordan. You think you're close to being done?

21 Mr. Sobocinski. I'm not at liberty to discuss the ongoing case. But I will say, as
22 you've heard me say over and over again, I on behalf of the FBI and my team is doing
23 everything we can and using all of our resources to effectively investigate this case, bring
24 it forward to the Department of Justice, to the lawful person we think currently has that,
25 which is now special counsel. And we're doing everything we need to get there.

1 Chairman Jordan. I'm just curious. I think the country would like to know when
2 the Attorney General and the U.S. attorney, who is now special counsel, use the term
3 "stage," they'd like to know what stage we're in. But we'll have to wait for someone
4 else to give us that answer, I guess.

5 BY MR. CASTOR:

6 Q In the October 7th notes, exhibit 1, I just want to be clear that my
7 understanding's correct. When Shapley writes that Weiss stated that he's not the
8 deciding person on whether charges are filed, you don't have a recollection of that being
9 said, correct?

10 A I'm sorry. We've gone through this one again. Can you point out here
11 which part you're talking about?

12 Q Yeah, it's on the exhibit 1.

13 A Yup.

14 Q Page 1.

15 A Yup.

16 Q Item No. 2.

17 A Yup.

18 Q Weiss stated that he is not the deciding person on whether charges are filed.

19 A As I think I've said almost as much as I've said I'd move this case forward,
20 that is not what I heard. I went into that meeting believing he had the authority, and I
21 have left that meeting believing he had the authority to bring charges.

22 Q But is it not what you heard or is it not what you remember?

23 A You have continually asked me in various ways of whether or not what my
24 perception of his authority was.

25 Q Right. Is that discussed at all or is this part of a meeting just --

1 A My perception of his authority was he had the authority to the bring
2 charges.

3 Q But at the 10/7 meeting, did this -- was this discussed or was this just not
4 part of the meeting? Are you surprised that that shows up in the notes?

5 A As it relates to this meeting and his authority, without going into
6 specific -- nothing was said in that meeting by anybody that led me to believe that David
7 Weiss did not have the authority to bring this case.

8 Q Was he talking about his authority in that meeting? Squarely in the scope
9 of the -- today's interview.

10 A Yeah. I -- it's kind of like, are we breathing air? We all were working
11 under the impression that he had the authority. Whether -- I don't have a memory of
12 that particular moment, bringing it up. But like I've said, I've talked to David quite a bit.
13 I talk to him regularly. And throughout that, I've assumed he's had and believe he has
14 authority.

15 Q I guess, last question I said was, did it surprise you that this showed up in the
16 notes, that you didn't remember it from the meeting? You said it was a long meeting
17 and, you know, it's two pages of notes. There's not that much stuff here.

18 A Once again, it's an email, 6, 7 -- 5 or 6 hours afterwards. I -- there was
19 nothing in that meeting that changed my belief that David Weiss had the authority to
20 bring this case forward.

21 Q Okay. But the question was: Are you surprised it showed up in the notes,
22 then, if you don't remember it being discussed at the meeting?

23 A Yeah, these aren't my notes. This is not my email.

24 Mr. Castor. I think we're all done on our side.

25 Chairman Jordan. Thank you.

1 Mr. Castor. Go off the record.

2 [Recess.]

1 [2:57 p.m.]

2 [REDACTED]: We're going to go back on the record. It's 2:57 p.m.

3 BY [REDACTED]:

4 Q You were asked I don't know if it was in the earlier hour or 2 hours ago at
5 this point, but if you had any discussion with anybody about the testimony that
6 Mr. Shapley gave?

7 A Yeah. Can I just go back to one thing, because as we just shifted here, I just
8 want to make it clear is that, you know, I've talked to David regularly. This is part of
9 what I do. I hope you would expect the SAC of the FBI to have regular conversations
10 with his U.S. Attorney counterpart.

11 And so when you asked for specific moments of time and specific things, all I'm
12 going to give you is that I, you know, unfortunately at this point in my career, you have
13 dozens of meetings. Something as significant as this would be memorable. I don't
14 remember a specific meeting, but I do not have any memory of David altering or changing
15 his ability or discussion about his ability or anybody in his office to have the authority to
16 bring this case forward. That's it.

17 Q Thank you for that.

18 You were asked earlier if you had discussions about Mr. Shapley's testimony. Do
19 you recall that conversation?

20 A I do.

21 Q Okay. And I think the statement was made that if you totally disagreed
22 with it or if you thought it was offensive, you and him would probably would have had a
23 discussion about that. Do you remember that statement being made?

24 A Yeah, in general.

25 Q Is it fair to say that following -- after you learned about Mr. Shapley's

1 testimony, your number one concern was the integrity of the case and the ability for it to
2 move forward?

3 A Combined with, you know, the morale and safety of my folks, yeah.

4 Q And that was my second question. And your secondary concern, maybe
5 equal concern, was the safety of your employees?

6 A Correct.

7 Q So that was your real focus, not the veracity of the testimony?

8 A Correct.

9 Q Okay. You were asked some questions about statements allegedly made
10 by a defense attorney --

11 A Yes.

12 Q -- in this prior -- just a couple minutes ago. Without getting into those
13 statements specifically, would you agree that the job of the defense attorney is to
14 zealously represent their clients?

15 A Yes.

16 Q And in your experience, are defense attorneys sometimes unpleasant to
17 work with?

18 A Yes.

19 Q They can be jerks, right?

20 A Yes, they can.

21 Q Okay. And that's pretty standard. I'm not saying that all defense
22 attorneys are jerks, but it's standard that, you know, there may be headbutting?

23 A Yeah. Let's be fair, there are prosecutors that are jerks. So, yes, it's
24 very -- there are even -- I'll even admit FBI agents that might be jerks as well.

25 Q You were asked different questions about Lesley Wolf and whether she's still

1 assigned to the case or not. You are not a supervisor for Ms. Wolf, correct?

2 A I am not.

3 Q Okay. To the best of your knowledge, does Ms. Wolf primarily -- outside of
4 this case, does she primarily handle tax cases? Is that fair to say?

5 A I'm not aware of her role.

6 Q Okay. Do you know if Ms. Wolf has faced threats personally because of this
7 investigation?

8 A There has been greater interest in her and things about her.

9 Q Okay. So is it fair to say she may have concerns for her own safety?

10 A I think that's fair.

11 Q Okay. One --

12 A And let me -- you know, when you talk to the FBI about threats, it's a very
13 legal definition and things like that. We -- without going into specifics, my office and the
14 FBI have done things and initiated things to ensure that she remains safe.

15 Q I want to turn quickly back to these June 7th and June 30th and July 10th
16 letters. And I don't want to talk through them in detail. I think we did that during my
17 first hour of questioning. But I did want to just note for the record that in this -- you had
18 said that you don't see inconsistencies between these letters, correct?

19 A Correct.

20 Q And I do want to note that in the June 30th letter, and we talked through
21 this earlier, that the first sentence of the first paragraph on the second page says that
22 the -- my charging authority is geographically limited. But then it does go on to discuss
23 his ability to obtain authority in other districts under that 28 U.S.C. Section 515, correct?

24 A It does.

25 Q And as we talked through earlier, that Section 515 authority is the special

1 attorney status, correct?

2 A Yes.

3 Q And you said that you had no reason to disagree with his statement that he
4 would have authority -- he would be able to be granted that authority if he had so
5 requested it?

6 A Correct.

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

8 A I do.

9 [REDACTED]: Thank you. We don't have anything further. We can go off the
10 record.

11 [Whereupon, at 3:03 p.m., the interview was adjourned.]

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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

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit Q

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5 COMMITTEE ON THE JUDICIARY,

6 U.S. HOUSE OF REPRESENTATIVES,

7 WASHINGTON, D.C.

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12 INTERVIEW OF: MATTHEW M. GRAVES

13

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16

17 Tuesday, October 3, 2023

18

19 Washington, D.C.

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22 The interview in the above matter was held in room 2237, Rayburn House Office

23 Building, commencing at 10:00 a.m.

24 Present: Representatives Jordan, Gaetz, Biggs, and Swalwell.

1 Appearances:

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3

4 For the COMMITTEE ON THE JUDICIARY:

5

6 CLARK ABOURISK, COUNSEL

7 STEVE CASTOR, GENERAL COUNSEL

8 DILLON CHEPP, COUNSEL

9 SEAN CLERGET, COUNSEL

10 BETSY FERGUSON, DEPUTY GENERAL COUNSEL

11 BRITTANY HAVENS, PROFESSIONAL STAFF MEMBER

12 RACHEL JAG, COUNSEL

13 CAROLINE NABITY, CHIEF COUNSEL FOR OVERSIGHT

14 [REDACTED], MINORITY CHIEF OVERSIGHT COUNSEL

15 [REDACTED], MINORITY STAFF ASSISTANT

16 [REDACTED], MINORITY OVERSIGHT COUNSEL

17 [REDACTED], MINORITY PROFESSIONAL STAFF MEMBER

18

19

20 For the U.S. DEPARTMENT OF JUSTICE:

21

22 GRETA GAO, SPECIAL COUNSEL, OFFICE OF LEGISLATIVE AFFAIRS

23 SARA ZDEB, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS

1

2 Mr. Castor. Good morning.

3 Mr. Graves. Good morning.

4 Mr. Castor. This is a transcribed interview of United States Attorney for the
5 District of Columbia Matthew Graves.

6 Chairman Jordan has requested this interview as part of the committee's oversight
7 of the Justice Department's handling of the Hunter Biden investigation.

8 Would you just please state your name for the record?

9 Mr. Graves. Matthew Graves.

10 Mr. Castor. And you're joined here with agency counsel. I'll have them
11 introduce themselves.

12 Ms. Zdeb. Sarah Zdeb, Department of Justice.

13 Ms. Gao. Greta Gao, Department of Justice.

14 Mr. Castor. And you understand agency counsel has a fiduciary duty to the
15 Department and not you personally?

16 Mr. Graves. Yes.

17 Mr. Castor. And you've decided to proceed with agency counsel as opposed to
18 personal counsel, correct?

19 Mr. Graves. That is correct.

20 Mr. Castor. Okay.

21 On behalf of the committee, I want to thank you for appearing here today
22 voluntarily to answer our questions.

23 My name is Steve Castor. I'm with Mr. Jordan's Judiciary Committee staff. I'll
24 have the staffers here in the room introduce themselves.

25 Ms. Nabity. Caroline Nabity, with Chairman Jordan's staff.

1 Mr. Clerget. Sean Clerget, Chairman Jordan's staff.

2 [REDACTED], Ranking Member Nadler's staff.

3 [REDACTED], Ranking Member Nadler's staff.

4 [REDACTED], Ranking Member Nadler's staff.

5 Ms. Havens. Brittany Havens, Chairman Jordan's staff.

6 Mr. Abourisk. Clark Abourisk, Chairman Jordan's staff.

7 Ms. Ferguson. Betsy Ferguson, Chairman Jordan.

8 Ms. Jag. Rachel Jag, Chairman Jordan's staff.

9 Mr. Chepp. Dillon Chepp, Chairman Jordan's staff.

10 [REDACTED], Ranking Member Nadler's staff.

11 Mr. Castor. The staff participation here is limited to the committee staff, so we
12 won't have additional staffers -- if other folks come in the room, we might stop and have
13 them announce themselves for the record.

14 I'll go over the ground rules and guidelines that we'll follow during today's
15 interview.

16 Our questioning will proceed in rounds. The majority will ask questions first for 1
17 hour, and then the minority will have an opportunity to also ask questions for an hour.
18 We will alternate back and forth until the interview is complete.

19 Ordinarily, we take a break at the end of each hour, but if you'd like to take a
20 break apart from that, just let us know.

21 As you can see, there's an official House reporter taking down everything we say.
22 So we will, from time to time, need to make sure you give a verbal response, if you nod
23 your head and that type of thing.

24 Do you understand that?

25 Mr. Graves. Yes.

1 Mr. Castor. We want you to answer our questions in the most complete and
2 truthful manner possible, so we'll take our time. If you don't understand our question,
3 just ask, and we can go back.

4 The Rules of Evidence don't apply, and so if a question calls for hearsay, you can
5 just tell us that you didn't learn something firsthand, but maybe you could just tell us how
6 you did learn it. Is that okay?

7 Mr. Graves. Yes.

8 Mr. Castor. You understand you're required to answer questions before
9 Congress truthfully?

10 Mr. Graves. Yes.

11 Mr. Castor. And 18 United States Code, 1001, covers false statements before
12 Congress and proceedings like this. You understand that, correct?

13 Mr. Graves. Yes.

14 Mr. Castor. We try to keep the information that we talk about confidential. A
15 lot of times that doesn't happen. Sometimes the transcripts come in and they get sent
16 to The Washington Post. So we don't like the fact that that happens, but we do try to
17 keep things confidential. So, to the extent we mark exhibits, we'll collect them.

18 That's the end of my welcoming remarks.

19 ██████████, do you have anything?

20 ██████████. We just thank the witness for joining us today.

21 Mr. Graves. Thank you.

22 Mr. Castor. Ms. Zdeb, do you have any welcoming remarks?

23 Ms. Zdeb. I do. Thank you --

24 Mr. Castor. Okay, good.

25 Ms. Zdeb. -- Steve.

1 As you're aware, the committee's inquiry implicates an ongoing criminal
2 investigation and prosecution. At this juncture, Mr. Graves is going to be able to
3 address questions that can be answered without compromising the ongoing matter.

4 Specifically, the Department has authorized him to discuss U.S. Attorney and
5 now-Special Counsel Weiss's authority. And that would include the committee's interest
6 in whether Mr. Graves and his office prevented or denied Mr. Weiss the ability to bring
7 charges related to his investigation in the District of Columbia.

8 There may be some additional information Mr. Graves can share, depending on
9 the question, but, again, consistent with the Department's need to protect the ongoing
10 investigation.

11 I think you know, but to the extent you have questions that are outside the scope
12 of what Mr. Graves has been authorized to discuss at this point, we reiterate our
13 willingness to take those questions back and consider further accommodations at the
14 appropriate time.

15 All that said, our goal today is very much to facilitate Mr. Graves sharing as much
16 information as he can consistent with the scope of his authorization.

17 Mr. Castor. Great.

18 We'll start the clock. It's 10:05.

19 EXAMINATION

20 BY MR. CASTOR:

21 Q When were you nominated to be the U.S. attorney for D.C.?

22 A I was nominated in July of 2021.

23 Q And you were confirmed by the United States Senate when?

24 A October of 2021, I believe.

25 Q Okay. And then you were sworn in as the U.S. attorney?

1 A In November of 2021.

2 Q Okay.

3 Prior to joining the U.S. Attorney's Office in November of 2021, what was your
4 experience with the Justice Department?

5 A I had been a career prosecutor at the Justice Department, serving both as a
6 line assistant and as a career supervisor.

7 Q Okay. And for how many years?

8 A Collectively, a little bit under 10.

9 Q Okay. And in what sections or what divisions of the Department did you
10 work?

11 A So I worked in the U.S. Attorney's Office for the District of Columbia in a
12 number of different capacities.

13 Q Okay. But never Main Justice?

14 A That is correct; I never worked at Main Justice. Some of my investigations
15 involved me working with Main Justice, though.

16 Q Okay.

17 And your office right now, how many attorneys work in your organization?

18 A Counting temporary attorneys and attorneys on detail to us, ballpark,
19 roughly 450.

20 Q Okay.

21 And can you articulate for us your interactions with Main Justice? Do you
22 consider the DAG your supervisor or your direct -- the person you report to?

23 A And just to be clear, we're talking in my current capacity?

24 Q Yes.

25 A I think the way that it's articulated is, my direct supervisor is the Attorney

1 General --

2 Q Uh-huh.

3 A -- but there's a dotted line reporting to the Deputy Attorney General --

4 Q Okay.

5 A -- in her capacity as chief operating officer of the Department.

6 Q Okay. And in your day-to-day report, like, who do you ordinarily
7 communicate with at Main Justice? Is it Ms. Monaco or Mr. Miller?

8 A So I think the question assumes a level of coordination or communication
9 that doesn't necessarily exist.

10 Q Uh-huh.

11 A As U.S. attorneys, in general, we don't have day-to-day communication with
12 either the Office of the Deputy Attorney General or the Office of the Attorney General.

13 Q Okay. How often do you speak with Ms. Monaco?

14 A Ms. Monaco herself?

15 Q Uh-huh.

16 A Probably once a month, once every other month.

17 Q Okay. And Mr. Miller, Marshall Miller, the PADAG?

18 A Probably the same.

19 Q Okay.

20 A And it's changed over time in the role. I would say less now.

21 Q Okay. And is there anyone in the DAG's Office that you talk to more than
22 that, on a frequent basis?

23 A Yes. I talk to and members of my team talk to people on their staff more
24 than we talk to the principals.

25 Q Okay. And for you personally, who's the person in the DAG's Office that

1 you have the most frequent communications with?

2 A So it varies depending on the issue that's covered.

3 Q Okay.

4 A They're kind of divided into subject-matter expertise.

5 Q Okay.

6 A So at different times it's been different people, depending on the issue being
7 discussed.

8 Q Okay. With regard to the Hunter Biden matter, who in the DAG's Office did
9 you have communications with?

10 A To the best of my recollection, I don't think I had communications with
11 anybody in the DAG's Office.

12 Q Okay. So you didn't speak with Lisa Monaco about the Hunter Biden case?

13 A Certainly not --

14 Q Okay.

15 A -- her.

16 Q And Marshall Miller?

17 A No.

18 Q How about Mr. Weinsheimer, Brad Weinsheimer?

19 A I mean, other than --

20 Q About the Hunter Biden case.

21 A No.

22 Q Zero communications with Brad Weinsheimer?

23 A None.

24 Q Okay. Any other official in the DAG's Office that you had communications
25 with about the Hunter Biden case?

1 A So I can't recall. At that point in time, we were having more conversations
2 than we typically were with members of the Office of the Deputy Attorney General, given
3 what was occurring in our office at that point in time.

4 Q Okay.

5 A It is possible that the subject came up, but I have no recollection of it in one
6 of those communications.

7 Q So you have no specific recollection of any communications with anybody in
8 the DAG's Office about the Hunter Biden case.

9 A That is correct.

10 Q How about anybody in the Attorney General's Office?

11 A No.

12 Q About the Hunter Biden case.

13 A Absolutely not.

14 Q Okay. So you didn't speak to the Attorney General?

15 A That is correct.

16 Q Okay.

17 The chairman has joined us.

18 Mr. Graves. Chairman.

19 Chairman Jordan. Mr. Graves, thank you. Thanks for being here.

20 Mr. Graves. Thank you for having me.

21 BY MR. CASTOR:

22 Q Along the same lines, how often do you interact with the Tax Division in your
23 current role?

24 A Attorneys from the Tax Division?

25 Q Uh-huh.

1 A To the best of my recollection, I don't think I've interacted with them at all in
2 my current role.

3 Q Okay. But to bring a tax case, the lawyers in your department have
4 interactions with the Tax Division, correct?

5 A That is correct.

6 Q And how would you describe that?

7 A I'm sorry. Can you reframe the question?

8 Q How would you describe the communications on an ordinary basis that your
9 U.S. attorneys, your AUSAs, would communicate with the Tax Division lawyers?

10 A Yeah, so it depends on a variety of factors. And I did this when I was a
11 career prosecutor.

12 Q Uh-huh.

13 A There are cases where you're jointly prosecuting matters with them. The
14 contact looks different in that context than cases where you're prosecuting the case on
15 your own but, per the Justice Manual, there are certain authorizations you need to obtain
16 from the Tax Division in connection with those prosecutions.

17 Q Okay. And so it is fair to say, in Federal criminal tax cases, approval from
18 DOJ Tax is required before a U.S. attorney's office may issue subpoenas or undertake
19 other investigative actions?

20 A There are various steps along the investigative process that have to be
21 approved by the Tax Division in connection with the prosecution or investigation of tax
22 charges.

23 Q Okay. And so, if a U.S. attorney, whether it's yourself or Mr. Weiss, wanted
24 to bring tax charges against an individual, it would require the approval of the Tax
25 Division, correct?

1 A That is correct.

2 Q Under the Justice Manual.

3 A That is correct.

4 Q Okay.

5 If there is a disagreement, ordinarily, between a U.S. attorney's office and DOJ
6 Tax, in your experience, how is that sorted out? If, for example, the AUSA or the
7 U.S. attorney wants to bring tax charges and the Tax Division is balking, how does that
8 ordinarily get sorted out?

9 A So, first and foremost, in my experience -- and I'm drawing on my experience
10 as a career prosecutor, not my current role -- that is handled at the line level. And if
11 things need to be elevated, they're elevated in normal order up the career supervisory
12 chain.

13 Q Uh-huh.

14 A In my experience, generally, the Department arrives at consensus on --

15 Q Okay.

16 A -- how we should proceed.

17 Q Are there ever instances that you're aware of where the DOJ tax lawyers
18 wanted to bring a tax case but the local U.S. attorney or the AUSA assigned to it did not?

19 A To the best of my recollection, when I was on the line and when I was
20 supervising line attorneys, I can't recall that situation occurring.

21 But an important caveat to that is, I can't remember many cases where we
22 actually partnered with the Tax Division, as opposed to interacting with the Tax Division --

23 Q Okay.

24 A -- to get their approval.

25 Q Okay. And how is that different? If there's a tax prosecution in D.C. that

1 your AUSAs are working, how does the partnership work with the Tax Division?

2 A So, in general, when we're partnering with any Main Justice component, Tax
3 Division or otherwise, they're fully fledged on the case; both supervisory chains have to
4 approve all actions --

5 Q Okay.

6 A -- that are taken in connection with the prosecution.

7 Q Okay. Are there ever instances where you'll bring a tax case without the
8 assistance of the Tax Division lawyers?

9 A Yes. So that's what I was saying before. All of the cases that I can recall
10 that I worked on or supervised where there were tax charges, we were doing those cases
11 on our own without the Tax Division.

12 Q Okay. And why was that, or why would that occur, where you wouldn't
13 lean on Tax Division resources to prosecute a case?

14 A It's actually fairly normal --

15 Q Okay.

16 A -- in my experience. There is, unfortunately, lots of tax evasion out there,
17 and the Tax Division, it isn't structured to have prosecutors --

18 Q Okay.

19 A -- in all of them. The idea is that the U.S. attorney's offices in general will
20 handle a lot of those cases.

21 Q Okay. So the Tax Division reviews the charges, okays them, and then your
22 office would move forward?

23 A Correct.

24 Q Okay.

25 Has there ever been an instance where a U.S. attorney from a different district

1 came to you with a case that needed to be prosecuted in D.C.?

2 A So I think, outside of this situation, the technical answer to your question is
3 no, because it's assuming that those communications are occurring at the U.S. attorney
4 level.

5 There have been instances where other offices have reached out to career people
6 in my office and said, for a variety of reasons, there's this investigation that we have here,
7 where it's actually -- the venue is appropriate in your jurisdiction.

8 Q Okay. And so how does that ordinarily work? The line AUSAs talk to each
9 other and reach a conclusion?

10 A That's correct, the line AUSAs or -- usually, the interaction is at the line level.
11 It's a career supervisor reaching out to another career supervisor, because people in
12 general know each other.

13 This most commonly happens, in my experience, for our office with the Eastern
14 District of Virginia and Maryland --

15 Q Uh-huh.

16 A -- because you can be in an investigation in one jurisdiction and realize,
17 because of our proximity, that, actually, the better venue is another jurisdiction.

18 Q Okay. And so, ordinarily, those types of decisions don't make their way up
19 to the U.S. attorney for approval?

20 A What I would say is, they certainly don't require U.S. attorney approval
21 necessarily. I am briefed when those happen as part of my normal briefing on what is
22 happening in our Criminal Division.

23 Q And when these types of situations occur, how does the prosecution move
24 forward? Let's say it's an AUSA in Maryland that realizes venue's appropriate in D.C.,
25 wants to bring a tax case, confers with your line AUSAs, decide that they will take the

1 case. How does that work?

2 A It varies, and it's very case-specific. It can be what you just described, that
3 we actually take the case and then we try it with our prosecutors. It can be that
4 assistant United States attorneys from other jurisdictions get designated as special
5 assistant United States --

6 Q Okay.

7 A -- attorneys in our jurisdiction --

8 Q Okay.

9 A -- and then prosecute the case that way.

10 Q Okay. And how often would you say it happens? What's the more
11 ordinary situation? Is it your prosecutors taking the case, or is it you, your office,
12 designating the lawyers from Maryland or Virginia as special AUSAs?

13 A It's -- I'm sorry, I just want to clarify. Are you saying, what's more
14 common --

15 Q Yeah.

16 A -- for prosecutors from another jurisdiction to come here and try the cases
17 or for us to take the case in its entirety? Is that the question?

18 Q Yes.

19 A Okay. I think, in general, in my experience, it's prosecutors from other
20 jurisdictions coming or --

21 Q Okay.

22 A -- us going out and trying. But it depends.

23 Q Uh-huh.

24 A A big factor is going to be, like, how far along are you in the investigation.

25 Q Right. Okay.

1 Is there a difference in the DOJ Tax world between approval of charges and
2 discretion? Are you aware of that distinction?

3 A No.

4 Q Okay. So, as far as you're concerned, DOJ Tax, they either approve or
5 decline to recommend charges?

6 A In my experience, that's been the case --

7 Q Okay.

8 A -- yes. You either get approval or you don't get approval.

9 Q Okay. So there's no middle ground, something called "discretion"?

10 A In my experience. I can't claim that I've seen every iteration possible of a
11 tax case.

12 Q Okay. Fair enough.

13 Now, as far as the Hunter Biden case is concerned, what is your awareness of DOJ
14 Tax's position on that?

15 A I have no knowledge from within the Department.

16 Q Okay.

17 A I mean, there are things that I've seen in public reporting, but I have no
18 job-related knowledge of what the Tax Division's position is.

19 Q So you're unaware of whether the Tax Division recommended charges or not
20 in the Hunter Biden case?

21 A That is correct.

22 Q Okay.

23 Can you walk us through your recollection of how the Hunter Biden case was
24 brought to your office?

25 A Yes. To the best of my recollection, in late February or early March of

1 2022, then-U.S. Attorney Weiss, now-Special Counsel Weiss, called me directly.

2 Q Okay. And what did he say?

3 A To my recollection, he said that he had a case where there was a component
4 of that case that he had deemed he wanted to bring in the District of Columbia.

5 Q Okay. And what did you say?

6 A So, at a high level, without getting into the case specifics, my recollection
7 was generally saying -- asking him whether he was just looking for the kind of normal
8 administrative support that any U.S. attorney would need if they were going to come and
9 bring a case in another jurisdiction or have their people bring a case in another
10 jurisdiction, or whether he was asking for us to join the investigation.

11 Q And what was his answer?

12 A To the best of my recollection, his answer was that, at a minimum, it was
13 providing the support but we could discuss further joining or not.

14 Q And what happened next after that telephone call? Did you resolve
15 anything on the call?

16 A Nothing other than a high-level commitment that we would provide
17 whatever logistical support that he needed, and I would work with my career people to
18 put them in touch with his career people.

19 Q Okay. And that was the end of the call?

20 A Yes.

21 Q And do you remember how long that lasted?

22 A Best recollection, roughly 10 minutes.

23 Q And then what did you do next?

24 A I went to the then-head of our Criminal Division.

25 Q And who's that?

1 A Well -- so, in general, I would prefer, in the context of this interview, given
2 what you referenced before about, despite all of our best efforts, some of these
3 transcripts becoming public, giving positions as opposed to names. We can work with
4 OPA if this really does become --

5 Q I mean, we'd ask you for the name of the head of the Criminal Division; we
6 might ask, you know, your first assistant. I think we're looking for those two names, but
7 about other than that, I think we can --

8 A So can we -- my request to you would be that we kind of work this through
9 OLC as opposed to putting it in an official transcript. I'm already dealing with enough
10 threats and harassment of my assistant United States attorneys --

11 Q Okay.

12 A -- who are career prosecutors.

13 Q So you're unwilling to tell us who the head of the Criminal Division is?

14 A So --

15 Q I mean, we can probably look that up on the internet, can't we?

16 A So I'm not sure that you could look it up at that point in time. But what I
17 am saying is, I would like to work this out so that it's not in the official transcript.

18 Q Okay.

19 So you had a telephone call with the head of the Criminal Division?

20 A No. I went to the head of the Criminal Division's office.

21 Q Okay. And what did you say, to the best of your recollection?

22 A To the best of my recollection, I relayed what had just been conveyed to me.
23 I asked the head of the Criminal Division to have some of our career prosecutors work
24 with their counterparts in Delaware to get a briefing on the case --

25 Q Uh-huh.

1 A -- to make a recommendation about how we should proceed, in terms of
2 whether we would continue to seek to potentially join the investigation.

3 Q And did you have any communications with your first assistant on this
4 matter?

5 A My first assistant was present for a number of these conversations -- well,
6 sorry. Strike that.

7 I just want to be crystal-clear. Technically, we don't have a first assistant.
8 There's no one who had that title in our office.

9 Q Okay. So what title does the person who serves effectively -- effectively as
10 the first assistant?

11 A It's the principal assistant.

12 Q Okay. So it's just a different name, principal assistant as opposed to a first
13 assistant?

14 A It's a different name and -- it's a different name.

15 Q Okay.

16 So tell us about the communications you had with your principal assistant.

17 A So my principal assistant, to the best of my recollection, was present for this
18 meeting and a couple other limited meetings that occurred, but my principal assistant
19 didn't take any active role in moving anything forward in our office or having
20 communications with anyone outside of our office.

21 Q Okay.

22 Now, you indicated that you went down the hall to speak with the head of the
23 Criminal Division, correct?

24 A That is correct.

25 Q Now, was it just a -- was it an official meeting, in your view, or was it just a

1 conversation?

2 A I'm not sure of the distinction you're trying --

3 Q Well, was something on a calendar that you scheduled?

4 A No, there was no calendar invite.

5 Q Okay. So you just walked down the hallway and the head of the Criminal
6 Division was able to talk to you about this?

7 A That is correct.

8 Q And do you remember any other communications or meetings like this that
9 you had on the case?

10 A So I -- there was one other meeting that I recall.

11 Q Okay. With the head of the Criminal Division?

12 A Just in general, there's one other meeting that I recall.

13 Q Okay.

14 And so what was the next step after you had this discussion with the Criminal
15 Division head?

16 A So the next step was for the Criminal Division head to reach out to the
17 appropriate section within our office that does tax investigations to have the matter
18 staffed for an assessment and to get back to me quickly with their recommendation.

19 Q Okay. And what did they do, as far as you know, next? Did they go to
20 Delaware? Did they communicate with the AUSAs in Delaware on the phone? How
21 did they conduct their assessment?

22 A My understanding at a high level is, there was some interaction with the
23 AUSAs in Delaware. They got some case-related or investigation-related material. I
24 don't know specifically who the individuals were that they interacted with or what
25 materials they reviewed or gathered.

1 Q Okay. Now, did you review any materials?

2 A To the best of my recollection, no, I didn't review any underlying case
3 materials.

4 Q Okay.

5 So you had the conversation with Mr. Weiss; then you had that conversation with
6 the head of the Criminal Division. The head of the Criminal Division, as far as you know,
7 instructed the AUSAs in your office to communicate with the AUSAs in Delaware. Some
8 materials were exchanged, but you don't know what materials they were?

9 A That is correct.

10 Q Okay. And then what happened?

11 A Well, during the course of all of this, we're taking steps to facilitate whatever
12 then-U.S. Attorney Weiss would need in terms of bringing a case in the District --

13 Q Okay.

14 A -- separate and apart from whether we would join the investigation.

15 Q Okay. And tell us what that is.

16 A So some of it is protected, but what I can say at a high level, in general:
17 Whenever you're trying to return an indictment, if it's a felony charge, we can't just bring
18 those charges on our own. We have to present evidence to a grand jury, and a grand
19 jury has to --

20 Q Of course.

21 A -- vote those charges. So that's a key step that's done in any case where
22 someone wants to bring charges, and kind of facilitating that process.

23 Q Okay. And did you facilitate that process?

24 A So I can't speak specifically about the case, but what I'm telling you generally
25 is that that's what we would do when we receive requests to help with returning an

1 indictment in our jurisdiction.

2 Q Okay. And what else?

3 A At a high level, without getting into case specifics, I think that generally
4 describes what was occurring at that point in time.

5 Q Okay.

6 What feedback did you receive from your people after the interactions that they
7 had with the U.S. Attorney's Office in Delaware?

8 A To my recollection, they had a meeting with the relevant career supervisors
9 and the career prosecutor who was assigned to the matter, where they provided their
10 assessment.

11 Q And what was their assessment?

12 A So I can't get into what their assessment was, because it concerns an
13 ongoing investigation.

14 Q Okay.

15 So is that the universe of meetings you had in this case? You had the -- or,
16 meetings or calls? You had the call with Mr. Weiss. You had the drop-by meeting with
17 the head of your Criminal Division. And then now you said you had a meeting with your
18 AUSAs.

19 A Those are the most prominent.

20 Q Uh-huh.

21 A It's possible -- because, I mean, my Criminal Division chief and I, at that point
22 in time, were in daily contact --

23 Q Uh-huh.

24 A -- I mean, multiple times per day.

25 Q Right.

1 A So it's possible, in any one of our other various times that we were together,
2 the issue came up.

3 But those are kind of the three most prominent events that I recall.

4 Q And -- go ahead.

5 Chairman Jordan. Earlier, Mr. Graves, you said you had one other meeting, 2
6 minutes ago, and you described it as a general meeting. Is that related to all this? Or
7 tell me about that meeting.

8 Mr. Graves. That is the meeting that I was describing where I met with the
9 career prosecutor, yep, yes.

10 Chairman Jordan. Fine.

11 BY MR. CASTOR:

12 Q And when was that?

13 A I think it was March 19, 2022.

14 Q And was a decision made at that meeting?

15 A Yes.

16 Q Okay. And the decision was made not to move forward with the case,
17 correct?

18 A So I wouldn't describe it that way.

19 Q The decision was made not to partner with the U.S. Attorney's Office from
20 Delaware, correct?

21 A So I think what has obviously been publicly reported and is known -- and I'm
22 trying to be careful, given that there's an ongoing investigation -- is that we ultimately did
23 not join.

24 And recall, when this came up, to my recollection, I was the first person to raise
25 whether they wanted a local counsel on the case. And I think the best way of

1 characterizing the decision was, we instructed -- I instructed to say that we weren't going
2 to pursue being a local counsel on the case.

3 Q So the meeting that you had on March 19th, the decision was made not to
4 join.

5 A So, not to continue to pursue to see if they'd be willing to allow us to serve
6 as local counsel, but to provide all assistance that was necessary for them to do whatever
7 they wanted to do in our jurisdiction.

8 Q So the decision was made to invite them into your jurisdiction and let them
9 prosecute the case?

10 A That decision had been made when then-U.S. Attorney Weiss called me.

11 Q Okay.

12 A Then I made the decision, we were going to do whatever he needed --

13 Q Okay.

14 A -- done logistically in our jurisdiction.

15 Q Okay. So you were going to welcome the prosecutors from Delaware into
16 D.C. and let them prosecute the case?

17 A Yes. The only issue was whether we were going to seek to join their
18 investigation or not.

19 Q Okay. And you decided not to join their investigation.

20 A That is correct.

21 Q And can you tell us why?

22 A So I unfortunately cannot get into the why without getting into the case
23 specifics of an ongoing investigation.

24 Q Okay.

25 And how was the decision not to partner or not to join -- everyone's got a

1 different way of saying it -- how was that communicated to the Delaware U.S. Attorney's
2 Office?

3 A Instructed it to occur at the line level.

4 Q At the line level?

5 A Yes.

6 Q Did you have any telephone calls or anything of that nature with Mr. Weiss?

7 A To the best of my recollection, no. I only recall that first conversation. It's
8 possible that we had one. I'm talking about, like, a year and a half ago. But that's all I
9 recall.

10 Q Okay.

11 And in the March 19th meeting, were all the officials in the meeting your staff?

12 A That's correct.

13 Q Okay. And who was in that meeting?

14 A The --

15 Q How many people?

16 A Roughly, to the best of my recollection, five or six.

17 Q And who were those five or six people?

18 A The principal assistant; Criminal Division chief; the head of our fraud, public
19 corruption, and civil rights practice; the head of our Fraud and Public Corruption Unit; and
20 a line assistant, I believe.

21 Q And can you tell us anything more about the March 19th meeting, about
22 what was communicated to you and what decision -- what types of things led to the
23 ultimate decision?

24 A So I understand the question, and in the constraints we're operating under, I
25 can't answer it directly.

1 What I can say generally, in terms of how I run these meetings, is, if it's a decision
2 that rises to my level, I make everyone present give their view of how we should proceed.

3 Q And was the view unanimous?

4 A So I can't get into this case specifically. I will say, in general, in my
5 experience, most of the things that come to me, the overwhelming majority are
6 unanimous.

7 Q Uh-huh.

8 A There are some times where there's disagreement among various
9 supervisors, and that's where I have to decide with one camp or another.

10 Q Okay. But this is a very unusual case, correct? I mean, this doesn't fall
11 into the ordinary type of matter, right?

12 A In what sense?

13 Q Well, it's the son of the President of the United States.

14 A So I understand where you're coming from, and I get your point. Being in
15 D.C., we have a good number of cases that involve very prominent individuals.

16 Q Okay, but nothing like the son of the President of the United States.

17 A I would actually -- I mean, I can't get into all of it, but I'd actually disagree. I
18 think there are things of that level that --

19 Q So this was common?

20 A I didn't say "common."

21 Q Uh-huh.

22 A I didn't say "common" at all.

23 Q Right.

24 A But it's not unusual or a one-of-a-kind to have a family member of someone
25 who is prominent, or someone who is prominent themselves, under investigation in our

1 office.

2 Chairman Jordan. When did U.S. Attorney Weiss call you? In March of 2022?

3 Mr. Graves. So, to the best of my recollection, it was late February or early
4 March.

5 Chairman Jordan. So, in 3 weeks' time -- so you've got the U.S. attorney calling
6 you about an important case, as Steve just talked about, a somewhat unusual case. He
7 calls you and asks that you partner with them and assist them, right? I think you made
8 those two distinctions.

9 And -- go ahead. Correct me if I'm wrong.

10 Mr. Graves. So I just want to clarify. He asked for assistance. I asked if he
11 needed us to partner or if he wanted us to partner. And he said he was open to a
12 conversation about that --

13 Chairman Jordan. Okay.

14 Mr. Graves. -- but needed the assistance.

15 Chairman Jordan. Okay.

16 But in 3 weeks' time, you decide not to partner. On March 19th you have the
17 meeting, and the determination is made you were not going to partner with the
18 U.S. attorney.

19 Mr. Graves. We decided that we were not going to join the investigation. And,
20 again, the context here is, I was the one who brought it up, not them. And I understood,
21 for a variety of reasons, it was important for us to move quickly.

22 Chairman Jordan. And then you didn't call David Weiss; you just let your
23 assistant attorneys let Delaware know.

24 So the only conversation you had with David Weiss was, he calls you up about a
25 pretty important case and asks for your assistance. You raise the issue of whether you

1 can partner or not. Three weeks later, you decide you're not going to. And then you
2 don't communicate back to him.

3 Mr. Graves. So --

4 Chairman Jordan. You, personally, don't.

5 Mr. Graves. So me, personally? No. I instructed my career prosecutors to
6 convey the decision and the basis for the decision to his career prosecutors.

7 Chairman Jordan. Okay.

8 BY MR. CASTOR:

9 Q Now, you're a big-time Democrat, correct?

10 A I wouldn't describe it that way, but okay.

11 Q You were nominated by the President of the United States to be the U.S.
12 Attorney for D.C., correct?

13 A That is correct.

14 Q You worked on the Biden campaign, right?

15 A That is -- I understand where your question is coming from. I actually
16 wouldn't characterize it that way.

17 Q You had a role with the Biden campaign?

18 A So do you want me to actually clarify what that was?

19 Q Sure.

20 A So I knew someone who had some affiliation to the campaign; said that I was
21 interested in criminal justice issues. I got put on this committee, and my
22 responsibilities, being on this committee, consisted of receiving emails from the
23 committee that anybody -- basically, almost anybody who contributed. I had no direct
24 interaction --

25 Q Okay.

1 A -- or indirect interaction with anybody on the campaign.

2 Q Contributed money?

3 A I did contribute money.

4 Q Okay.

5 Mr. Swalwell. Sorry, what was it?

6 Mr. Graves. I did contribute money.

7 BY MR. CASTOR:

8 Q And you also had a role with the Kerry campaign, as I understand it?

9 A So the firm that I was working with at the time provided some support to the
10 Kerry campaign in connection with its vetting process for Vice Presidential candidates.

11 Q Anything else with the Kerry campaign?

12 A No, that was it. And I had no direct interaction or indirect interaction with
13 anyone from the Kerry campaign. It was strictly working for people within the firm.

14 Q Okay.

15 I mean, this isn't surprising. I mean, you know, you're the U.S. attorney pick for
16 President Biden.

17 A Yes.

18 Q Obviously you're aligned with his political party and so forth. So, you know,
19 you shouldn't be, you know, alarmed that we're asking these questions or that the
20 answers are, yes, I'm somebody that's been affiliated with the Biden campaign, the Kerry
21 campaign, and also the Clinton-Gore campaign. Is that correct?

22 A Yes. The Clinton-Gore campaign, my sophomore -- junior year of college, I
23 took off my fall semester to work advance for that campaign.

24 Q Okay. And did you ever work on any Republican campaigns?

25 A I did not work on any Republican campaigns. I worked for a Republican

1 State senator.

2 Q Okay. Any other bipartisan elected work, work for elected officials?

3 A Other than -- I mean, I had very limited work for elected officials. And,
4 again, the only time that I worked directly for an elected official, not in the campaign
5 context, was when I worked for a Republican State senator.

6 Q Okay.

7 Now, let me take a step back. In the Hunter Biden case, do you think a
8 special-counsel situation would've made sense from the outset?

9 A So, you know, I've been authorized to discuss U.S. Attorney Weiss's authority
10 and the circumstances around his interaction with our office about bringing charges.
11 That kind of goes outside of it. And, candidly, I don't know that I have enough
12 information about the investigation to make that kind of assessment.

13 Q Uh-huh. But you understand the perception problem. You're an
14 appointee of President Biden, and, here, you've been asked to weigh in on a prosecution
15 involving his son. I mean, certainly, there's an obvious perceived -- at least the
16 perceived conflict of interest, correct?

17 A I don't -- I don't see it that way.

18 Q Okay. And why is that?

19 A So we have investigations all the time --

20 Q Uh-huh.

21 A -- the Department does, of individuals who are members of the
22 administration.

23 Q Uh-huh.

24 A A family member of the administration? I don't see it as necessarily a
25 conflict of interest or perception of a conflict of interest.

1 Q Uh-huh. So you don't believe you should've recused yourself?

2 A No.

3 Q And in your communications with Mr. Weiss, did he alert you that he
4 believed he had ultimate authority to bring this case?

5 A The subject of his authority never came up, to the best of my recollection,
6 because it was just assumed that, from the moment I got on the call, he was gonna be
7 able to do whatever he needed to do in our jurisdiction to bring the case, if that was his
8 prerogative.

9 Q And do you know if, ultimately, the line -- when your line AUSAs were talking
10 to his line AUSAs, do you know if they made any requests of -- like, what did they need
11 from your office other than help with the grand jury --

12 A So --

13 Q -- to bring the case?

14 A Yeah. So, again, it's hard to get into this without getting into the specifics
15 of the case. But I would say, in any case, the primary thing you need, once you're at the
16 stage where a charging decision has ostensibly been made, is the logistical support and
17 the grand jury -- getting before a grand jury, securing time in a grand jury --

18 Q Right.

19 A -- presenting evidence to a grand jury, and ultimately asking a grand
20 jury -- presenting charges to the grand jury, and ultimately asking a grand jury to return
21 an indictment.

22 Q And so your testimony is, your office was willing to facilitate that fully.

23 A Those were my instructions from the first.

24 Q And do you know if your staff communicated that to the Delaware U.S.
25 Attorney's Office?

1 A My understanding is, that was communicated instantly.

2 Q Uh-huh.

3 And after the March 19th meeting where the decision was made not to join, not
4 to partner, did you give any instructions to your staff to go back and tell the Delaware
5 U.S. Attorney's Office that, while you weren't joining and you weren't partnering, you
6 wanted to make all the resources available?

7 A So we had already made that clear at the outset, so I didn't feel like I needed
8 to give the instruction. And based on what was happening, I knew that there was no
9 reason that I needed to give that instruction again.

10 Chairman Jordan. So, then, tell me what the distinction is. In this March 19th
11 meeting, when you decide that you're not going to do some things but you are going to
12 do others, what is the actual distinction? What did you decide not to do?

13 Mr. Graves. So let me take a step back and just talk about this in general.

14 So, as we were talking about before, there are some times, where we have
15 neighboring jurisdictions, where they realize that, for whatever reason, something they
16 were investigating is better venued in D.C. We work with them all the time -- not "all
17 the time." It comes up not infrequently, and we have mechanisms for working with
18 them to be able to, like, get their charges brought in the District. And we work through
19 that. We often don't join those cases, but we support them.

20 We also have Main Justice components that will come into our jurisdiction and
21 want to bring cases, where, for a variety of reasons, either because we don't want to or
22 they don't want to, we don't partner and they just do it in our jurisdiction. They have all
23 kinds of questions -- because they don't prosecute here -- about the practicalities. Like,
24 what do the templates look like? Who do you contact in the clerk's office? Like, all of
25 those things are the questions that come up. Just as, if I went into Delaware, like, I

1 would have no clue. I couldn't just go in and say, "Hey, I'm a U.S. attorney from D.C. I
2 want to enter in a grand jury." I would need Delaware to facilitate that.

3 Chairman Jordan. I just want to -- you told the Delaware U.S. attorneys that "we
4 don't want to join, but we'll assist with the grand jury." Does that cut to the chase?

5 Mr. Graves. No. Cutting to the chase is, "We'll do whatever you need done to
6 bring this case. And we're kind of withdrawing our request or our interest -- the
7 question we asked about whether you want local counsel, we're kind of tabling that issue
8 and not interested in pursuing that."

9 Mr. Castor. So you weren't willing to offer your AUSAs to sit at the table?

10 Mr. Graves. So -- I want to be clear on this. I had raised -- and let me take a
11 step back --

12 Chairman Jordan. Is there a distinction between not being local counsel and
13 joining the case, or are those one and the same?

14 Mr. Graves. Those are one and the same, in response to your question.

15 Chairman Jordan. Okay.

16 Mr. Graves. Going back a question, I want to be clear about this from, like, what
17 is happening here.

18 So, in general, putting this case aside, U.S. Attorney's Offices don't partner with
19 other U.S. Attorney's Offices. Each U.S. attorney is the chief law enforcement officer in
20 his or her jurisdiction. They generally stick in their jurisdiction.

21 If there is something that happens where we have, kind of, these venue problems
22 or you realize a case initiated in one jurisdiction has to be brought in another, usually it is
23 the AUSAs from those jurisdictions going to the other jurisdiction and handling it that
24 way.

25 When our office, in general, decides to join with another Department of Justice

1 component, that's usually done at the beginning of an investigation. It's exceedingly
2 rare for an ongoing investigation for someone to join as a partner afterwards.

3 There are a lot of issues. First of all, the component that has been conducting
4 the investigation generally doesn't want another component coming on at the 11th hour.

5 Mr. Castor. Fair enough.

6 Mr. Graves. The challenge is -- particularly when you're talking about U.S.
7 attorney and U.S. attorney -- is you're bringing in another chain of command. And once
8 you're partnered, you have to reach consensus. So, as a manager, in general, we don't
9 want to do that.

10 And on our end of it, if it's an ongoing investigation, there is no way, whether it's 3
11 weeks, 3 months, if it's been a multiyear investigation, that we can get up to speed on
12 everything that has occurred beforehand. So you're kind of buying a mansion without
13 an inspection, and whatever problems exist, you are buying those.

14 Chairman Jordan. I understand.

15 But you said earlier, U.S. attorneys don't partner with other U.S. attorneys. But
16 that's not what the Attorney General told us; that's not what David Weiss told us.
17 We've got all kinds of correspondence that uses that exact language, that you do partner.
18 And that was the question. And that's why we're asking the questions we're asking.

19 Mr. Graves. So I've seen some of the correspondence. I don't quite read it the
20 way that you do. I'm telling you, just in general, it would be difficult to find a single
21 prosecution where there are two U.S. attorneys operating in one of their jurisdictions.

22 BY MR. CASTOR:

23 Q So what happened next after the March 19th meeting, to the best of your
24 knowledge? Your staff went and communicated the decision to --

25 A The staff went and communicated the decision that we weren't going to

1 seek to join but would continue to support whatever they needed in the jurisdiction.

2 And I don't recall any other subsequent calls.

3 Q Okay.

4 Did your staff, before the March 19th meeting, have any communications that
5 you're aware of with Main Justice?

6 A Who do you mean by "Main Justice"?

7 Q Anybody in the Tax Division, anybody in the DAG's Office, anybody in the
8 AG's Office, anybody in any other office at Main Justice.

9 A So the Tax Division, potentially, though I don't know.

10 Q Uh-huh.

11 A The AG's Office, certainly not.

12 And I am not aware of the Deputy Attorney General's Office. But, at that point in
13 time, I would point out that we were kind of, as I said before, in daily contact with them
14 related to some other prosecutions, so it's possible that it came up.

15 Q Okay. So it's possible.

16 Now, of all the people in the meeting -- the principal assistant; the Criminal
17 Division chief; the head of the fraud, civil division; the head of the public corruption
18 division; or the line assistant -- of that universe of people, who would be the individual
19 having communications with the DAG's Office?

20 A So, after myself, the person who had the most independent -- at that point
21 in time, the most independent conversations with the DAG's Office would've been the
22 Criminal Division chief.

23 Q Okay. So, if anyone was having communications with the DAG's Office on
24 this issue, it was either you or the Criminal Division chief?

25 A I'd be speculating -- I'm speculating now.

1 Q Right.

2 A But I'm just telling you who had the most contact with the Office of --

3 Q Okay.

4 A -- the Deputy Attorney General at that point in time.

5 Q And do you know if the Criminal Division chief -- and you won't give us the
6 name of that person? Is that right?

7 A In the context of the transcribed interview, I am requesting not to.

8 Q Okay.

9 A If this is something that you're interested in, we can work through OLC.

10 Ms. Zdeb. OLA.

11 Mr. Graves. Oh, sorry. Sorry. OLA.

12 Mr. Castor. Okay. OLC definitely doesn't want to do this.

13 Mr. Graves. Yeah. That would be a very slow process, if we worked through
14 OLC.

15 BY MR. CASTOR:

16 Q So the Criminal Division chief, what do you know about the
17 communications -- can we -- is it a he or she? Can we --

18 A Sure. At that point in time, it was a he.

19 Q Okay. So do you know what communications he had with the DAG's Office
20 on this case?

21 A I am not aware of him having any communications. I am just not
22 foreclosing the possibility that the subject --

23 Q Okay.

24 A -- maybe came up.

25 Q Okay. So, to the best of your knowledge, nobody on your team, including

1 yourself, had any communications with the DAG's Office on the Hunter Biden case.

2 A Correct.

3 Q Or anybody at Main Justice, other than the Tax Division.

4 A Correct.

5 Q And who from your office was working with the Tax Division at Main Justice?

6 A So I'm not aware. Given the -- it is possible that individuals, either career
7 supervisors or the career prosecutor, had communications. I just don't know.

8 Q Okay.

9 Now, are you aware that the whistleblower testimony from the IRS
10 whistleblowers -- Mr. Shapley, Mr. Ziegler -- tell of a conversation that Mark Daly -- Mark
11 Daly is a Tax Division lawyer. Mark Daly related to Mr. Ziegler that he had conversations
12 with -- it was described as your first assistant, but presumably it was the principal
13 assistant.

14 Are you aware of that testimony?

15 A I've generally seen some public reporting around that testimony.

16 Q And do you know if that's accurate?

17 A So, again --

18 Q At the time, was your principal assistant -- is it a he or a she?

19 A A she.

20 Q Okay. So do you know if your principal assistant had communications with
21 Mark Daly on this topic?

22 A So, again, we're kind of straying very close to the subject matter of the
23 investigation. What I can say at a high level with respect to the principal assistant: I do
24 not recall her doing anything other than attending meetings that I happened to be at in
25 connection with this case.

1 Q Okay. So you're not aware of her having a conversation with Mark Daly on
2 this issue? That wasn't reported back to you?

3 A That is correct.

4 Q Okay. Is it possible the Criminal Division chief was the one talking with
5 Mark Daly?

6 A So, sure, anything is possible. And this is why I was saying earlier the
7 principal assistant versus first assistant wasn't, like, a distinction without a meaning.

8 Q Okay.

9 A I do not think the principal assistant was involved. So if whoever this
10 conversation --

11 Q But who do you think was talking to Mark Daly?

12 A I don't know. It could've been -- with the people that were involved, I think
13 there could've been a lot of assumptions that they were the first assistant when they
14 weren't the first assistant. I don't know. I'm --

15 Q Fair enough.

16 A -- speculating.

17 Q But it was someone from your office.

18 A Someone from my office, sure.

19 Q Like, who do you think that was?

20 A One of the people that I just described --

21 Q Okay.

22 A -- that was at that March 19th meeting.

23 Q Okay.

24 Chairman Jordan. One of those five to six people --

25 Mr. Graves. Yeah.

1 Chairman Jordan. -- at the March 19th --

2 Mr. Graves. Yes.

3 Chairman Jordan. -- meeting? Okay.

4 Mr. Graves. Yes.

5 BY MR. CASTOR:

6 Q And did you learn about that communication from them? Or did you learn
7 about that apparent communication from Mr. Ziegler's testimony or Mr. Shapley's
8 testimony?

9 A The first time I heard about the communication was the public reporting.

10 Q Okay. And did you go back and circle up with your staff to see what they
11 remembered when that became public?

12 A No.

13 Q You did not.

14 A No.

15 Q Okay.

16 After the whistleblower testimony became public and there was news stories
17 about it, did you read the whistleblower testimony?

18 A The whole testimony? No. I've seen news coverage.

19 Q Okay. So you didn't read any of the transcripts?

20 A I mean, I might have seen portions of transcripts in news --

21 Q In news stories.

22 A -- coverage, but I did not, like, pull a transcript and read it from beginning to
23 end.

24 Q Okay.

25 And did you talk with any of the people that were in this meeting about what the

1 public reporting was?

2 A Not in any great substance.

3 Q I mean, were you surprised by the public reporting?

4 A Yes.

5 Q And why is that?

6 A I'm trying to think of how to best answer this without getting into the
7 substance.

8 So let me take a step back and talk about why I was surprised and why I was not
9 surprised.

10 So why I was not surprised is that I have worked, personally, a number of
11 whistleblower investigations and kind of understand how these things can unfold and the
12 garble that can happen when you layer hearsay on top of hearsay on top of hearsay.
13 And when you look at a lot of this, it's someone said that someone said that someone
14 said. So, not surprised that these things can happen.

15 Q Uh-huh.

16 A But definitely surprised by the allegation, because it's not consistent with my
17 recollection.

18 Q Which allegation?

19 A Well, the allegations, as I understand them, have evolved over time.

20 Q Okay. So what do you understand are the allegations?

21 A So, in the first, it was that the U.S. Attorney's Office in the District of
22 Columbia blocked charges.

23 Q Okay.

24 A I understand from the public reporting that that has shifted --

25 Q Uh-huh.

1 A -- and I've seen the letters from USA Weiss denying that that occurred.

2 So -- so there's that.

3 Q Okay.

4 I mean, witnesses have phrased it, you know, in different ways -- that the U.S.
5 Attorney's Office in D.C. declined to partner, that they rejected the case. But, at the end
6 of the day, it's consistent that your office didn't want to move forward as a partner on the
7 case.

8 A I would describe those as radically different, right? If we are taking steps to
9 stop an investigation from going forward, that is markedly different from whether we are
10 facilitating --

11 Q Uh-huh.

12 A -- whatever another U.S. attorney wants to do and giving them all of the
13 logistical support they would need to do that.

14 Q Okay. And so you maintain here today that your office was willing to give
15 the Delaware U.S. Attorney's Office all the logistical support they needed to come into
16 your district and prosecute that case.

17 A Yes.

18 Q Now, did you ever follow up to make sure something wasn't lost in
19 translation between your office and the Delaware U.S. Attorney's Office?

20 A No.

21 Q Okay. I mean, is it possible that after the March 19th meeting your staff
22 communicated to Mr. Weiss's staff and something got lost in translation, that they
23 interpreted the message incorrectly?

24 A I mean, anything is possible.

25 Q Uh-huh.

1 A I was very clear in my initial conversation with U.S. Attorney Weiss that we
2 would provide support.

3 Q Uh-huh.

4 A I know that we took steps that would signal that we were very clear in that
5 commitment. And I was very clear with my staff about what they should communicate
6 about our decision about whether we would seek to join the investigation and the basis
7 for our decision to their counterparts.

8 Q Okay.

9 This is in March of 2022. As it reached, like, later parts in the year 2022, did you
10 ever have any followups with your staff, like, "Hey, are you sure that we haven't assured
11 the Delaware U.S. Attorney's Office that they have the green light to walk into our
12 jurisdiction and we'll help them with the logistical aspects?"

13 A I did have a conversation or two along those lines. I can't really get into the
14 specifics of the conversation.

15 Q When were they?

16 A Best of my recollection, that spring.

17 Q Okay. Like, April/May?

18 A That timeframe, yes.

19 Q Okay. And who were they with?

20 A The Criminal Division chief and potentially the principal assistant.

21 Q Okay. And what do you remember saying to them, at a high level?

22 A So I can't get into the specifics of, or even at a high level, what it was,
23 because it would implicate ethical rules that we operate --

24 Chairman Jordan. What did you say to them? "Hey, what's going on with this
25 case that David Weiss called me about a month ago? What's happening? I know we

1 made a decision on the 19th that we were going to say, you guys can come on in but we
2 ain't joining." Was that the nature of the conversation?

3 Mr. Graves. It was them flagging an issue for me.

4 Chairman Jordan. So they brought up to you that there was still a concern
5 with --

6 Mr. Graves. Not a --

7 Chairman Jordan. -- what was decided on the 19th?

8 Mr. Graves. No, not a concern.

9 Chairman Jordan. Okay.

10 Mr. Graves. Not a concern with what was decided on the 19th. Just kind
11 of -- I'm trying to think of how to do this.

12 I could just say at a high level, they alerted me to something about the status of
13 Delaware's investigation.

1 [11:00 a.m.]

2 BY MR. CASTOR:

3 Q Did they say that the investigation was moving forward, or not moving
4 forward?

5 A So --

6 Q Obviously they mentioned it to you that they needed to raise it to your
7 level?

8 A So -- yeah. And, again, I can't get into the specifics. The reason they
9 raised it with me had nothing to do with the investigation itself and more in terms of my
10 situational awareness for managing relationships with the court.

11 Chairman Jordan. Can we go back to the initial call from U.S. Attorney Weiss,
12 now Special Counsel Weiss? Tell me what happened in that call again exactly.

13 Mr. Weiss calls you and says: We want to bring charges in D.C.

14 Tell me what happens.

15 Mr. Graves. Sure. So Mr. Weiss said that he had an investigation that he had
16 been conducting. Some of the charges related to that investigation needed to be
17 venued out of the District, and he described the logistical support that he needed.

18 I told him we would provide the logistical support and asked him if he was also
19 interested in us joining the investigation as effectively local counsel once charges are
20 brought.

21 Chairman Jordan. You said a couple times you brought that up.

22 Mr. Graves. Yes.

23 Chairman Jordan. Okay. And then what did he say again?

24 Mr. Graves. He said: Definitely need the logistical support, and we can talk
25 about joining the investigation.

1 Chairman Jordan. But then you never talked to him about that. But you and
2 your team, your chief of the Criminal Division, the principal assistant, and one other
3 individual in the next 3 weeks, looked at whether you're going to become local counsel
4 and join. And then, on the 19th, you have a meeting, and you decide you're not going to
5 do that?

6 Mr. Graves. So trying to -- there was a lot in the question. I just want to make
7 sure.

8 So let me just state it to make sure that we're on the same page.

9 Chairman Jordan. Sure.

10 Mr. Graves. I tasked our Criminal Division chief with immediately taking steps to
11 provide the logistical support, asked him to assign the section leadership and an AUSA
12 from the relevant section to do a quick assessment because time was of the essence, and
13 we had to make a decision quickly, and --

14 Chairman Jordan. Why did you have to make a decision quickly?

15 Mr. Graves. For a variety -- I can say, at a high level, we needed to make a
16 decision quickly. I understand your question about the 3-week timeframe --

17 Mr. Castor. He can't answer that.

18 Mr. Graves. -- but why specifically, I can't get into.

19 Chairman Jordan. I get it.

20 Mr. Graves. So we had to make a decision quickly, and I instructed my team to
21 move with all speed, and they did.

22 Chairman Jordan. And then, on the 19th, the day you decided, is that the day
23 you also communicated?

24 Mr. Graves. I don't know if it was the exact day. And I'm saying the 19th. I'm
25 relying on my calendar for that being the day. It's possible that I'm looking at the wrong

1 meeting, but it would have been sometime then, like mid- to late March.

2 BY MR. CASTOR:

3 Q Were you aware around that time that the White House Communications
4 Office was issuing public statements --

5 A No.

6 Q -- about this case, that -- so you don't remember anything that was said from
7 the podium at the White House?

8 A Sorry. I should have let you finish your question.

9 No, I do not.

10 Q Okay. Do you remember anything that was said on the Sunday shows?

11 A No.

12 Q Okay. Were you aware of the President's position that, you know, he didn't
13 think his son had done anything wrong?

14 A I don't -- I actually don't think so. Yeah.

15 Q Did you hear him at the debate?

16 A Which debate?

17 Q You know, during the debate.

18 A Oh, like during the --

19 Chairman Jordan. Campaign.

20 Mr. Graves. -- campaign?

21 Chairman Jordan. Yeah.

22 Mr. Castor. Yeah.

23 Mr. Graves. I watched the debates, so I'm sure that I did. That's not something
24 that sticks out in my mind.

25 BY MR. CASTOR:

1 Q So, after March 19th, your office communicates to Weiss' office that you're
2 not going to join the case. You said that there were two other times that this case sort
3 of was brought to your attention by the Criminal Division chief, right, in the spring of
4 2022?

5 A No. I was saying there were two times total that I recall --

6 Q After the 19th?

7 A Not after the 19th. Including the 19th. The 19th and the original
8 conversation --

9 Q Okay.

10 A -- were the two meetings that I recall. I'm sure there was intervening
11 where we talked about it.

12 Q But didn't you say -- and maybe I misunderstood, but didn't you say
13 subsequent to the 19th --

14 A Oh --

15 Chairman Jordan. The conversation with the Criminal Division and during the --
16 Ms. Zdeb. Can we go off the record for one second?

17 [Discussion off the record.]

18 Mr. Castor. Go ahead.

19 Mr. Graves. Yes. So yes. They were not full-blown meetings. It was in the
20 context of another conversation or meeting, something that I was told for my situational
21 awareness about aspects of the support that we had agreed to provide to Delaware and,
22 in fact, had provided to Delaware.

23 BY MR. CASTOR:

24 Q And did you instruct anyone to call Weiss' office and say, "Hey, to be sure,
25 you can do whatever you need, and we will assist you"?

1 A I did not because I was incredibly clear in my conversation -- and I know the
2 subsequent steps that we took would have left no doubt that they knew they had all the
3 support they needed in D.C.

4 Q My time is up, but the subsequent steps you took, you're not willing to tell
5 us what they are?

6 A I'm not able to tell you what they are.

7 Q Okay.

8 Mr. Castor. Our time is up, so we'll --

9 Ms. Nabity. Off the record.

10 [Recess.]

11 [REDACTED]. All right. It is 11:15. We can go back on the record.

12 EXAMINATION

13 BY [REDACTED]:

14 Q Mr. Graves, before we get into our case in chief, or most of our questioning,
15 I wanted to clarify. In the prior hour, you had previously referenced the Criminal
16 Division. Do you recall that?

17 A Yes.

18 Q Was that a reference to the Criminal Division at Main Justice, or was that a
19 reference to the Criminal Division at the U.S. Attorney's Office?

20 A Thank you for clarifying that. That was a reference to the Criminal Division
21 within the D.C. U.S. Attorney's Office, not Main Justice.

22 Q Okay. And, just to put a finer point on this, the head of the Criminal
23 Division at Main Justice at that time period would have been Kenneth Polite. It wasn't
24 Kenneth Polite that you were having conversations with, correct?

25 A That is correct.

1 Q Okay. In the prior hour, we also talked about the Tax Division's
2 responsibility over certain matters and the way that you would consult with Tax Division
3 in certain instances, and I want to return to that discussion.

4 The responsibility that you're referring to is actually -- it's laid out in the Justice
5 Manual, correct?

6 A Correct.

7 Q So it's not specific to any particular case. It's guidance that applies to any
8 case?

9 A That is correct.

10 Q Okay. What's your understanding of why the Justice Manual grants the Tax
11 Division responsibility over these matters?

12 A So, at a high level, my understanding is that the Tax Code is one of the most
13 complicated criminal regimes that we have. It has, among the various levels of scienter,
14 kind of mental intent, the highest mental intent. There are all kinds of violations of the
15 Tax Code that don't rise to the criminal level. And you want a centralized group that is
16 very much steeped in these issues and able to make sure that tax prosecutions across the
17 country are being implemented uniformly.

18 [REDACTED]: I want to introduce -- I think this is actually exhibit 1, Justice Manual
19 section 6-1.000, which is entitled "Department of Justice Policy and Responsibilities, Tax
20 Division."

21 [Graves Exhibit No. 1

22 Was marked for identification.]

23 [REDACTED]: There is a couple copies.

24 [REDACTED]: Oh, I think you have a couple copies there.

25 Mr. Graves. Oh, I have a couple copies. Sorry.

1 [REDACTED]: If you can pass them down.

2 BY [REDACTED]:

3 Q Have you had a minute to review?

4 A I have reviewed exhibit No. 1, yes.

5 Q And have you seen this before?

6 A I have, yes.

7 Q So I want to look at specifically the very first sentence here. It reads: The
8 Assistant Attorney General for the Tax Division, subject to the general supervision of the
9 Attorney General and under the direction of the Associate Attorney General, is
10 responsible for conducting, handling, or supervising the following matters, correct?

11 A Correct.

12 Q And it specifically uses the word "responsible," correct?

13 A Correct.

14 Q It doesn't say "has authority over." It says "he's responsible for doing these
15 things"?

16 A Correct.

17 Q And then there is a list of seven bullet points?

18 A Yes.

19 Q Okay. So, while the Tax Division is responsible for conducting, handling, or
20 supervising these matters, the entire division is actually directed by the Associate
21 Attorney General, correct?

22 A Correct.

23 Q And the Attorney General himself, or herself, I guess, has supervisory
24 authority over all the matters, correct?

25 A Yes.

1 Q And that's true actually for everything the Department of Justice does, right?

2 A Correct.

3 Q So, if a U.S. attorney disagrees with the decision that the Tax Division makes,
4 they can appeal that to the Attorney General, correct?

5 A Correct.

6 Q And, if the Attorney General has, for example, assured a U.S. attorney that
7 that U.S. attorney will have full authority over a matter, then the Attorney General could
8 overrule the Tax Division and grant the U.S. attorney whatever it is he's seeking?

9 A Yes. That is correct.

10 Q Okay.

11 BY [REDACTED]:

12 Q I mean, just to be clear, prosecuting authority in the Department of Justice
13 ultimately lies with the Attorney General in all cases. Is that fair to say?

14 A Correct.

15 Q And he can delegate -- he or she can delegate that authority as he wishes
16 within the Department of Justice or the U.S. Attorney's Offices as he chooses?

17 A That's my understanding.

18 Q Okay. So, when we had some discussion in the previous hour about
19 approvals or responsibilities of the Tax Division, all of that authority is ultimately derived
20 from the Attorney General himself, correct?

21 A That's correct.

22 Q And, if the Attorney General says that someone -- in this case,
23 Mr. Weiss -- has the authority to make charging decisions, do you have any reason to
24 believe that Mr. Weiss did not have that authority?

25 A I have no reason to believe Mr. Weiss did not have that authority, and, yes,

1 the Attorney General can supersede anything in terms of the structure that's laid out in
2 the Justice Manual.

3 Q Okay.

4 BY [REDACTED]:

5 Q Thank you.

6 I want to take a step back. You talked a little bit about your background in the
7 first hour, but I want to talk about that in a little more depth. So I understand that you
8 were appointed U.S. attorney in 2021, but way back in the 2000s, you actually worked at
9 the U.S. Attorney's Office as a career employee, correct?

10 A That is correct.

11 Q When did you actually first join the District of Columbia U.S. Attorney's
12 Office?

13 A May 2007.

14 Q And what was your role at that time?

15 A I was a line assistant in our Superior Court Division.

16 Q What type of cases did you prosecute in that role?

17 A Started off prosecuting misdemeanors. We have a rotation system in the
18 U.S. Attorney's Office for the District of Columbia because we are responsible for
19 prosecuting local crimes as well as Federal crimes, and you kind of work your way up from
20 misdemeanors all the way up to very serious felonies.

21 Q You stayed at the D.C. U.S. Attorney's Office for a fair number of years,
22 correct?

23 A Yes. I left in October 2016, so 9.5 years.

24 Q So almost a decade. Is that fair --

25 A Yes.

1 Q -- to say?

2 And, during that entire time, you were a career prosecutor?

3 A That's correct.

4 Q During that time, did you have the opportunity to try cases before a jury?

5 A Yes.

6 Q How many cases did you try before a jury?

7 A Roughly two dozen.

8 Q Okay. And, during your time as a line prosecutor, did you hold any
9 supervisory positions?

10 A Yes, I did.

11 Q So I guess at that point you're not a line prosecutor; you're a supervisory --

12 A Yes.

13 Q -- prosecutor?

14 Could you describe those positions?

15 A I was an acting assistant chief of our Fraud and Public Corruption Section in
16 our Criminal Division, which is what we refer to as our division that prosecutes Federal
17 crimes as opposed to local crimes. And then I ultimately became the acting chief of that
18 section.

19 Q And when did you become the acting assistant chief?

20 A Acting assistant chief, I believe that was in 2015.

21 Q Okay. And then when did you become the acting chief?

22 A That would have been early spring of 2016.

23 Q Okay. What type of cases did you oversee as a supervisor?

24 A The whole gamut of fraud, public corruption, and civil rights cases. So,
25 in -- I can expand on that if you want, or --

1 Q Yeah. I mean, I think what I'm -- did you oversee white-collar crime cases
2 specifically?

3 A Yeah. It was exclusively what -- well, it was almost exclusively what people
4 would call white-collar crime cases. The only one that was different is civil rights, which
5 involved officer -- which a component of that involved use of force and use of deadly
6 force by officers, which we conceptualize as a public corruption crime.

7 Q And did your duties sometimes involve overseeing or prosecuting tax fraud
8 cases specifically?

9 A Yes.

10 Q Okay. And, in fact, you were the lead prosecutor in United States v. Jesse
11 Jackson, Jr., and Sandra Stevens Jackson, correct?

12 A That is correct.

13 Q Who was Jesse Jackson, Jr., or who is Jesse Jackson, Jr.?

14 A Jesse Jackson, Jr., is a prominent political figure and, at the time of the
15 investigation, was an elected Member of Congress.

16 Q What political party does he belong to?

17 A Democrat.

18 Q And, in that case, Sandra Jackson actually pleaded guilty to filing false tax
19 returns, didn't she?

20 A That is correct.

21 Q So that was actually a tax fraud case involving a Democratic politician that
22 you prosecuted?

23 A Two Democratic politicians. She was a local alderman.

24 Q A Democratic alderman?

25 A Correct.

1 Q And you also prosecuted Neil Rodgers, correct?

2 A That is correct.

3 Q Who was Mr. Rodgers?

4 A Mr. Rodgers was a staffer to a D.C. Council member, D.C. Council member
5 Harry Thomas.

6 Q And what political party was Mr. Thomas a member of?

7 A Mr. Thomas was a member of the Democratic Party.

8 Q And can you briefly describe the facts of that case?

9 A Yes. Mr. Thomas, who I also was part of that prosecution team, because he
10 also was prosecuted, had directed city funds to charitable organizations that he was
11 affiliated with and then had conduits at those charitable organizations who funneled the
12 money back to him.

13 Q And was that around the time of President Obama's first inaugural?

14 A Yes. That would -- the conduct occurred around the time of the first
15 inaugural.

16 Q And was some of the money actually used to fund an event of the first
17 inaugural?

18 A Yes. He had like -- yes. There are -- obviously a number of people have
19 events associated with the inaugurals that might not be official inaugural event but in
20 honor of the inauguration, and some of the money was used to fund an inaugural party,
21 celebrating President Obama's first inaugural.

22 Q So these were Democratic political figures who were using money to fund an
23 event around President Obama's first inauguration, correct?

24 A That's correct.

25 Q And you were the -- you prosecuted that case?

1 A That is correct.

2 Q Okay. So, taking a step back, it's fair to say you've had experience
3 overseeing white-collar cases and, specifically, tax fraud cases, both as a line prosecutor
4 and as a supervisor, correct?

5 A Yes. And if I could just add one thing --

6 Q Sure.

7 A -- to your finer point, I also was part of the prosecution team that
8 prosecuted another Democratic member of the D.C. Council for bank fraud.

9 Q Who was that?

10 A Kwame Brown.

11 Q And what timeframe was that?

12 A The same timeframe as the -- it happened around the exact same time as
13 the Harry Thomas, so kind of the 2012-2013 timeframe.

14 Q Thank you for that?

15 A Yeah.

16 Q Is it fair to say, talking about white-collar cases specifically, that they can be
17 complex in nature?

18 A Yes.

19 Q Are you familiar with the complexities that are associated with white-collar
20 cases?

21 A Yes.

22 Q And with tax fraud cases as well?

23 A Yes.

24 Q Okay. And so you are familiar specifically with the considerations that
25 might arise when deciding whether to bring charges in a white-collar case, correct?

1 A Yes.

2 Q And in tax fraud cases specifically?

3 A Yes.

4 Q So I want to turn to some of those considerations and the considerations
5 that prosecutors take into account when deciding whether to bring charges in any matter,
6 but especially in complex matters like white-collar case and tax fraud cases.

7 We discussed the Justice Manual earlier. Are you familiar with the principles of
8 Federal prosecution in the Justice Manual?

9 A Yes.

10 Q Okay. It's section 9-27.

11 A Yes.

12 Q Okay.

13 [REDACTED]: Let me introduce as exhibit 2 section 9-27.220.

14 [Graves Exhibit No. 2

15 Was marked for identification.]

16 Mr. Graves. Okay. Thank you.

17 BY [REDACTED]:

18 Q And this is the section entitled "Grounds for Commencing or Declining
19 Prosecution."

20 A Yes.

21 Q And I believe it's on the second page.

22 A I'm very familiar, yes.

23 Q Okay. And I'm actually -- we're going to look at the very first paragraph
24 under 9-27.220. That section reads: The attorney for the government, which is the
25 prosecutor, right?

1 A Uh-huh.

2 Q -- should commence or recommend Federal prosecution if he or she believes
3 that the person's conduct constitutes a Federal offense and that the admissible evidence
4 will probably be sufficient to obtain and sustain a conviction unless, number one, the
5 prosecution would serve no substantial Federal interest; number two, the person is
6 subject to effective prosecution in another jurisdiction; or, number three, there exists an
7 adequate, noncriminal alternative to prosecution.

8 Did I read that correctly?

9 A Yes. I'm very -- I know that off the top of my head, but I was struggling to
10 find exactly where you were reading from at first, but yes. You --

11 Q But -- so I read that correctly?

12 A You read it correctly, yes.

13 Q So, under these principles, prosecutors should only bring charges when,
14 among other considerations, they believe that the admissible evidence will probably be
15 sufficient to obtain and sustain a conviction, correct?

16 A Correct.

17 Q In layperson's terms, what does "admissible evidence" mean?

18 A "Admissible evidence" means that, when you get to trial, you're going to be
19 able to introduce witness statements or documents that a court is going to say: Yes, this
20 can come in at this trial.

21 Q And it's evidence that meets the standards of the Federal Rules of Evidence.
22 Is that fair to say?

23 A Correct. Yes.

24 Q Okay. What type of considerations might a prosecutor take into account
25 when weighing whether the admissible evidence will probably be sufficient to obtain and

1 sustain a conviction?

2 A Their experiences with similar cases comparing it to other cases. They'll
3 look at defenses, particularly in the white collar context, where usually, unlike the violent
4 crime context, in the white collar context, there is actually a complete agreement on
5 what factually occurred and it's all about what is in a person's head, which is what makes
6 white-collar cases so difficult, but kind of what the defenses might be and how you're
7 going to prove beyond a reasonable doubt the significant scienter or mens rea
8 requirements.

9 Q And are you familiar with the term "sufficiency of the evidence"?

10 A Yes.

11 Q What does that term refer to?

12 A So, I mean, in general, "sufficiency of the evidence" is whether you have a
13 sufficient -- whether you have enough evidence to get over whatever the evidentiary
14 burden is at that point in the process.

15 Q Is that something that prosecutors would take into account when
16 considering whether to bring charges?

17 A Yes. It's whether you have sufficient evidence to prove the case beyond a
18 reasonable doubt, which is obviously the highest standard in the legal system.

19 Q Okay. And I want to turn back to that in a minute. But, along with
20 sufficiency of the evidence, does a prosecutor also consider the ability to explain the
21 charges and the evidence to a jury?

22 A Yes.

23 Q Why is that important?

24 A Because of the nature of the trial process, you don't get to often kind of
25 cleanly put in, from beginning to end in a logical fashion: This is what happens.

1 You have to introduce evidence through witnesses, and witnesses usually only
2 know a portion. So, as you're talking about, in the white collar context, a complex fraud
3 scheme, you're constantly thinking through how am I going to prove this in a way that a
4 lay jury is going to understand, assuming as -- you know, take the same approach that the
5 journalism industry takes, that you're talking to people with a middle school education.

6 Q And that's because jurors are any -- they're anybody, right? They're drawn
7 from the people of the community, right?

8 A Correct.

9 Q And they maybe are not lawyers?

10 A Correct.

11 Q They maybe aren't accountants?

12 A That is correct.

13 Q They may not be familiar with the rules of evidence, for example?

14 A That is correct.

15 Q Okay.

16 A Or, because we actually do tend to have a lot of lawyers and accountants in
17 this jurisdiction in particular that practice in areas other than the area that is the subject
18 of the case, they think they know things about the law that they actually don't know --

19 Q And that's --

20 A -- which is another complication for trying these cases.

21 Q In a tax case specifically, might it be relevant if the potential defendant had
22 actually paid the taxes due?

23 A Yes.

24 Q Why would that be relevant?

25 A So, in tax cases, as I was saying earlier, the Tax Code, as we probably know

1 through all of our limited experiences and then jurors would know from their limited
2 experiences, is incredibly complex, so there is lots of room for good-faith mistakes. And
3 that's why people have all kinds of experience with people who either come under audit
4 or get a notice of tax deficiency, just paying it and it never amounting to a crime.

5 So, when someone immediately turns around and pays, you have to deal with the
6 defense, as soon as they're alerted to an issue, that this was a good-faith mistake that
7 does not rise to the level of intentionality required for a criminal violation.

8 Q Again, speaking of things that a prosecutor might consider with respect to
9 bringing a case before a jury, might it be something to consider if the potential defendant
10 has a sympathetic personal story?

11 A Yes.

12 Q How can that impact a prosecutor's thinking?

13 A So it can impact on at least two levels in the context of a tax prosecution.

14 One, you're always worried in these kinds of cases, where no one was actually
15 hurt, about juror nullification, and you have to guard against that, just because they feel
16 bad for the defendant. But, more importantly, depending on what the sympathetic
17 nature of the story might be, that can get intertwined with the intent issue.

18 Q How so?

19 A So, like, hypothetically speaking, the person is going through some kind of
20 trauma or some -- or there is documented evidence of substance abuse, right? Now
21 you're getting into defenses of: My client was so distracted by X, or my client was under
22 the influence of Y, that, when they were filling out -- when they were working with their
23 return preparer, they just were, like, not focused on this. That's why this was wrong,
24 not because they were trying to be evasive.

25 Q And, to obtain a conviction in a tax fraud case, for example, is the prosecutor

1 required to prove intent?

2 A Yes.

3 Q And can you briefly describe in layperson's terms what that means?

4 A It's that you knew exactly what the Tax Code required and you intentionally
5 didn't do that, which is exceedingly hard to prove in tax cases because of how complex
6 the Tax Code is.

7 Q Thank you for that.

8 We just talked through many concerns or many issues that prosecutors should
9 consider when deciding whether to bring charges. How do prosecutors learn to assess
10 and evaluate these types of concerns?

11 A Some of it is through experience and supervisors who have been through
12 these cases before who will say, you know: Well, this is how I would defend this case.
13 What are you going to do in response if that's the defense, and kind of talking through
14 those kinds of issues.

15 But, in my view, there is nothing -- no greater teacher than experience, which is
16 why, like, the supervisory chain is so important, because they've seen these cases before.

17 Q And prosecutors -- you don't start out prosecuting white-collar crime, right?

18 A That is correct. Well, I mean, I should say that, in our office, you don't start
19 off prosecuting white-collar crime. There are places within the Department you can go
20 where you can specialize in white-collar crime.

21 Q But, in the U.S. Attorney's Office in particular, you might start off
22 prosecuting misdemeanors, right?

23 A Yes.

24 Q And you learn from experience doing misdemeanors, right?

25 A Yes.

1 Q And then you may be assigned to progressively more complex cases,
2 correct?

3 A Yes.

4 Q And you may be paired up with a more senior attorney to have them mentor
5 you on a more complex case, right?

6 A Yes.

7 Q And so my point is that there is learning -- there is a learning process that is
8 garnered through experience as a prosecutor?

9 A That is correct, and that's just on the violent crime. And then, when you
10 get over to the fraud and public corruption, you're not immediately by yourself doing
11 multimillion-dollar fraud cases. It's like 100,000, 200,000, \$300,000 embezzlement.
12 And then you kind of start the process all over again in the white collar context of learning
13 those cases, because prosecuting white collar is like a different animal than violent crime.

14 Q So it's fair to say that prosecutors have fairly unique training, learn on the
15 job, and experience in assessing things like the sufficiency of admissible evidence?

16 A That is correct.

17 Q And it's fair to say that prosecutors have unique training and experience in
18 assessing the likelihood that the admissible evidence will be persuasive to a jury, correct?

19 A Correct.

20 Q So it's fair to say that prosecutors have unique training and experience in
21 assessing whether the admissible evidence is reasonably likely to result in a conviction
22 ultimately, correct?

23 A Yes.

24 Q In your experience, is it fair to say that investigators, whether they're from
25 the FBI or from the IRS or some other investigative entity, don't have the same

1 experience specifically with regard to assessing the admissible evidence and whether it
2 would be persuasive to a jury?

3 A Yes.

4 Q And is it fair to say that one unique difference between investigators and
5 prosecutors is that investigators generally do their work -- so investigators do their work
6 before the stage when the evidence is tested by trial, and prosecutors are looking at it
7 specifically with respect to the trial itself?

8 A In general, yes.

9 Q In some cases, the investigation might continue?

10 A Yes. So, I mean, just to expand on your point, I agree with the premise
11 behind the question. So the investigators are gathering evidence and often don't see
12 how the evidence plays out in court. Even when they themselves are called to testify,
13 they're only there for their period of when they're testifying and maybe closing
14 arguments. So they don't see the trial process and how all this plays out, with the
15 limited exception of sometimes, in Federal cases and white-collar cases, you can have an
16 agent sitting with you -- a law enforcement agent sitting with you for the entire trial.

17 And I only raise that because that is one of the best experiences that a law
18 enforcement officer can get, because sometimes they sit through the whole trial and they
19 say: Oh, now I see why we were having those conversations before that I didn't
20 understand.

21 Q And, if they don't sit through that, or if they haven't had the opportunity to
22 sit through that, they might not really understand how the trial process works?

23 A Correct.

24 Q And they might not really understand the prosecutor's thinking?

25 A Correct.

1 Q Given the difference in roles between investigators and prosecutors, it's not
2 surprising that there might be differences in opinion among investigators and prosecutors
3 about the strength of the evidence and the likelihood of success at trial, correct?

4 A Not only is it not surprising, but, in my experience, in Federal charges, blue
5 collar or white collar, it's kind of more often than not that there is some disagreement,
6 with the agents usually thinking that more charges should be brought than the attorneys.

7 Q And, in those cases where the agents think more charges should be brought
8 than the attorneys do, the prosecutors have the final say, correct?

9 A They have -- yes. Well, yes. I -- in my office, we try to do things
10 collaboratively because the agents have spent so much time and we try to talk through
11 the issues and explain to them, like: This is -- these are the challenges we see.

12 And you hope to be able to get and we often do get to a consensus of: Yeah, I
13 wanted to do A, B, C, X, Y, and Z before, but now I understand A, B, C.

14 There are some times where they are like: I still think X, Y, Z, but I respect the
15 decision that you're making.

16 Q And I appreciate that.

17 A Yeah.

18 Q But, ultimately, if there is -- if you can't get them to see your point of view,
19 at the end of the day, it is the prosecutors whose word goes, right?

20 A Yes.

21 Q And that's because prosecutors have that specialized experience we talked
22 through, correct?

23 A Yes. And that's our role in the process.

24 Q Right. They're the ones that have to present the case to the jury?

25 A Yes. Yes.

1 Q So, when Mr. Weiss approached you at the end of February in 2022 and
2 asked you to consider or asked you to support -- provide administrative support in the
3 potential tax-related or potential prosecution of Hunter Biden and you asked if he wanted
4 you to join the case, he said, "We can talk about that," and then you went back and had
5 some further conversations, right, or your investigator -- your staff looked into the case a
6 little bit more, correct?

7 A Yes.

8 Q As they were doing that additional look into the case, was there examination
9 guided by the consideration of the Justice Manual principles we just talked through, so
10 sufficiency of the evidence, the ability to present the charge to the jury, for example?

11 A Yeah. I think, at a high level, I can say -- I can say yes to that.

12 Q Okay. Without revealing any of the actual deliberations, realizing this is an
13 ongoing case, did they consider whether there was sufficient admissible evidence such
14 that prosecutors could probably sustain a conviction from a jury in the District -- in your
15 district.

16 Ms. Zdeb. And I think, before he answers, he can certainly talk in general about
17 the types of considerations in any case, but obviously not the specifics.

18 [REDACTED]: Understood.

19 BY [REDACTED]:

20 Q And I'm asking, you know, if these are considerations that apply to every
21 case, were they applied here?

22 A So I am trying to thread this needle. I think I am authorized to say, in any
23 case, we are going to go through these Justice Manual factors, like sufficiency of the
24 evidence. In terms of making an assessment about whether we should proceed with the
25 case, join a case, whatever, is kind of like the process, and the normal order is that starts

1 at the line level, and that recommendation makes its way up the supervisory chain.

2 Q And, in this case, like in any case, the prosecutors would have to show that
3 the evidence was probably sufficient to convince a D.C. jury of the defendant's guilt
4 beyond a reasonable doubt, correct?

5 A Correct.

6 Q So the burden of proof, we've said earlier, is beyond a reasonable doubt.
7 That's actually the highest evidentiary standard in the law, correct?

8 A That is correct.

9 Q Can you briefly describe what beyond a reasonable doubt is?

10 A Yes. It's not beyond any doubt, not beyond imagined or a fantastical
11 doubt, but beyond any doubt that any reasonable person would have about the outcome;
12 as our very good public defender service says, it's a higher standard than what you need
13 to take a child away from his or her mother.

14 Q And it's also a higher standard than probable cause, correct?

15 A Much higher than probable cause.

16 Q So what's the standard for probable cause?

17 A Probable cause is, is it likely?

18 Q And beyond a reasonable doubt is a higher standard than the
19 preponderance of the evidence standard that's needed to obtain a judgment in a civil
20 case, correct?

21 A Yes. It -- yes. Exactly.

22 Q And --

23 A Probable cause, preponderance of the evidence, reasonable doubt.

24 Q And so preponderance -- what is preponderance of the evidence?

25 A Preponderance means majority.

1 Q So it's more than 50 percent?

2 A Yeah.

3 Q In your experience as a Federal prosecutor, is it fair to say that it can be
4 difficult to convince a jury, quote, "beyond a reasonable doubt," even when you have a
5 significant amount of evidence that a defendant may have actually committed a crime?

6 A It certainly can be, yes.

7 Q And, in order to obtain a criminal conviction, you need to not only establish
8 that the defendant is guilty beyond a reasonable doubt, but you also have to convince 12
9 jurors that you've met that standard, correct?

10 A Correct.

11 Q And that jury's decision has to be unanimous, correct?

12 A Correct.

13 Q That means that, if even one single juror has a doubt or has what he or she
14 considers to be a reasonable doubt about the sufficiency of the evidence that you've
15 presented, then that juror will be instructed to find your defendant not guilty, correct?

16 A So what will happen is, if the jury cannot reach unanimity, if 11 jurors agree
17 a conviction and one doesn't, eventually a mistrial will be declared.

18 Q Have you ever had the experience as a prosecutor where you felt very
19 strongly that you had presented the jury with sufficient evidence to prove a case beyond
20 a reasonable doubt, but there was one juror who didn't agree, and so the defendant
21 wasn't convicted?

22 A Yes.

23 Q Can you describe broadly the circumstances of that case --

24 A Yes.

25 Q -- or cases?

1 A Yes. I can. Case or cases. One that comes to mind, one of my first jury
2 trials, an individual was riding in the back of a car that got stopped. Officers see in plain
3 sight a bag that contains 20 Ziplocks of an illicit substance by his feet. They step him out
4 of the car, and they search him, and they find additional illegal drugs on him. That was
5 an 11-1 hang for conviction.

6 Q And, in that case, there had been evidence found in the car?

7 A Yes.

8 Q There had been --

9 A Two officers testified in basically unimpeached fashion that: I saw drugs
10 sitting next to the person. I stepped him out of the car and found additional drugs.
11 The jury was shown those drugs. The jury was shown photos from the scene of where
12 the drugs were, and there was one juror who held out.

13 Q So it can be difficult to convince 12 jurors to convict a defendant?

14 A That is correct.

15 Q Okay. And prosecutors, as we talked through a couple minutes ago, have
16 to consider the perspective of jurors when they make charging decisions?

17 A That's correct.

18 Q How do those considerations play out in your experience when prosecutors
19 are making those decisions?

20 A I'm sorry. In what sense?

21 Q So, for example, might prosecutors have discussions with other prosecutors
22 to assess how the evidence might play out before a jury?

23 A Yes. Particularly in the white collar context, you'll have discussions with
24 your supervisors, in our office, at both the indictment phase and at the trial phase.

25 We'll assemble other people who haven't worked on the case. We try to -- really try to

1 bring in professional staff who are not lawyers, particularly at the trial phase, to say:

2 Hey, is this all making sense?

3 Q And, among other things, the prosecutors might discuss what's happened in
4 other similar cases, right?

5 A That is correct.

6 Q So, using the drug case as an example, you might say: Well, I had a case
7 where the officers found drugs on the person of this defendant, and we still had an 11-1
8 split.

9 Right?

10 A Yes.

11 Q And that would inform the prosecutors as to their charging decisions?

12 A Yes.

13 Q Okay. In addition to the probability of obtaining a conviction at trial, the
14 Justice Manual's principles of Federal prosecution also instruct that prosecutors must
15 consider whether there exists an adequate noncriminal alternative to prosecution,
16 correct?

17 A That's correct.

18 Q Was this something that you were required to consider or that your career
19 prosecutors were required to consider when deciding whether to join Mr. Weiss' case?

20 A So it's in the Justice Manual, so on any case -- I wouldn't limit it to
21 Mr. Weiss' -- we would be required to consider that.

22 Q And so they would be required to consider the fact that, in tax-related cases,
23 there are alternatives to criminal prosecution that are routinely pursued, such as the
24 payment of civil penalties?

25 A So what I -- yeah. What I can say in general is this is a regular conversation

1 that we have in the context of tax cases and other cases where there is a regulatory or
2 civil remedy. Why are we doing this criminally as opposed to regulatory or civil?

3 [REDACTED]. And I want to introduce as exhibit No. 3 the civil complaint in a case.
4 It's United States of America v. Robert J. Shaughnessy and Susan J. Shaughnessy.

5 [Graves Exhibit No. 3

6 Was marked for identification.]

7 BY [REDACTED]:

8 Q And this is a 2022 civil case from the United States District Court for the
9 District of Columbia.

10 A Okay.

11 Q Do you recall this case?

12 A I don't, and I don't think that this is a case that our office brought.

13 Q So this was actually brought by the Tax Division, correct?

14 A I believe so, although, as luck would have it, we have a member of our team
15 who is also named Emily Miller, but I believe it is a different Emily Miller.

16 Q And we'll ask to redact that from the transcript --

17 A Yeah.

18 Q -- because I believe that's a line attorney.

19 A Okay.

20 Q But it is a tax case --

21 A Yes.

22 Q -- that was brought in the District of Columbia Federal district court, correct?

23 A Yes, correct.

24 Q In 2022?

25 A Correct.

1 Q And, if you look at page 2 of this complaint, the civil complaint, there is a
2 table, right?

3 A Yes.

4 Q And, at the table, it says that the total outstanding balance or -- refers to the
5 total outstanding tax balance as of April 18th, 2022, was almost \$7 million, correct?

6 A Yes.

7 Q And then, on page 3, paragraph No. 8, it says that the defendants in this
8 case, despite being given notice of those taxes due, they neglected or refused to make full
9 payments of those assessments to the United States, correct?

10 A Yes.

11 Q And then, further down on page 3, under the prayer for relief, it says that
12 the United States respectfully prays that this court enter judgment in favor of the United
13 States. And then it says in the amount of roughly \$7 million, plus interest, correct?

14 A Yes. Yes.

15 Q So this is an example of a tax case where taxes were not paid, correct?

16 A Correct.

17 Q And the government did bring a case, but it brought a civil case?

18 A Correct.

19 Q And the demand for relief was that the defendants pay the taxes due?

20 A Correct.

21 Q All right. So you've explained that, when Mr. Weiss first contacted you in
22 February of 2022 and that you raised the possibility of joining the case, that your team's
23 consideration as they were evaluating that was guided, as in all cases, by consideration of
24 the Justice Manual's principles of Federal prosecution, correct?

25 A Yes.

1 Q Was their consideration influenced in any way by personal or political or
2 partisan considerations?

3 A I -- it's across the board, no. In none of our cases does that ever come up.

4 Q Was the evaluation of the case influenced in any way by people outside of
5 your office, such as individuals at Main Justice, the White House, or elsewhere, who
6 sought to impact your decision?

7 A No.

8 Q And you said that you did offer to provide any and all logistical support,
9 correct?

10 A Correct.

11 Q And you instructed your team to provide any and all logistical support?

12 A Correct.

13 Q In light of that, what impact do you believe that your decision not to actually
14 join the case would have had on Mr. Weiss' efforts to prosecute Mr. Biden in the District
15 of Columbia if he chose to do so?

16 A I, at the time, believed that my decision had no impact, and the first time
17 that I heard concerns about the decision that we reached was in the public reporting
18 around the whistleblowers' allegation.

19 Q So in the past couple months?

20 A Yes.

21 Q And, if anything, your determination that you would provide him with any
22 and all administrative and logistical support actually would have made it easier for him to
23 bring the case if he so chose?

24 A Yes. I believe we had done everything we needed to do in order for him to
25 bring a case if he chose to bring a case.

1 Q Okay. And it was never your intent to block Mr. Weiss from pursuing
2 charges that he, meaning Mr. Weiss, wished to pursue against Hunter Biden, correct?

3 A Absolutely not.

4 Q Okay.

5 BY [REDACTED]:

6 Q Mr. Graves, Mr. Weiss never actually asked you directly to be local counsel in
7 the Hunter Biden case. Is that fair to say?

8 A That's my recollection, that I was the first one to raise it. And that kind of
9 informed my thinking that that was an ask from me as opposed to an ask from him.

10 Q Okay. So it's fair to say that Mr. Weiss, no one on his staff, as far as you
11 know, asked anyone at the U.S. Attorney's Office in D.C. to be a local prosecutor and was
12 denied that request?

13 A As far as I am aware, yes.

14 Q Okay.

15 [REDACTED]: Yes, that's accurate, what [REDACTED] said?

16 Mr. Graves. Yes. What you said is accurate as far as I am aware.

17 [REDACTED]: Thank you for that clarification.

18 BY [REDACTED]:

19 Q And, also to be clear, you personally, in your position as the United
20 States attorney for the District of Columbia, never took any action to block Mr. Weiss or
21 anyone from his office from bringing any charges against Hunter Biden within the District
22 of Columbia?

23 A No.

24 Q And you indicated that you had some familiarity based on press reporting of
25 what the whistleblower allegations in this case have suggested, and that is generally that

1 you did block Mr. Weiss in some manner from bringing charges in the District against
2 Hunter Biden.

3 Are you aware of that allegation generally?

4 A I am generally aware of that allegation.

5 Q Okay. And what is your response to it as you sit here today based on
6 everything that you know and you can share with us?

7 A So my -- allegation or my response or my position is that that is not accurate.
8 I want to be careful and respectful, because I've worked with whistleblowers my entire
9 career. I believe these people are saying what they believe to be true. But, if you look
10 at a lot of the communications, it's second or thirdhand, never direct communication with
11 us after a decision was made.

12 Q Is it fair to say that you think there may be some confusion on the part of the
13 whistleblowers as to what you did in this case in your communications with Mr. Weiss?

14 A So I don't want to get into the specifics of this case, but I have been around
15 large institutions -- and the Department is a large institution enough -- to see the garbles
16 that can occur when there are communications across different components and people
17 aren't talking directly to each other.

18 Q Okay. But, to the extent that there has been public reporting that the
19 whistleblowers have said that you blocked Mr. Weiss in some manner in bringing charges
20 against Mr. Biden in the District, that is incorrect. Is that fair to say?

21 A The -- I'm just -- there is -- constitutionally, I don't like taking issue with what,
22 like, whistleblowers are saying. I'd rather speak directly. I did not take steps to block
23 any investigation by Mr. Weiss in the District of Columbia. I offered to help.

24 Q Okay. And, Mr. Graves, do you know who Ken Wainstein is?

25 A Yes, I do.

1 Q How do you know him?

2 A He was the U.S. attorney for the District of Columbia during the kind of -- the
3 early part of the George W. Bush administration.

4 Q Did he happen to hire you when you became a prosecutor at the
5 U.S. Attorney's Office?

6 A So it's -- it's funny. He was the U.S. attorney when I started the process. I
7 knew him from before. We had multiple rounds of interviews.

8 He saw me at the first-round interview, and he asked what I was doing there.

9 And I told him I was interviewing.

10 And he asked if he wanted me to hire him on the spot.

11 And I said, I don't think it works that way. I think we have to go through this
12 process.

13 By the time I got to the third round, which is the interview with the U.S. attorney,
14 he had actually transitioned out of that role, and Jeff Taylor was in that role.

15 Q Okay. Mr. -- sorry. Go ahead.

16 A Yeah. Mr. Taylor is a lifelong Republican, had worked in the White House
17 and had worked in Senate Judiciary Committee, and so I had my final interview with him.

18 Q And Mr. Taylor hired you then?

19 A Yes.

20 Q Did you have any concerns about becoming a prosecutor under a Republican
21 U.S. attorney?

22 A So not necessarily, but a little bit of context and a story that I think goes to
23 your question. So this was right around the period of the point when there were a lot of
24 inquiries into whether there was political influence on career hires. And we were kind
25 of the first U.S. attorney class coming up, and the person who had just put in this -- been

1 put in this role and had no connection to D.C. -- and Mr. Wainstein had had a connection
2 to D.C. and had all of this political background in addition to being a career
3 prosecutor -- was the person I was interviewing with.

4 So I didn't quite know what to expect. I tell this story all the time. We got in.
5 He saw my resume, saw that I had done advance for Clinton-Gore and started asking
6 about politics.

7 And I was like: Oh, no, here we go.

8 And he said: I don't care about your political background. I'm a lifelong
9 Republican. When we do this job as prosecutors, we prosecute. Can you check politics
10 at the door whenever you do anything?

11 I said: Absolutely.

12 He's like: You're hired.

13 So -- well, he didn't say it in the interview, but, like, that was the question -- the
14 real question he wanted to ask. And he was one of the greatest U.S. attorneys I served
15 under, and it's a conversation that I remember and I repeat often.

16 Q And so, when you became a prosecutor at the U.S. Attorney's Office, it was
17 your intention to be a career prosecutor and not to be influenced in any way by politics of
18 the person who was at the head of the office. Is that fair to say?

19 A That is correct.

20 Q And, in your experience in that office for 10 years as a career prosecutor, is
21 that the way you were allowed to do your work?

22 A Absolutely.

23 Q Nonpartisan?

24 A Absolutely.

25 Q And, as a U.S. attorney currently, do you have anything that you would like

1 to share about how partisanship does or doesn't influence the decisions that you make?

2 A It doesn't influence in any way whatsoever. As you pointed out in the
3 earlier questioning, every elected official that we've ever ultimately prosecuted was a
4 Democrat. That is irrelevant to us. It is simply these Justice Manual requirements and
5 whether they are met.

6 Q Okay. So there has been an allegation made that Mr. Weiss, quote, "went
7 to D.C. U.S. Attorney's Office in early summer to request to charge there," and the, quote,
8 "Biden-appointed U.S. attorney," end quote, said that you couldn't charge in the district.

9 Do you have any response to being referred to in that context as the, quote,
10 "Biden-appointed United States Attorney"?

11 A I mean, it is true, like every other presidentially appointed, Senate-confirmed
12 U.S. attorney that is currently serving, that I was appointed by the President. But the
13 fact that I was appointed by the President, if this is the insinuation, has absolutely nothing
14 to do with the charging decisions that we make in any case.

15 Q I'm sorry. Mr. Graves, let me just -- one last set of questions.

16 You were asked a little bit about your experience as a prosecutor when there was
17 a disagreement between what investigators saw in the evidence and what prosecutors
18 might see in the evidence. Do you have any opinion based on your experience as to why
19 investigators tend to sometimes overvalue evidence as compared to what prosecutors
20 might think?

21 A It's because they're looking at it -- in my experience, first, they're kind of not
22 seeing how all this plays out in trial. Second, their job is to kind of assemble facts and
23 build a narrative, and they do a great job of that in general, by the way. But they
24 don't -- because this isn't their job or their training, they don't see the ways in which that,
25 you know, house they assembled can be taken apart brick by brick.

1 Q Does it surprise you when investigators complain that prosecutors are trying
2 to block them, for example, or not allowing them to take investigative steps that they
3 think that they should be able to take?

4 A That can happen from time to time, for sure, in all kinds of different cases.

5 Q It's not that uncommon for that kind of complaint to happen, right, in the
6 context of a criminal investigation, that an investigator might think that the prosecutor is
7 holding them back in a sense?

8 A Yes. That can happen, particularly in complex cases. There are all kinds
9 of really complex strategy decisions you have to make, and looking at a proposed action
10 in isolation, you might have one view of it. But, if you're the attorney and you're
11 thinking about how this might play out before a court or before a jury, you might have a
12 different view of it.

13 Q And often the investigators are not lawyers. Is that right?

14 A That is correct. They are often not. They are typically not.

15 Q And they may not have the same responsibility as prosecutors to consider a
16 defendant's constitutional rights, for example?

17 A I think they have a duty to consider the constitutional rights, but I don't think
18 they are as necessarily attuned to all the nuances because they're not attorneys.

19 Q Understood.

20 [REDACTED]. Thank you. We can go off the record.

21 [Recess.]

22 BY MR. CASTOR:

23 Q I want to go back to that 3-week period that you testified about, in March
24 of 2022.

25 First, Mr. Weiss called you, and you told him that you'd be able to assist with

1 whatever he needed, correct?

2 A That is correct. And I just want to clarify. I'm going off my best of my
3 recollection. Roughly 3 weeks.

4 Q Okay. And then you went through a process where your principal assistant,
5 the Criminal Division chief, the head of the Fraud Civil Division and the Public Corruption
6 Division, and your line AUSAs evaluated something, correct?

7 A Correct.

8 Q And do you know if those meetings occurred in person that they had?

9 A I do not know.

10 Q Do you know if Lesley Wolf, the AUSA in Delaware, came to D.C.?

11 A I don't know. But, just to reorient, that's at a time when we are still under
12 maximal telework, so that would -- I could speculate. That would -- a lot was probably
13 done virtually.

14 Q Okay. Do you know if any of your personnel went to Delaware?

15 A I am not aware of that.

16 Q And do you know what type of paper was exchanged?

17 A I do not know.

18 Q Do you know if your team reviewed the special agent report prepared by
19 Agent Ziegler?

20 A So I know they have reviewed investigative material. What investigative
21 material specifically, I don't know.

22 Q And were you aware that DOJ Tax had also prepared a report recommending
23 charges?

24 A Not aware.

25 Q Okay. So you didn't review that report?

1 A I did not review any underlying case material.

2 Q Okay. And you didn't review any PowerPoint presentations that may or
3 may not have been made?

4 A No.

5 Q Okay. So you didn't evaluate any paper?

6 A No. My briefing from my team was oral.

7 Q Okay. Now, there is a little bit of a disconnect. I mean, during the last
8 hour, there was some back and forth about how D.C. juries are very tough, and you
9 walked us through a case that I believe you said you were involved with where they found
10 all the evidence you would ordinarily need to --

11 A Yes.

12 Q -- convict somebody, and yet you were unable to get that conviction.

13 A Correct.

14 Q Did your team communicate that to the Delaware U.S. Attorney's Office, that
15 D.C. juries are real tough?

16 A I think what I can say at a high level was that I told my team to explain why
17 we weren't going to seek to join the investigation.

18 Q Now, earlier this morning, you said that joining an investigation after it's
19 already started, like halfway through, would be very unusual, correct?

20 A In my experience, yes. Usually, if you join or partner, it's at the beginning
21 of an investigation, not the end.

22 Q Right. So the Hunter Biden investigation began in -- at least the IRS portion
23 of it began in 2018, and then the Justice Department portion began in 2019. So several
24 years had unfolded by the time you evaluated whether to join, correct?

25 A So I am not tracking all those details. What I can say at a high level --

1 Q Right.

2 A -- was that I was aware that U.S. Attorney Weiss had been a U.S. attorney in
3 the prior administration, and he was one of two of those U.S. attorneys held over because
4 he had an ongoing investigation involving Hunter Biden. But, prior to him calling me, I
5 think I don't know much -- I didn't know much more than that. So whether it started
6 in -- by definition, it would have had to have started before the current administration
7 came in. How long he was doing it, I don't know.

1 [12:12 p.m.]

2 BY MR. CASTOR:

3 Q Now, the fact that he was held over, was it your understanding that he was
4 held over particularly for this case?

5 A So I'm just going off of public reporting, nothing internal, but that was my
6 understanding from public reporting.

7 Q And why do you think whoever made that decision wanted to hold Mr.
8 Weiss over?

9 A I couldn't -- I mean, I could only speculate.

10 Q Is it because he was a Republican-appointed U.S. attorney and the
11 investigation involved the son of a Democrat Presidential --

12 A So, I mean, anything is possible. It's also, if there is a long-running
13 investigation, there's continuity in keeping the entire --

14 Q Uh-huh.

15 A -- supervisory chain in place.

16 Q Right. Have you heard the Attorney General state, though, that the reason
17 he was kept was that he was a Republican-appointed U.S. attorney?

18 A I certainly haven't heard the Attorney General say that, and I haven't seen
19 that in any of the reporting.

20 Q So, no?

21 A Yeah, no. I mean, like, I've had no conversations with the Attorney General
22 about this issue generally, and in public reporting I don't recall seeing anything along
23 those lines.

24 Q Have you recalled anyone at the Justice Department touting the fact that
25 Weiss was a Trump appointee that made him a good prosecutor for this case, because

1 he's supposedly not aligned with President Biden?

2 A No, I don't -- no. No.

3 Q No?

4 A No.

5 Q So the only reason, in your mind, that Mr. Weiss was held over was because
6 he had this investigation ongoing.

7 A So that's the thing I knew for certain. I could speculate about other
8 reasons. I'm not saying what you're saying is necessarily unreasonable. I just don't
9 know that. I've never heard that.

10 Q Do you think there's a perception that maybe Weiss could be viewed as
11 more fair because he's not a Democrat-appointed U.S. attorney to begin with?

12 A Um --

13 Q It's a good look, isn't it? It's certainly a good look.

14 A I understand what you're saying. I understand what you're saying.

15 Q You knew it was a good look, right?

16 A I mean, kind of in the way "good look" -- I mean, I understand the optics
17 issue there, yes.

18 Q And it's a good look optically, right?

19 A Well, you're leaving in place the person who was in charge of the
20 investigation before you were -- before the administration changed.

21 Q Okay.

22 And along the same lines, I mean, you can certainly understand how some
23 Republicans might have concerns that a U.S. attorney appointed by President Biden might
24 have some conflict-of-interest types of issues, weighing in on a case against the
25 President's son.

1 A I mean, people can have whatever concerns they might have. I do not view
2 it that way. And I'm not aware of any ethical canon that says that U.S. attorneys have
3 an obligation to recuse whenever --

4 Q But you can --

5 A -- a family member of the President is implicated.

6 Q But you can certainly understand a reasonable person might wonder
7 whether a U.S. attorney appointed by President Biden can fairly make a decision on a
8 case involving his son.

9 A So, kind of -- I mean, I wouldn't -- I don't even know that I would necessarily
10 go that narrow. I understand that people have questions when we make
11 determinations about matters of significant public consequence all the time about the
12 basis.

13 Q What would be the process in your office today if you did have a conflict of
14 interest? Who would be the decision-maker?

15 A So we have an ethics officer within our office who is the first line that we run
16 potential conflicts of interest past. That can lead to -- from there, it can go to the
17 General Counsel's Office of the Executive Office for United States Attorneys. And the
18 Associate Deputy Attorney General who's responsible for ethical matters can also become
19 involved when there are questions about whether recusal is required.

20 Q So, hypothetically, let's say you did have a conflict of interest. You ran it
21 through that process --

22 A Yes.

23 Q -- and it was determined that, in fact, you did have a conflict of interest.
24 Who would then be the decision-maker in your office?

25 A So --

1 Q Who would you defer to?

2 A -- I mean, it depends. I mean, sometimes the conflict is resolved by -- it
3 could be deemed a district-wide conflict, and it's taken away from the district and
4 assigned to another U.S. Attorney's Office.

5 Q Uh-huh.

6 A In other instances, it could be -- you know, within our office, it
7 would typically become -- the Principal Assistant United States Attorney would be the
8 final decision-maker. And if she had a conflict like me, then it would go --

9 Q Okay.

10 A -- to one of our division chiefs.

11 Q So, in your office, is the principal assistant considered the number two?

12 A The principal assistant is the number two, yes.

13 Q Okay. And did you ever contemplate deferring this matter to her?

14 A No.

15 Q Why not?

16 A Because there was no conflict of interest and no reason for me to do so.

17 Q You may have felt that way, but others looking from the outside optically
18 might have felt differently, that a U.S. attorney appointed by President Biden wasn't a fair
19 arbiter of a case involving President Biden's son.

20 A So --

21 Q I mean, that's not an outlandish thing to suggest.

22 A I understand what you're saying.

23 Q Uh-huh.

24 A I am saying there is no ethical reason for me to put this decision on someone
25 else. And, in my experience, when you start trying to do things that aren't required to

1 placate people on the outside --

2 Q Uh-huh.

3 A -- you still wind up with those accusations despite what you did.

4 Q Okay. Do you think U.S. Attorney Weiss was kept in his position to placate
5 people on the outside?

6 A No.

7 Q No?

8 Do you know who kept U.S. Attorney Weiss on, whose decision that was? Was
9 that the decision of the Justice Department, or was that the decision of the White House?

10 A I don't know.

11 Q Now, during the last hour, counsel asked you questions about the types of
12 considerations that you went through, citing the Justice Manual. And I was a little, I
13 guess, confused, because it seemed like you were walking us through potentially the
14 decision-making process that your office made with respect to this particular case.

15 And that just struck me as a little bit different than what you had said in the first
16 hour when we were speaking with you, that this was a decision for the U.S. attorney in
17 Delaware to make. Could you help us resolve that?

18 A So what I was trying to do in the last hour when I was getting asked
19 questions about specifically was this factor considered in the context of this case, to say,
20 in general, in all cases, the principles of Federal prosecution, factors like sufficiency of the
21 evidence, are things that we are considering at all points, and taking it out of the context
22 of an assessment about whether we should seek to join this particular case.

23 Q Right. But you also have said that the decision whether you would join this
24 case would be unusual, because the case had been ongoing for a number of years.

25 And so I took -- and maybe you can correct me if I misunderstood what you were

1 saying. But I took what you said this morning, in the first hour, that after the case had
2 been up and running for a couple years, it would be very unusual for you to join. In your
3 experience, you hadn't had any case in your experience where after a number of years
4 had unfolded that you would decide to join it.

5 A It would be -- so, yes, it would be unusual to -- in my experience, it would be
6 unusual to join an investigation, just in general, that is late in the process. In my
7 experience, if a component has been conducting an investigation for a period of time,
8 they, in general, don't want to bring in another supervisory chain, because they've
9 already gotten all the sweat equity and now you're just adding additional layers of
10 supervision.

11 Q So --

12 A In --

13 Q Go ahead. I'm sorry.

14 A In terms of the jurisdiction in which the case is gonna be brought, it's a really
15 complicated analysis. There's, in general, all the concerns I was talking about before
16 about, kind of, buying an investigation largely sight unseen. On the other side, people
17 are gonna be in your jurisdiction litigating potentially complex issues that could result in
18 case authority that you are then subsequently stuck with.

19 So there's, like, a whole host of complications that weigh for and against in any of
20 these cases where you're considering getting involved.

21 Q Right. But, you know, you told us about that you spent 3 weeks going
22 through this analysis. And I'm just confused, why you didn't tell Mr. Weiss from the
23 beginning, hey, whatever you need, you just come into D.C. and we will help you get the
24 grand jury set up and we'll give you a copy of the local rules, that type of stuff. Like, you
25 went through a 3-week process that ended in either a declination or a decision not to

1 partner.

2 So I'm just trying to reconcile those two things.

3 A That's a good question that it's hard to get into without case-specific, but I
4 think you are absolutely right. If one were inclined not to join from the outset, that
5 conversation could've gone a very different way.

6 Q Right.

7 A I could've not even brought up joining, and I could have simply said, we'll
8 provide you whatever support you need.

9 Q Right. So don't you think going through the process, the 3-week process,
10 you know, sends the message to Delaware that this is a loser of a case and you shouldn't
11 bring it?

12 A No. I mean, I've told you I didn't know anything factually about the case
13 before that call.

14 Q But I'm talking about the end of the 3-week process.

15 A I'm sorry. Can you repeat the question then?

16 Q At the end of the 3-week process, you told Delaware that you didn't want to
17 partner or you didn't want to join, whatever words you want to use. Don't you think
18 that may have had the effect of trying to convince them not to bring the case?

19 A No, not -- no. No, I don't. And that certainly, just to be clear, was not the
20 intent of why we went through the 3-week process.

21 Q Okay.

22 A number of witnesses -- and it's not just Ziegler and Shapley. We've heard from
23 two FBI officials. We've heard from IRS officials. If there's one thing that's clear,
24 nobody thinks that your office was willing or interested to partner on this case. You
25 know, whatever semantics you want to use -- you either denied the case, you didn't want

1 to partner, you neglected to join, like, whatever. And Shapley and Ziegler testified that
2 Weiss himself, you know, characterized your decision as, you know, a failure to partner.

3 And that's very different than, "Hey, you can have anything you need, and you're
4 welcome to bring a prosecution, and we'll help you."

5 A So, I mean, I can't get into and I'm not tracking the details of what everyone
6 said. I can just tell you -- and lay out the chronology again.

7 And one thing I want to be clear on: A lot of your questions are assuming that
8 the conclusion of that process was known at the outset. And --

9 Q Right.

10 A -- that's not the case.

11 Chairman Jordan. Why'd you --

12 Mr. Castor. Go ahead, sir. Sorry.

13 Chairman Jordan. Well, why'd you offer it on the front end, then?

14 You said earlier that U.S. attorneys don't like to partner, you don't want two cooks
15 in the kitchen. But this is a -- they'd already done 3 years of investigation. And he calls
16 you and says, hey, we're looking to bring this case. And then he said you volunteered to
17 partner with him or potentially partner with him.

18 So why'd you offer it on the front end?

19 Mr. Graves. So I just want to clarify something you said. In general, if you're
20 the U.S. attorney who has been conducting an investigation for a long period of time, you,
21 in general, don't want to bring another U.S. attorney into the decision-making chain.
22 The calculus is different if you're the recipient of the request, if the investigation is
23 coming to your jurisdiction.

24 And, I mean, what I can say at a high level, I think, is, I made the ask because it
25 was something I wanted to explore.

1 BY MR. CASTOR:

2 Q And at the end of the 3-week process, you communicated to Delaware,
3 through your staff, that you didn't want the case to be brought. Is that correct?

4 A I had my staff reach out and explain that we weren't going to seek to join
5 and explain why.

6 One other point that hasn't come up: I did follow up to confirm that that
7 conversation occurred, and I asked if --

8 Q Which conversation?

9 A The conversation I just described, my staff communicating our decision --

10 Q Okay.

11 Chairman Jordan. After the 19th meeting.

12 Mr. Graves. -- to them --

13 Chairman Jordan. Got it.

14 Mr. Graves. -- to ask how the meeting went or if any additional information was
15 learned.

16 BY MR. CASTOR:

17 Q And what did they tell you?

18 A They told me how the meeting went. And I did not receive any additional
19 information.

20 Q And that communication you had was with your first assistant or who -- head
21 of the Criminal --

22 A I can't remember whether it was the head of the Criminal Division or --

23 Q Or your principal assistant?

24 A -- lower-level supervisors. It might've been directly with the lower-level
25 supervisors.

1 Chairman Jordan. And how did that meeting go? What was the feedback?

2 Mr. Graves. I can't get into specifics, but, like, at a high level, I think I am
3 authorized to say that they conveyed that we weren't going to seek to join, our rationale
4 and our thought process about why we weren't going to seek to join, and we did not
5 receive any information back that would cause us to change our analysis.

6 BY MR. CASTOR:

7 Q And, during the course of that, did your staff communicate to Delaware that
8 they were welcome to bring the case themselves, that you would do everything possible
9 to facilitate that?

10 A So I don't know if that happened during the course of that conversation,
11 because I didn't participate in that conversation. Based on what I know was occurring at
12 that time in terms of what we were facilitating, there is no doubt in my mind that they
13 understood they could bring whatever charges they wanted in the District.

14 Q And do you know why they later characterized your decision as blocking the
15 case?

16 Ms. Zdeb. Who is "they"? The whistleblowers?

17 Mr. Graves. So I think -- and this is what I was referring to earlier. I think I have
18 seen the whistleblowers initially use language of "blocking." I've definitely seen
19 correspondence from now-Special Counsel Weiss saying there was no blocking, and then
20 this shifting to "partnering" and "not partnering."

21 BY MR. CASTOR:

22 Q What was your understanding of Mr. Weiss's authority to bring this case?

23 A So, from my perspective, I never thought about it in terms of his authority.
24 It's a fellow U.S. attorney that has a matter that he believes needs to be brought.

25 Q Uh-huh.

1 A I'm not saying, "What is your basis for doing so in D.C.?" I'm immediately
2 shifting to, "What do you need from us?"

3 Q Uh-huh. Did he ever communicate to you that the Attorney General had
4 given him authority to bring the cases he needs?

5 A I don't recall if that came up in our conversation. And, again, that would be
6 of no significance to me. The last thing I'm thinking when he's calling is, "Well, what is
7 your basis for doing these charges in D.C.?" It's, "You're doing an investigation that you
8 say you've realized you have to bring charges in D.C. Let's talk about how you get it
9 done."

10 Q Uh-huh. So you didn't have a discussion with Mr. Weiss about special
11 counsel authority?

12 A No.

13 Q When was the first time you learned that he was interested in special
14 counsel authority?

15 A Through the public reporting of the Attorney General naming him to be
16 special counsel.

17 Q Okay. But before that, there was -- I mean, the Attorney General testified
18 on a couple different occasions. I'm sure you were watching the letter exchange that
19 Mr. Weiss sent to the Hill, correct?

20 A That is correct. And, like, at a high level, my understanding was, the
21 Attorney General was of the position that then-U.S. Attorney Weiss had not asked to be
22 special counsel. And I hadn't seen anything from then-U.S. Attorney Weiss saying that,
23 at a point in time earlier to him being named special counsel, he needed to be named
24 special counsel.

25 Q Right. But, during that letter exchange, didn't it strike you as maybe a

1 point in time that you needed to call and clarify to Mr. Weiss that if he needed to bring
2 anything in D.C. that he would have your support?

3 A During the letter exchange? No. And my chronology could be off,
4 because I am following this as a recipient of news, but, like, in the middle of all this, there
5 was a negotiated resolution as well.

6 Q Uh-huh.

7 Well, in June of this year -- that was before any negotiated resolution -- Weiss
8 wrote to Mr. Jordan and stated, "I've been granted ultimate authority over this matter,
9 including responsibility for deciding where, when, and whether to file charges and for
10 making decisions necessary to preserve the integrity of the prosecution."

11 Is that, like, accurate?

12 A To my understanding, yes.

13 Q Because before getting special counsel authority, for Mr. Weiss to bring
14 some of these charges, he would've needed, as we discussed this morning, the approval
15 of the Tax Division.

16 A So, again, I don't know the specifics of this case. The way the Justice
17 Manual is set up, certainly Tax Division approval would be required.

18 Q Uh-huh.

19 A But the Justice Manual exists under the Attorney General's authority. So, if
20 he wants to say in a particular case that consultation and approval is not going to be
21 required, he can say consultation and approval is not required.

22 Q But doesn't he have to go through the 28 United States Code 515 process?

23 A Well, I guess that's a process one could go through. I'm not sure that 515
24 would necessarily take you out of Tax Division approval necessarily.

25 Q Is there another way the Attorney General can grant Weiss ultimate

1 authority?

2 A So I'm not sure of all the ways. I mean, from my perspective -- because I
3 can tell you, as U.S. attorney, 515 is not something that I have ever dealt with --

4 Q Right.

5 A -- these are just worked out more informally, which is my frame of reference
6 of, "Okay, you have charges you want to bring. We'll work it out. You'll get charges
7 brought here."

8 Q When Weiss said, "I've been granted ultimate authority over this matter,
9 including responsibility for deciding where, when, and whether to file charges," did that
10 strike you as a little odd? I mean, he's essentially saying he can walk right into D.C. and
11 file charges without your input.

12 A In the context of the investigation, no, it didn't strike me as odd. And, like I
13 said, it's an -- it was a preexisting investigation, and I understand the reasons for having
14 him continue to run it.

15 Q But as of June 7th, that's a totally untrue statement, what Weiss said here.
16 I mean, he did not have ultimate authority. He had to go through the Tax Division.
17 And if he was going to bring charges in Los Angeles or D.C., he had to go through the U.S.
18 attorney.

19 A So I don't know that that's -- again, I don't know that that's an untrue
20 statement. I mean, again, I never got to the intellectual point of what happens if I just
21 say, no, we're not going to facilitate you doing anything in here, what's going to happen
22 next, because it never crossed my mind to do that.

23 Q Right.

24 But then he follows up on June 30th, okay -- this is well before the special counsel
25 status in August -- and he essentially acknowledges that his June 7th letter was incorrect.

1 And he writes, "I stand by what I wrote" -- which, of course, is an euphemism for
2 "I need to correct it" -- "but wish to expand. As the U.S. Attorney for the District of
3 Delaware, my charging authority is geographically limited to my home district." Okay?

4 So, going back to what he said on June 7th, he did not have ultimate authority to
5 bring cases in D.C. Isn't that correct?

6 A I'm not sure.

7 Q He didn't have the ultimate authority to bring cases in Los Angeles, right?

8 A I don't know.

9 Q Well, I mean, he now, on June 30th, he's saying that is, in fact, the case,
10 which totally contradicts the June 7th letter.

11 "If venue for a case lies elsewhere, common departmental practice is to contact
12 the United States Attorney's Office for the district in question and determine whether it
13 wants to partner on the case."

14 Now, you've testified that you went through a 3-week process and determined
15 that you did not want to partner on the case, correct?

16 A So I'm not sure what he means by "partner" in that context, but, yes, we
17 weren't going to join.

18 Q Right.

19 A Now, if he means, by "partner," are they going to support us, then we'd
20 already said in the initial call, we'll support you guys returning whatever charges you want
21 to return in our district.

22 Q Right.

23 "If not, I may request special attorney status," which, as of June 30th, he didn't
24 request special attorney status, pursuant to 28 United States Code 515.

25 "Here I have been assured that, if necessary, after the above process, I would be

1 granted 515 authority in the District of Columbia."

2 So isn't he saying that, for him now to bring charges, he needs 515 authority in
3 D.C.?

4 A So I'm -- I can hear the words you're saying as you're reading it. I have no
5 firsthand knowledge, so I can just kind of surmise, in the way that you can surmise, what
6 he is saying.

7 Q But what he says in the June 30th letter, in fairness, contradicts what he said
8 in the June 7th letter and contradicts what you've told us.

9 A So, I don't see it that way.

10 Q Okay.

11 A I mean, I see the June 30th letter as a clarification of the June 7th letter,
12 which is consistent with --

13 Q Uh-huh.

14 A -- my understanding of where things were, which is that he is running an
15 investigation and he has authority to bring the charges, and the Attorney General is going
16 to work to make sure, if it comes to it, that he can bring charges in whatever jurisdiction
17 he wants.

18 Q But --

19 Chairman Jordan. Could you tell him "no"?

20 Mr. Graves. So, could I have told him, "No, we're not going to support you, I'm
21 not going to make my grand jury available"? I mean, I never considered it, but I guess I
22 could've told him "no."

23 Chairman Jordan. Okay. So, then, where's the authority coming from?

24 Mr. Graves. Because I could get a call from the Office of Attorney General
25 saying, "You are going to."

1 Chairman Jordan. Well, based on what Steve just read you, what authority does
2 he have that says he can bring the case when, where, and whether he decides to bring
3 charges at all? What authority is that?

4 Mr. Graves. So, as I --

5 Chairman Jordan. And how does he get that authority? Because you said it's
6 not 515, so what is it?

7 Mr. Graves. So, as I understand the letters and the public reporting, he was
8 given assurance by the Attorney General, who heads our department, that he is going to
9 be able to bring whatever charges wherever he wants to bring charges that he thinks are
10 appropriate.

11 So, I mean, I can -- this has never happened, but I can make all kinds of
12 determinations I want to make on my own. If the Deputy Attorney General or the
13 Attorney General calls me up and says, you are going to do the opposite of what you said,
14 I am going to do the opposite of what I said. That's the way the Department works.

15 BY MR. CASTOR:

16 Q If this was real, if this was actually the case, don't you think the Deputy
17 Attorney General's Office or the Attorney General's Office would've looped you in before
18 these letters were sent?

19 Like, if Weiss was really going to bring a case in D.C., okay, if that was a genuine
20 possibility, okay, don't you think they would've looped you in, rather than just, like, have
21 you learn about this in the letter exchange?

22 A No, not really. I mean, I think this is --

23 Q No?

24 A Again, while the situation is unique, it is not uncommon for cases to start in
25 one jurisdiction and venue to lie in another jurisdiction, and we all just work it out

1 amongst each other. We're not saying, what authority are you acting pursuant to?
2 We are one Department. And if we have someone else who is, you know, the head of
3 an office, and in this case a Presidentially appointed Senate confirmed head of his office,
4 that wants to bring charges --

5 Q Uh-huh.

6 A -- the immediate mindset is, we're going to support it.

7 And I think the Attorney General and the Deputy Attorney General know that's
8 out there, and they don't need to kind of lay the groundwork for the request that's
9 coming in.

10 Q Right.

11 But isn't it likely that your office, when you communicated back in March of '22,
12 on March 19th -- subsequent to March 19th, that the message received from Mr. Weiss
13 was, no, you can't do it in D.C.?

14 A I cannot -- I don't know, since I didn't have conversations with him, what
15 message he heard when he got briefed.

16 Q Right.

17 A I'm presuming he got briefed by his team.

18 Q Right.

19 A It would be hard for me to believe that, given the steps that we had taken,
20 but anything is possible.

21 Q Okay.

22 Weiss sent another letter in July, July 10th --

23 A Uh-huh.

24 Q -- a couple weeks later, and he asserted to Senator Graham, "I have not
25 requested special counsel designation pursuant to 28" -- the CFR -- "CFR section 600.

1 Rather, I had discussions with departmental officials regarding potential appointment
2 under 28 U.S.C. 515, which would have allowed me to file charges in a district outside my
3 own without the partnership of a local U.S. attorney."

4 So Weiss is now saying that, for him to bring a case outside of the District of
5 Delaware, he needed to go through, you know, 515 or at least through senior officials of
6 the Department.

7 A Sorry, what's the question?

8 Q So this -- I mean, these words indicate, in Weiss's own mind, he didn't have
9 the ability to bring the case in D.C. like you've testified.

10 A So I don't read the correspondence that way.

11 Q Okay. So your testimony is, if Weiss wanted to bring a case in D.C., he
12 could've done it and you would've assisted, without 515 authority.

13 A So let me take a couple steps back.

14 My understanding, which was largely informed by public statements, is that the
15 Attorney General had given his assurance to U.S. Attorney Weiss that he would get
16 whatever he needed from the Department in order to bring the charges that he thought
17 was appropriate in the venue that he thought was appropriate.

18 Which would include, from my reading of the public statements and what I've
19 heard, if he ultimately needed it, a grant of 515 authority to act outside of Delaware.
20 There are all kinds of ways short of 515 that these charges could have been brought in
21 D.C.

22 Q Right. But, according to your testimony, he didn't need 515 authority,
23 because you were gonna let him come into D.C. and do it if he really wanted to. You
24 weren't gonna partner --

25 A So we didn't --

1 Q -- but you were gonna facilitate.

2 A Yeah, so we didn't have conversations along those lines. But, like, what
3 one could do, right, if you wanted to proceed, is, he could ask to have all of his trial team
4 designated as special assistant United States attorneys in D.C., and they would be
5 designated as such, and --

6 Q And did you tell him you were willing to do that?

7 A Never -- that never came up. But they would be designated as such, and
8 then a grand jury indictment would be returned under my name.

9 Q Right. But your conversation in March of 2022, you said you told him that
10 he could have whatever he needed to bring the charges. And there was a question of
11 whether you'd officially partner or join --

12 A Uh-huh.

13 Q -- but, regardless of whether you'd officially partner or join, you'd still
14 facilitate him bringing a case.

15 A Correct.

16 Q Okay. But that's, like, totally different than what he says in the July 2023
17 letter and these letters where he says, if I need to bring charges outside of my district,
18 without the partnership of a local U.S. attorney, you know, I had to go through either 515
19 authority or some other, you know, process.

20 So does he misunderstand, like, what you communicated to him?

21 A I mean, I can only speculate as to what is going on in his mind.

22 Q Uh-huh.

23 A The solution that I just laid out, if we weren't going to put our own AUSAs on
24 the trial team, he might've deemed that inadequate and he might've preferred 515 over
25 that solution.

1 Q Uh-huh.

2 A I don't know. We never had that conversation.

3 Q Okay.

4 How frequently, in your experience, do you decline to partner when a U.S.
5 attorney from -- you know, AUSA from Maryland or AUSA from Virginia or some other
6 State asks you to partner?

7 A So it doesn't happen -- it happens; it doesn't happen all that -- well, let me
8 strike that.

9 It's not framed that way. It is framed as -- and, again, this doesn't happen all that
10 often -- "We have this case that we need to bring," and they're usually not looking for us,
11 in those instances, to staff the cases. They're usually looking to figure out a way of
12 getting the cases charged in our district. And we work with them on that, as we offered
13 to work with --

14 Q Okay.

15 A -- U.S. Attorney Weiss here.

16 Q So is it fair to say there's, sort of, two tracks when venue lies outside of your
17 district? Track one is you join, you partner, you team up; and then, if you join, if you
18 partner, if you team up, you put your AUSAs on the trial team. Correct?

19 A No. I thought you were going to describe two different tracks.

20 Q Okay. Well, what are the two tracks, in your mind?

21 A The two tracks, in my mind, are the AUSAs from the other jurisdiction just
22 come in and handle everything themselves --

23 Q Okay.

24 A -- or the other jurisdiction just transfers the case to us and then we
25 prosecute it.

1 Q Okay.

2 A I can't think of a situation where it's the hybrid model that you just --

3 Q Okay.

4 A -- described, where it's two offices joining --

5 Q So what was Weiss looking for here?

6 Chairman Jordan. Yeah. Was he track one, track two, or hybrid?

7 Mr. Graves. So, again, this wasn't explicitly said, but he was talking about -- my
8 recollection of the conversation was, he was immediately talking about what he needed
9 to do and the support that he needed to complete that. So my frame of --

10 Chairman Jordan. Was it track one or track two?

11 Mr. Graves. -- my frame of reference, how I'm hearing it, is, he is most focused
12 on getting his charges brought by his people in the District.

13 I am the one that introduces the idea of, "Hey, can we maybe join up with this?"
14 And he says, "We can discuss that."

15 Chairman Jordan. Well, why would you do that? If that's not one of the two
16 tracks, why would you do that?

17 And you just told us earlier that U.S. Attorney's Offices, when they're on the
18 receiving end, someone's coming in, they don't like that. The investigation's been going
19 for 3 years; you've got, as I said before, two cooks in the kitchen then.

20 Why would you offer that?

21 Mr. Graves. So the giving end, in my experience, rarely -- the end that already
22 has the case very rarely wants to do that, for all of the reasons you just articulated.

23 Chairman Jordan. Right.

24 Mr. Graves. The end that's on the receiving end of it is looking at things
25 differently. And I laid out some of the considerations before.

1 Like, you know, particularly in complex matters where there's gonna be a lot of
2 litigation, you can have authority generated in the course of those cases that you're stuck
3 with. And if you have a bunch of people who aren't from the jurisdiction litigating those
4 issues -- and this has happened to us with Main Justice components before -- that can
5 have massive programmatic consequences for you.

6 Chairman Jordan. And 3 weeks later, you decided you didn't want to go that
7 route.

8 Mr. Graves. Yes, that is correct.

9 Chairman Jordan. Okay. So you can't have it -- I guess the point we're making
10 is, you can't have it every way. You can't say there's two tracks, but then you
11 offered -- and you don't like the second track, necessarily, or you do like the second track
12 because it's gonna be in your district and you're gonna work with them, and then 3 weeks
13 later decide you don't want to do it and there's this hybrid model.

14 I mean, that's what's creating all the confusion, not to mention the three different
15 things we got from U.S. Attorney Weiss in the correspondence to Congress.

16 Mr. Graves. So let me try to unpack everything. So what I'm talking
17 about -- because we are talking about two tracks in a different context.

18 Putting aside this investigation, the cases that I've typically seen where there has
19 been a venue issue -- a gun case where someone is going back and forth over Eastern
20 Avenue, which is the dividing line between us and Maryland in one quadrant, and the
21 case actually should've been brought in a different jurisdiction -- those cases, the
22 conversations are, are we gonna bring people in as SAUSAs, special assistant United
23 States attorneys, or are we going to transfer the case to the right jurisdiction? Like, how
24 are we logistically gonna make it work?

25 I agree that, in general, I can't think of a time where in an ongoing case U.S.

1 Attorney's Offices have teamed up.

2 As a career prosecutor, I had a case where I had an investigation, the Southern
3 District of New York had an investigation; the same company was the target of the
4 investigation. We ultimately agreed that we should do it in one jurisdiction and we
5 would team up and have our resolution together. But that wasn't talking about trying a
6 case together, which is a different animal.

7 There are a host of reasons not to join an existing -- any existing investigation.
8 There are also countervailing reasons to join an investigation that is gonna come into your
9 jurisdiction that might be of some significance and likely will lead to the creation of
10 binding authority. And those weigh against each other. And that's what we had to
11 weigh against each other on an incredibly short and compressed timeframe.

12 BY MR. CASTOR:

13 Q It's very unusual for Weiss to call you directly, right? You've only had one
14 conversation during this saga, right?

15 A So, I mean, I don't know that I'd characterize it as unusual. I would say, in
16 the past, that when these issues have come up, they've kind of started at the line level
17 and worked their way up. There are some obvious sensitivities around this one --

18 Q But, clearly, Weiss called you because he wanted to bring a case in D.C.,
19 right?

20 A Yes.

21 Q So he wanted to bring a case in D.C. And, you know, as I understand what
22 you're saying, there are two tracks: Either you take over the case for him, or you
23 facilitate him prosecuting the case.

24 A Yes.

25 Q So that 3-week process, was that an evaluation of whether you were gonna

1 take the case over for him?

2 A It was an evaluation of whether we would continue the conversation that I
3 started about whether he'd be open to us joining the case.

4 Q Okay. And so would that have been a hybrid model?

5 A That would've been the rare hybrid model that we were proposing --

6 Q Okay.

7 A -- yes.

8 Q So there are three tracks.

9 A I've never seen track three before, in all candor.

10 Q Okay.

11 So Weiss wanted, though -- Weiss wanted to bring the case. Did he tell you he
12 needed your help, your partnership? Did he need that hybrid model?

13 A No. And that was after our communication -- after we communicated that
14 we were not gonna explore potentially joining the investigation, I never heard anything
15 about that decision.

16 Q So I think we're just wondering why you couldn't have just facilitated track
17 one and let Weiss bring the case himself with his own U.S. attorneys.

18 A We could have started in that position. And that's where we ultimately
19 landed of what we were going to do. From my perspective, we were back in what we
20 are now calling track one.

21 Q Uh-huh. But, unquestionably, I mean, Weiss believed that you had denied
22 him the ability to bring a case in D.C.

23 A I don't know what he believed, and that's not my read of the letters,
24 necessarily.

25 Q It's not just what he wrote in the letters. It's what was related to the

1 witnesses that we have subsequently spoken with -- I mean, all the witnesses, from, you
2 know, the two FBI officials, who aren't whistleblowers by any stretch --

3 A Uh-huh.

4 Q -- you know, in addition to the two whistleblowers, and then the IRS officials
5 who are more senior than the whistleblowers, who had direct communication with Weiss.

6 A Uh-huh.

7 Q I mean, universally, their understanding was, the D.C. U.S. Attorney's Office
8 denied us the ability to bring the case, or declined to partner, or whatever word you want
9 to use.

10 Ms. Zdeb. I think those are two separate things. And I am concerned that what
11 you just said mischaracterizes at least some of the testimony that witnesses have
12 provided.

13 Mr. Graves. So I have never heard that the ability to go forward was predicated
14 on our decision of whether we should assign one of our own AUSAs to the case or not.
15 Which is essentially what we're talking about: Are we gonna have an assistant United
16 States attorney from the District of Columbia on the case?

17 Chairman Jordan. I just want to make -- we can simplify this. Like, it's either
18 they bring the case or you take over the case. That's how it's always worked, until this
19 one.

20 And, in this one, there was this hybrid model put forward where -- and it was
21 offered by you. And you said, we can partner with you, you know, like we're a partner,
22 whatever, we can join with you, we can -- this different model than what's ever been
23 used, this different model. And then you take 3 weeks to discuss it and decide, no,
24 we're not gonna do that, and it's back to they bring the case.

25 Mr. Graves. So --

1 Chairman Jordan. Is that summarizing it?

2 Mr. Graves. Yeah, so let me clarify. When I'm saying "not used," it's not
3 something we typically do with other U.S. attorneys -- it's not something we do generally
4 with other U.S. Attorney's Offices, because, in general, U.S. Attorney's Offices don't work
5 together.

6 What I had in the back of my mind and what I've definitely seen before is, when
7 Main Justice components come into our jurisdiction, special counsel's offices come into
8 our jurisdiction, it's not uncommon for us to assign an assistant if that component wants
9 an assistant on those cases as special counsel.

10 Chairman Jordan. But that wasn't this case. This is just another U.S. attorney.
11 This wasn't Main Justice; this wasn't a special counsel.

12 Mr. Graves. It is another U.S. attorney, but it is another U.S. attorney -- this isn't
13 some gun case that happened to go across Eastern Avenue. This is a white-collar case
14 where they're -- this is a white-collar case where, based on the nature of the charges
15 contemplated, you could expect that there is gonna be a lot of litigation and litigation
16 that might create binding precedent in our jurisdiction.

17 BY MR. CASTOR:

18 Q Were you aware that a statute of limitations was about to expire?

19 A I don't think I'm allowed to get into that, given the contours of what I've
20 been authorized to discuss.

21 Q Were you aware of the nature of the 2014 and 2015 income at issue here
22 that was not reported?

23 A Yeah, I don't think I'm allowed to get into that, given the contours of what I
24 have been allowed to discuss.

25 Q But do you know the answer?

1 A So, again, if I get into that I know the answer, then that's a backdoor way of
2 getting into --

3 Q I don't think so. You either know the answer or you don't know the
4 answer, but that doesn't get into the substance.

5 A Um --

6 Q If all the restrictions the Justice Department has imposed on you were lifted,
7 would you be able to answer my question?

8 A So, to be clear, the reason the restrictions exist is because we are trying to
9 protect the integrity of an investigation that is very much ongoing. Like, what is and is
10 not in that investigation I don't know, and I, candidly, in my role, should not know.

11 So I'm trying to be very careful not to say anything which we acknowledged at the
12 outset might become public that could be deleterious to that investigation.

13 Q Okay.

14 Can I have that exhibit?

15 This is exhibit 4?

16 The Reporter. Uh-huh.

17 Mr. Graves. Well, this is convenient.

18 Mr. Castor. Yeah.

19 [Graves Exhibit No. 4]

20 Was marked for identification.]

21 BY MR. CASTOR:

22 Q This is an email from Eric Schwerin, one of Hunter Biden's business
23 associates.

24 A Uh-huh.

25 Q In the fourth paragraph -- take your time reading it. I'm gonna direct your

1 attention to the fourth paragraph, though, when you're ready.

2 A Okay, I've read it.

3 Q Page 2 is an easier one to read.

4 A Yes, page 2 was very easy to read.

5 Q Were you aware that, in 2014 and 2015, in the Hunter Biden case -- we're
6 talking about the Burisma income. I mean, he's making, like, a million bucks a year for
7 doing nothing except, potentially, political favors.

8 Were you aware that the 2014 and 2015 income hadn't been captured for tax
9 purposes?

10 A So, again, I appreciate -- and I'm reviewing the exhibit. Again, I can't get
11 into the ongoing investigation and facts that were considered and not considered during
12 the course of it, because it gets into our internal deliberations.

13 Q Last hour, Democratic counsel asked you -- you know, you were talking
14 about how intent is very tricky with tax cases sometimes. Is that right?

15 A Yes, it can be, in general.

16 Q Okay. But if you have an email from your business partner whose -- you
17 know, Eric Schwerin's job was to manage this money for Hunter Biden. If you have an
18 email to the potential defendant which states, "In 2014" -- this is the fourth paragraph
19 down, second sentence of the fourth paragraph.

20 "In 2014 you joined the Burisma board and we still need to amend your 2014
21 returns to reflect the unreported Burisma income. That is approximately \$400,000 extra
22 so your income in 2014 was closer to [\$1.2 million]."

23 This is a pretty good piece of evidence that goes to intent, isn't it?

24 A So what I can say in general, in the context of -- in general about tax returns
25 is, in my experience, individuals who have businesses and complicated taxes are not

1 preparing their tax returns themselves. There is a tax-return preparer. So, in tax cases
2 in general, it often comes down to what was and was not communicated to the tax
3 preparer --

4 Q Okay.

5 A -- and what the taxpayer directed others to tell.

6 Q Uh-huh.

7 A So it could be that you have a communication where someone is talking
8 about income. Well, then you have to trace down, did the taxpayer expect that person
9 to tell the tax preparer? Did the person actually forward the --

10 Q Okay.

11 A -- document to the tax preparer and it --

12 Q I mean, you sound --

13 A -- got lost?

14 Q -- like a defense attorney for Hunter Biden.

15 A No, but this is -- but, like, this is very serious. This is what you have to do as
16 a prosecutor.

17 Q Right.

18 A You have to think through all the defenses and how we're going to disprove
19 it.

20 I have to go down and deal with, if I'm in a tax case like this, saying, "In addition,
21 you reported a million dollars of income that all went to RSB, and you report 180,616 --

22 Q Right.

23 A -- in income that also went to RSB. You didn't receive this in cash, and it is
24 really phantom income. So, like, I have questions about, did you over-report?" And all
25 of that gets complicated in a tax-evasion scheme.

1 So that's just one example of --

2 Q But Schwerin is telling Hunter Biden, "You didn't report your Burisma
3 income." He's getting a million bucks a year -- you know, \$83,000, I think, a month. I
4 mean, isn't this at least a good piece of evidence that goes to intent?

5 A I can't judge from the outside of the investigation. I'd also note that this is
6 in 2017, so it's clearly some retrospective. I'd have questions about whether the taxes
7 were paid, because that could be consistent with a good-faith mistake. So it's very
8 complicated.

9 Q Okay.

10 During your discussions with your team in March of 2022, was statute of
11 limitations brought up?

12 A Again, I can't get into internal deliberations. What I can say at a very high
13 level -- and I have acknowledged today, we were -- I instructed my team to operate on a
14 very tight and compressed timeframe and to do the best we could do. And that wasn't
15 arbitrary, that we were doing that.

16 Q Do you think Weiss and his team believed you had a gatekeeper role here?

17 A I don't know. I had always assumed not, because of the steps we were
18 taking to facilitate the bringing of charges.

19 Q What did your team tell you about the result of the -- you had your meeting
20 March 19th. Your team then communicated to the U.S. Attorney's Office in Delaware
21 the outcome of that meeting, that you weren't gonna join, you weren't gonna partner.
22 What feedback did you get from your team about how Weiss reacted?

23 A So, to my understanding, U.S. Attorney Weiss was not part of that
24 conversation that occurred at the career level.

25 Q Okay.

1 A At a high level, what I can say is, there certainly weren't concerns raised
2 about an inability to go forward if we didn't assign an assistant to the case.

3 Q Uh-huh.

4 A And to the extent substance of the investigation and that kind of stuff was
5 discussed, there was nothing that I learned that was new --

6 Q Okay.

7 A -- that was from that conversation.

8 Q Do you think Weiss thought he needed a D.C.-based U.S. attorney from your
9 office on the trial team?

10 A So I'd always been under the impression -- my belief was, no, he didn't think
11 that.

12 Q Okay.

13 A Because, remember, when I raised, would you be open to us adding
14 someone, he said that's something we would discuss. It wasn't, like, "Absolutely. We
15 can't go forward without you adding someone."

16 Q Right.

17 A That was not the response that I recall.

18 Q Okay. So, then, were you surprised when you saw his letters, which -- you
19 know, the plain language of the letters indicates that he thought he needed you.

20 A I don't read the letters that way, necessarily, collectively. I read the letters
21 as saying either I was gonna partner with them, whatever partnership looks like --

22 Q Uh-huh.

23 A -- whether that's just them kind of making my people special assistants or
24 them adding an assistant to the case so that we're full-fledged partners --

25 Q Uh-huh.

1 A -- or I was gonna get authority under 515. And I knew that I would get
2 authority under 515, because the Attorney General told me, if it came to that, he would
3 do that.

4 Q Uh-huh.
5 Who is J.P. Cooney?

6 A He is a career prosecutor who was in our office.

7 Q Is he one of the people involved with the March 19th meeting?

8 A So, again, I'm gonna go through Office of Legislative Affairs in, kind of,
9 providing specific names.

10 Q I mean, I just want to know if he was involved with this particular meeting.
11 Was he one of the four -- he was not the principal assistant, we know that, right?

12 A So --

13 Ms. Zdeb. I'm sorry. I think what Mr. Graves has said a couple of times now is
14 that, to the extent you have questions about individuals --

15 Mr. Castor. I do.

16 Ms. Zdeb. -- who participated, that we are happy to discuss those with you
17 offline, but, given the concerns he has expressed about the safety of his prosecutors, that
18 we would prefer not to discuss names --

19 Mr. Castor. Yeah. I'm very sensitive --

20 Ms. Zdeb. -- in a transcript -- in a transcript.

21 BY MR. CASTOR:

22 Q I'm very sensitive to safety concerns, but come on. I'm asking you whether
23 J.P. Cooney was in the March 19th meeting. Let's get real. That's not going to, you
24 know, invoke safety concerns here.

25 A What I can tell you is, I've unfortunately had way too many instances of

1 documents getting into the public domain that have our prosecutors' names in them and
2 me receiving what we call urgent reports about security concerns because of threatening
3 or harassing behavior that they're receiving --

4 Q Uh-huh.

5 A -- and that we've had to take steps for a number of people in our office to
6 mitigate the risk.

7 Q Okay. So you're refusing to acknowledge whether he was in this March
8 19th meeting?

9 A I am laying forward what I would believe to be a very reasonable
10 accommodation, not to have this in a transcript which we all acknowledge might become
11 public at some point in time.

12 Q Okay. Do you want to go off the record and tell us?

13 Ms. Zdeb. Are you going to redact his name?

14 Mr. Castor. I said go off the record and you can tell us.

15 Ms. Zdeb. Why don't we take this question back, Steve?

16 Mr. Castor. So you're not willing to go off the record and tell us; then it wouldn't
17 be in the transcript. And then -- so it's like a totally different answer now.

18 Mr. Graves. So --

19 Mr. Castor. I'm inviting you to go off the record, and then it's not in the
20 transcript.

21 Ms. Zdeb. The scope of what he's here to talk about and --

22 Mr. Castor. That's a whole different topic.

23 Ms. Zdeb. Well, I understand, but he has been here for some time now
24 discussing --

25 Mr. Castor. It's 1 o'clock. It's not been that long.

1 Ms. Zdeb. -- the scope of Mr. Weiss's authority and --

2 Mr. Castor. Right.

3 Ms. Zdeb. -- the issue of the perception or lack thereof of him being blocked in
4 the District.

5 Mr. Castor. Uh-huh.

6 Ms. Zdeb. It does not explicitly include the name and identity of every person in
7 his office or any other office that may have participated in that process.

8 Mr. Castor. But when I first started asking about the 3/19 meeting, I was told
9 that, yeah, you can have the names, you just can't do it on the record.

10 So now I'm inviting everyone to go off the record to give us the name, and now I'm
11 getting a different answer, correct?

12 Ms. Zdeb. I think what he said was, let's confer -- why don't you confer with the
13 Office of Legislative Affairs.

14 Mr. Castor. I'm conferring with you right now.

15 Ms. Zdeb. And we are happy to continue conferring after the interview is done.

16 Mr. Castor. Okay. So you're not willing to go off the record and tell us.

17 Ms. Zdeb. I'm not willing to do that right now, given the concerns that have
18 been expressed.

19 Mr. Castor. Okay.

20 We've got, like, a minute left, boss. Got anything else?

21 Chairman Jordan. Off the record.

22 Mr. Castor. Okay. We're done with our hour.

23 Mr. Graves. Great.

24 [Recess.]

25 [REDACTED]. It is 1:16. We can go back on the record.

1 BY [REDACTED]:

2 Q U.S. Attorney Graves, we had talked through the letters that Mr. Weiss sent
3 to Congress in the prior hour pretty extensively, but I don't think the letters were actually
4 put in front of you at any stage. So I want to walk through the letters themselves and
5 just ask you if you have any information that contradicts them.

6 So we will start with the June 7, 2023, letter from Mr. Weiss to Chairman Jordan.
7 We'll mark that as exhibit 5.

8 [Graves Exhibit No. 5

9 Was marked for identification.]

10 Mr. Graves. Okay, I'm prepared.

11 BY [REDACTED]:

12 Q Have you seen this letter before?

13 A I have.

14 Q Okay. And so you know that this letter, it's actually -- it's a response that
15 Mr. Weiss sent to a May 25th letter from Chairman Jordan.

16 A I see that in the body of the letter. I have not seen the May 25th letter.

17 Q Okay. And this letter is a response to Chairman Jordan's letter about the
18 matter involving, among others, Robert Hunter Biden, correct?

19 A That is my understanding from reading the June 7th letter, correct.

20 Q Okay.

21 The second paragraph of this letter reads, quote, "While your letter does not
22 specify by name the ongoing investigation that is the subject of the Committee's
23 oversight, its content suggests your inquiry is related to an investigation in my District.
24 If my assumption is correct, I want to make clear that, as the Attorney General has stated,
25 I have been granted ultimate authority over this matter, including responsibility for

1 deciding where, when, and whether to file charges and for making decisions necessary to
2 preserve the integrity of the prosecution, consistent with federal law, the Principles of
3 Federal Prosecution, and Departmental regulations."

4 Did I read that correctly?

5 A You read that correctly.

6 Q Are you aware of any information which contradicts Mr. Weiss's statement
7 that he was granted ultimate authority over this matter?

8 A No.

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

12 A No.

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

16 A No.

17 Q And I want to turn to the last paragraph of this letter, which is actually on
18 page 3 of the letter.

19 That paragraph reads, quote, "In February 2021, I was asked to remain as United
20 States Attorney for the District of Delaware to continue my oversight of the matter.
21 Since that time, I have fulfilled my responsibilities, consistent with Department practices
22 and procedures, and will continue to do so. Throughout my tenure as U.S. Attorney my
23 decisions have been made -- and with respect to the matter must be made -- without
24 reference to political considerations."

25 Did I read that correctly?

1 A You read that correctly.

2 Q Are you aware of any information that contradicts Mr. Weiss's statement
3 that his decisions in this matter have been made without reference to political
4 considerations?

5 A I am not aware of any such information.

6 Q Okay.

7 So, following Mr. Weiss's June 7, 2023, letter, Chairman Jordan wrote to Mr. Weiss
8 directly. Mr. Weiss responded on June 30, 2023, and I'm going to introduce that letter
9 as exhibit 6.

10 [Graves Exhibit No. 6

11 Was marked for identification.]

1 [1:21 p.m.]

2 Mr. Graves. All right.

3 BY [REDACTED]:

4 Q Have you seen this letter before?

5 A I have.

6 Q Okay. The third paragraph of this letter reads: First, the Department of
7 Justice did not retaliate against, quote, an Internal Revenue Service, IRS, criminal
8 supervisory special agent and whistleblower, as well as his entire investigative team, for
9 making protected disclosures to Congress.

10 Are you aware of any information that contradicts this statement?

11 A I am not.

12 Q The June 30th letter then quotes his June 7th letter. That's at the bottom
13 of the first page.

14 A Yeah.

15 Q And then it continues on, on the second page. As the U.S. attorney -- I'm
16 sorry.

17 It says that: I stand by what I wrote and wish to expand on what this means.

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

1 Did I read that correctly?

2 A You read that correctly.

3 Q Are you aware of any information that contradicts Mr. Weiss' statement that
4 he was assured that he would be granted by section 515 authority if another U.S.
5 Attorney's Office declined to partner with him on the case?

6 A I am not aware of anything that contradicts that statement.

7 Q And, finally, Senator Lindsey Graham, who is the Republican senior ranking
8 member on the Senate Judiciary Committee, wrote to Mr. Weiss on June 28, 2023, and
9 Mr. Weiss responded on July 10th, 2023.

10 [REDACTED]: We'll introduce that as exhibit 7.

11 [Graves Exhibit No. 7

12 Was marked for identification.]

13 Mr. Graves. Okay.

14 Q The first sentence of the third paragraph on the first page of this letter
15 reads, quote: To clarify an apparent misperception and to avoid future confusion, I wish
16 to make one point clear. In this case, I have not requested special counsel designation
17 pursuant to 28 C.F.R., section 600, et seq.

18 28 C.F.R., section 600, et seq, gives the Attorney General authority to appoint a
19 special counsel, correct?

20 A Yes.

21 Q Okay. Are you aware of any information that contradicts Mr. Weiss'
22 statement that, as of July 10th, 2023, the date of this letter, he had not requested special
23 counsel designation pursuant to 28 C.F.R., section 600, et seq?

24 A I am not.

25 Q Okay. The July 10 letter continues, quote: Rather, I had discussions with

1 departmental officials regarding potential appointment under 28 U.S.C., section 515,
2 which would have allowed me to file charges in a district outside my own without the
3 partnership of the local U.S. attorney. I was assured that I would be granted this
4 authority if it proved necessary. And this assurance came months before the October 7,
5 2022, meeting referenced throughout the whistleblower's allegations. In this case, I've
6 followed the process outlined in my June 30 letter and have never been denied the
7 authority to bring charges in any jurisdiction.

8 Did I read that correctly?

9 A Yes, you did.

10 Q To the best of your knowledge, is it accurate that Mr. Weiss was never
11 denied the authority to bring charges in any jurisdiction?

12 A Yes.

13 Q And is it true specifically with respect to the District of Columbia that Mr.
14 Weiss was never denied authority to bring charges in the District of Columbia?

15 A Yes.

16 Q Okay.

17 BY [REDACTED]:

18 Q Okay. Mr. Graves, on September 20th of this year, Attorney General
19 Garland testified before the House Judiciary Committee, and he told the committee that,
20 quote: Mr. Weiss has full authority to conduct his investigation however he wishes,
21 unquote.

22 Do you have any information to contradict that portion of the Attorney General's
23 statement?

24 A No.

25 Q The Attorney General also said, quote: Mr. Weiss had, as I said from the

1 beginning -- at the very beginning -- that he had authority over all matters that pertain to
2 Hunter Biden, end quote.

3 Do you have any information to contradict the Attorney General's statement in
4 that respect?

5 A No.

6 Q To sum up, do you have any reason to believe that David Weiss lied to
7 Congress about the extent of the authority -- excuse me, not Weiss -- but that the
8 Attorney General had lied to Congress about the extent of the authority he had been
9 granted?

10 A Absolutely not.

11 Q I want to ask you just a little bit -- there's some confusion, I think, on this
12 committee and in the public about the authority that Mr. Weiss had.

13 And do you understand, just generally as a prosecutor, the difference between a
14 factual question and a legal question?

15 A Yes.

16 Q And generally, witnesses who are involved in testimony like you are today
17 are asked factual questions, correct?

18 A Correct.

19 Q But we may have to ask you a legal question, if you wouldn't mind giving me
20 a little bit of latitude here, because it seems to me that the confusion is a legal question
21 and not so much a factual question.

22 There, in the previous hour, were suggestions that the Attorney General may not
23 have had the authority in some respect under statutes to allow Mr. Weiss to bring
24 charges in the District of Columbia. Do you recall those questions or suggestions from
25 the previous hour?

1 A Yes.

2 Q Okay.

3 A Yes.

4 Q And, I mean, as you sit here before us, you don't have a statute in front of
5 you, but you do have the experience of being a United States attorney in the District of
6 Columbia, correct?

7 A Correct.

8 Q Okay.

9 [REDACTED]: I'm going to show you what we're going to mark as exhibit 8, and this
10 is a statute.

11 [Graves Exhibit No. 8

12 Was marked for identification.]

13 BY [REDACTED]:

14 Q It's 20 U.S.C., section 509. Just the first page, I think, is what you'll have in
15 front of you.

16 Let me ask you first, are you familiar with this statute, Mr. Graves?

17 A I am not.

18 Q Okay. Just direct your attention to section 509, which is the bold part of
19 the first column. It's entitled "Functions of the Attorney General."

20 If you just want to review that brief section.

21 A Yes.

22 Q Let me know when you've had a chance to see it.

23 A Yes.

24 Q Okay. Now, this statute says, quote: All functions of other officers of the
25 Department of Justice and all functions of agencies and employees of the Department of

1 Justice are vested in the Attorney General except these functions.

2 And then it lists, under paragraph 1 there, vested -- those vested by subchapter 2
3 of chapter 5 of title 5, administrative law judges?

4 A Yes.

5 Q And then it accepts certain responsibilities in the Federal Prisons Industries,
6 correct?

7 A Correct.

8 Q And, finally, it accepts certain responsibilities in the board of directors and
9 offices of the Federal Prison Industries, Inc., correct?

10 A Correct.

11 Q But everything else, at least according to this statute, is vested in the
12 Attorney General by 28 U.S.C 509, correct?

13 A Correct.

14 Q Okay. Based on your experience as a lawyer and particularly a United
15 States attorney in your reading of the statute, is there any reason that you would have to
16 believe that Attorney General Garland did not have the authority to delegate to Mr.
17 Weiss the ability to bring any criminal charges against Hunter Biden anywhere in the
18 United States in any venue he chose?

19 A I'd have no reason to doubt that the Attorney General has that authority,
20 and it is my belief that the Attorney General has that authority. We all act at the
21 direction of the Attorney General unless the Attorney General directs us to do something
22 illegal, immoral, or unethical. We have an obligation to file. And, to be clear, the
23 Attorney General has never directed me or anyone else, to my knowledge, to do anything
24 illegal, immoral, or unethical.

25 Q Okay. So we talked at length about certain policies of the Department of

1 Justice and certain, I guess, procedures that are outlined in the Justice Manual. For
2 example, in tax cases that you might have to go to the Tax Division to get certain
3 approvals or permissions.

4 All of that approval or permission of policy, those are policies that are at the
5 discretion of the Attorney General of the United States. Is that fair to say?

6 A That is my understanding, yes.

7 Q Okay. So, if he promises to Congress -- the Attorney General, that is -- that
8 Mr. Weiss is going to have the authority to bring any charge anywhere in the United
9 States in any district, there's no reason, as far as you understand it, that that was not the
10 case here?

11 A Correct. And he has the authority to deliver on that -- he uniquely has the
12 authority to deliver on that commitment.

13 Q Okay. And I think that when Mr. Castor earlier was going through his
14 interpretation of Weiss' letters before we had entered them into the record, he was
15 suggesting to you that Attorney General Garland couldn't have promised Weiss the
16 authority that he said he did because of section 515, for example, or because of these
17 policies in the Justice Manual that talk about approvals from the Tax Division.

18 But Mr. Garland has explained that what he meant was: Mr. Weiss had the
19 authority because I said I would give it to him.

20 Do you have any reason to believe that Mr. Garland was being insincere in that
21 respect when he said that Mr. Weiss did have that authority?

22 A Absolutely not.

23 Q Okay.

24 BY [REDACTED]:

25 Q There was discussion earlier about option one, option two, option three.

1 And I lost a little track of it, but I think option one was just offering administrative
2 assistance, and that's it.

3 And there was a statement made that, ultimately, you did offer administrative
4 assistance, but it came at the end of this 3-week period. But that wasn't accurate, right?

5 A That is -- that is correct that that was inaccurate.

6 Q Okay. So when did you agree to provide any logistical or administrative
7 support that Mr. Weiss could need?

8 A From the first call that Mr. Weiss made to me, we immediately began taking
9 steps on providing support.

10 Q And he was aware that you were doing that?

11 A My understanding is, yes, his people were made aware of what we were
12 doing and -- yes, of what we were doing.

13 Q Okay. And I think you said you could have declined to do that, correct?

14 A Yes.

15 Q And you used the phrase: You could have said I wasn't going to give him
16 my grand jury, for example.

17 A Yes. Yes. In theory, yes.

18 Q Okay. Can you explain broadly how it works when you let another U.S.
19 Attorney's Office or somebody or a Main Justice component use the grand jury?

20 A So we often refer to the grand jury. In actuality, at least in the District,
21 there are multiple grand juries sitting at any point in time. We maintain a schedule of
22 the grand jury. So, if you want time before a grand jury, you have to go to the
23 scheduler. If you're coming from our office and they know who you are, you can
24 request your time, and that's how you get authority to enter the grand jury.

25 If you're coming from a Main Justice component and we've what we call

1 deconflicted with them, and they're going it alone in our jurisdiction, they can reach out
2 to our coordinator, and our coordinator knows that it is a case that has been authorized
3 to be brought in our district. That's generally the process you have to follow.

4 You can't just show up at the Federal courthouse and say: I'm a Federal
5 prosecutor and I'd like to go into a grand jury now.

6 Q So, in addition to potentially making it possible for Mr. Weiss to schedule
7 time before the grand jury, was there any other logistical or administrative support that
8 you were offered to provide or, you know, could have provided?

9 A So I can't get into the specifics here. I think one thing I could generally note
10 is the extremely high number of Federal district court cases that were being brought in
11 that period of time. There were a lot of logistical demands on the court. So taking
12 steps to find available time is not -- was not necessarily an easy thing.

13 Q Okay. And so by saying "I will give you whatever support you need," what
14 you meant is: If you need time before a grand jury, we will make that happen. If you
15 need trial time or if you need time before a judge, we can make that happen. Right?

16 Ms. Zdeb. And I'm sorry. But I think he can answer that hypothetically with
17 respect to such a conversation with any prosecutor looking to come into here, but I want
18 to be very careful not to get into specific steps that he may or may not or that his team
19 may or may not have offered to make available in this case.

20 Mr. Graves. Yeah. And so -- and I think I can clear this up even without going
21 to the hypothetical to more just, like, general.

22 As I recall the conversation, my question is -- was: What do you need?

23 And my attitude was: Of course we're going to provide it to you.

24 So, you know, how he heard it, what he expected, and the long litany of things
25 one could need in returning, I don't know, but I could just say my immediate response is,

1 "What do you need"; I was trying to signal we will give you whatever you need logistically.

2 BY [REDACTED]:

3 Q And you never heard anything from Mr. Weiss directly suggesting that he
4 thought he would not get the support that he needed from your office?

5 A I never heard anything from him directly, and I never indirectly heard they
6 thought that something we were doing in D.C. was preventing them from taking some
7 step that they wanted to take.

8 Q Okay. And you said that, after the March 19th meeting or the meeting that
9 took place approximately on March 19th -- after your team made the decision not to join
10 the case, that was relayed back to Mr. Weiss?

11 A So I didn't get into the specifics because I'm precluded of what happened at
12 the March 19th and what the decision was.

13 I said what my direction to the team was when they were tasked. I said that
14 there was a conversation. And then after that meeting was when we conveyed to the
15 District that we would not be looking -- when we conveyed to Delaware that we wouldn't
16 be looking to add our own prosecutor to the case.

17 Q Thank you for that clarification.

18 A Yeah.

19 Q So that information was relayed back to Delaware late March 2023
20 approximately?

21 A I believe so.

22 Q Or 2022. I'm sorry.

23 A 2022. Yes. I believe so. And I'm kind of going off of a calendar entry for
24 the March 19th date to help me kind of -- whatever it is -- a year and a half after the
25 fact -- kind of repiece together the chronology.

1 Q Okay. And you said, based on what was occurring at that time -- again,
2 getting back to the question of logistical support.

3 You said, based on what was occurring at that time, there could be no doubt that
4 Weiss knew he had the administrative and logistical support that he needed?

5 A So, from my perspective, based on what we were doing, I would be surprised
6 if he didn't think he had -- I would be surprised if he didn't know that we were serious
7 about providing the support that he needed to get the case indicted if he wanted to indict
8 the case.

9 Q And is that because support had been provided at that stage?

10 A It was because of specific steps that we had taken, yes.

11 Q Okay. Have you ever had a case where -- and I'm sorry. I'm talking about
12 grand juries broadly, not with respect to this or any other case.

13 Grand juries serve a number of functions, right?

14 So they can return a true bill?

15 A Correct.

16 Q But grand juries can also authorize certain investigative steps to be taken,
17 right?

18 A So you would technically need to have an open grand jury matter to cut
19 grand jury subpoenas, for instance. Yes.

20 Q Okay. Have you ever had a case where a grand jury has declined to issue
21 an indictment?

22 A I am sure, at some point in time, I've seen a no-true bill. I can't think of a
23 specific instance off the top of my head.

24 Q But it does happen?

25 A It does happen.

1 Q And if the grand jury declines to take that step, then the case is effectively
2 over, right?

3 A It's a little bit more complicated than that, but that would be a serious
4 impediment to overcome.

5 Q And short of returning a true bill, as you said, you have to have an open
6 grand jury to take certain investigative steps, correct?

7 A Yes. You are supposed to have an open grand jury before you issue any
8 grand jury subpoenas in connection with that investigation.

9 Q And so, if a grand jury subpoena -- sometimes those grand jury subpoenas
10 are issued, and that brings back returns with relevant information for the case, correct?

11 A Correct.

12 Q And that can help inform whether to move forward with the case, correct?

13 A That is correct.

14 Q Okay. All right. I want to move on to something else that you've referred
15 to a couple times over the course of today.

16 In the very first hour, you said that you were already dealing with enough threats
17 to your career prosecutors?

18 A Yes.

19 Q And, in the last hour, you referenced urgent concerns being brought to your
20 attention about threats to the prosecutors. And I want to go through both of those
21 statements in a little bit of detail.

22 What is an urgent concern?

23 A So we have a mechanism within the Department for filing what we call
24 urgent reports, which is when something of significance needs to be elevated. And one
25 of those things is when there is a threat on prosecutors.

1 Q And, when you receive an urgent concern, what's the response in your
2 office?

3 A So we have a district office security manager -- DOSM is what we call
4 them -- who helps to ensure our safety. We also have Federal 1811 agents who are in
5 our office. We, in general --

6 Q Sorry to interrupt you, but what is an 1811 agent?

7 A Sorry. They are agents who are authorized to -- with arrest authority and
8 to carry firearms.

9 Q Thank you.

10 A They will often be alerted -- an assessment will be done of a security
11 situation in terms of, like, how credible the threat is, and then there will be mitigation
12 measures that are put in place depending on how credible the threat is.

13 Q When you previously served in the U.S. Attorney's Office as a line attorney,
14 were you aware of urgent concerns being brought to the office?

15 A Yes. I mean, we prosecute -- in, like, violent crime context -- cartels and
16 gang members, and there have been times when people who have done violent crime
17 cases where an assessment has been done that security measures had to be
18 implemented.

19 Q In your time now as a U.S. attorney, would you say that there are more
20 urgent concern matters being brought to your attention than in your time previously as a
21 line attorney?

22 A So, in my prior role, I wouldn't have had visibility into the totality and all of
23 that. I mean, from what I hear from those that did, though, yes, there are
24 greater -- there are a greater number of threats, and the nature of the threat is more
25 pervasive than what we've seen in the past.

1 Q What do you mean by "more pervasive"?

2 A So, in what I was used to and what I saw before, if you were prosecuting a
3 gang, a threat potentially could emanate from that gang, right? And so there is one set
4 of mitigation measures for that.

5 What we're seeing now is individuals from across the country who are not directly
6 affiliated with any of the subjects of our investigation engaging in threatening and
7 harassing conduct, which is harder to get your arms around because you know you're
8 seeing effectively the tip of the iceberg. You know that this is -- the sentiment is out
9 there. That people are trying to fuel the sentiment of stoking ire against these
10 dedicated civil servants. And you really don't even know the extent of it because it's not
11 group-affiliated.

12 If I am prosecuting a crew, I know the people -- you generally know who is in the
13 crew, and it's easier to take mitigation measures there.

14 Q Have you had to take specific mitigation measures to protect the
15 prosecutor -- and I don't want to get into specific cases, but have you had to take broadly
16 mitigation measures to protect the prosecutors in your office?

17 A Yes. We've had to do that, and I personally have had to do that.

18 Q For yourself?

19 A Yes.

20 Q Do you have concerns sitting here today for the safety of your office's
21 employees?

22 A Yes. Yes. Absolutely, which is why I am so hesitant to put on a public
23 record of a document -- that we all acknowledged at the outset might become
24 public -- individual names because, given the subject matter, the trajectory I've seen is as
25 soon as those individual names get out in the public, there's immediately, at a minimum,

1 harassing, if not legally threatening conduct that ensues.

2 Q And, sitting here today, do you have concerns for your own personal safety?

3 A Less of concerns for my safety than for my people's safety. More concerns
4 for my family's safety than my safety.

5 [REDACTED]: Okay. All right.

6 We can go off the record. Thank you.

7 [Discussion off the record.]

8 Mr. Castor. Back on the record. It's 1:45.

9 BY MR. CASTOR:

10 Q A couple questions about January 6 cases.

11 How many prosecutors do you have working on January 6 cases?

12 A So we have less than 3 percent of our full-time prosecutors working on
13 January 6 cases currently.

14 Q What's that number? 3 percent of 400?

15 A So it's 3 percent of, like, 370. We have less -- we have fewer than 10
16 people who all they do full time is work on January 6. There are a number of term
17 AUSAs who are specially designated for a brief period of time who we otherwise wouldn't
18 have and people who are on detail from other components that are prosecuting those
19 cases.

20 Q Can you give us any insight into the Ray Epps case and why he's only been
21 charged with one count of disorderly -- or disruptive conduct?

22 A So I obviously can't get into an ongoing investigation.

23 Q Okay. There's been some public outcry over some of the defendants, little
24 old ladies, that have been sentenced to long prison terms. What's your response to
25 that?

1 A So, without getting into any specific case, what I can say is, to my knowledge,
2 every sentence that we have asked for in the context of our January 6 cases has been
3 compliant with the United States sentencing guidelines, which is where we start our
4 analysis and, in this context, end our analysis.

5 Q So the age of a defendant isn't something you consider?

6 A So you, under what we call the 3553 factors, can consider personal
7 characteristics of a defendant, but the sentencing guidelines themselves -- which is where
8 we're supposed to begin our sentencing analysis -- do not take into account the
9 individual's age.

10 Q January 6 defendants haven't been awarded time served. Why is that?

11 A I am not aware of that. I think they have.

12 Q They have been awarded time served?

13 A Yes.

14 Q So they've been held pending trial?

15 A Yes. It should be automatic. Yes.

16 Q Okay. How many individuals are you currently trying to hunt down for
17 January 6-related crimes that you haven't indicted yet?

18 A So the FBI has received numerous tips about individuals who illegally -- not
19 only illegally entered the Capitol Grounds that day because the grounds outside the
20 Capitol are restricted, but the building itself -- and/or engaged in acts of violence or
21 destruction. There are estimates that there were thousands of individuals who might
22 fall into that category.

23 The Attorney General said we will seek to hold individuals accountable for their
24 conduct. Those -- FBI continues to investigate those leads, and we continue to assess
25 the results of their investigative fruits.

1 Q So how many people are you currently in the process of hunting down or
2 collecting that you haven't indicted yet?

3 A So there's no, like, set figure out there of we have to get this many people.
4 We are getting cases and considering cases as they're being presented to us, and if we
5 think -- consistent with the principles of Federal prosecution that we discussed
6 today -- the prosecution is warranted, we're going to go forward.

7 Q Okay. Have you been prosecuting individuals that were on the Capitol
8 Grounds but not -- that did not enter the building?

9 A Usually, for those prosecutions, it's only if there is some type of what we
10 would call aggravating factor: assaultive conduct, destructive conduct, interfering with
11 police officers, inciting others to enter the building even if you haven't yourself entered
12 the building.

13 Q And what's the charge for somebody that is accused of inciting others to
14 enter the building?

15 A So everybody -- to be clear, everybody who was on Capitol Grounds in the
16 context of January 6 -- there is probable cause that they have violated 18 U.S.C. 1752, and
17 we are exercising our prosecutorial discretion not to charge most of them.

18 Q But there's an intent element, if they didn't know the Capitol Grounds were
19 closed?

20 A Oh, absolutely. We have to prove that in all the cases. But in those
21 cases -- and it is the most photographed crime scene ever. There are bike racks that are
22 overturned, snow fencing that's overturned, officers that are trying to restrict, alarms
23 blaring. It's not that difficult to prove.

24 Q What's the charge for inciting others to enter the building?

25 A So, again, we're choosing to -- I mean, you can charge a number of different

1 of things, but you have to come back to the first principle of, just by being out there, even
2 if you weren't inciting anyone else, there is a valid 1752 charge there.

3 Q But what are some of the charges one could be charged with for inciting
4 others to enter the building?

5 A It depends on the evidence. It could be -- depending on the fact-specific
6 evidence, you could have an 18 U.S.C. 231. You could also have an 18 U.S.C. 1512. It
7 just depends.

8 Q And what are they? What are those two?

9 A 1512 is obstruction of an official proceeding, and 231 is civil disorder.

10 Q And what are the penalties for those?

11 A Well, there are statutory maximums, and then there's guidelines. The 231,
12 the statutory maximum is a 5-year penalty. 18 U.S.C. 1512 is a 20-year maximum. But
13 the guidelines in general are nowhere near the maximums, particularly for the 1512.

14 Q Mr. Epps was, you know, photographed on video -- captured on video
15 encouraging people to go into the Capitol. It's pretty demonstrative. Have you seen
16 that video?

17 A I believe I've seen some video, but to where your ultimate question is, I can't
18 get into the specifics of Mr. Epps' prosecution.

19 Q Have you seen the public video, though, about Mr. Epps?

20 A I believe I've seen some at some point in time.

21 Q But he hasn't been charged with 1512 obstruction?

22 A No. That is not the current charge. That is not the charge.

23 Q And he hasn't been charged with 231, has he?

24 A No. That is not the charge.

25 Q Okay. So he's not facing a 5-year penalty or a 20-year penalty?

1 A No. That's not the statutory maximum.

2 Q But others in similar circumstances have been facing those?

3 A Again, I can't get into the specifics of his prosecution. But I would say, in
4 general, we take great pains to try -- even though there was collective action that was
5 engaged on in that day -- to look at the individual and what they specifically did because
6 there's a pretty wide range of conduct, and it's a fact-intensive inquiry as to where people
7 should fall on the spectrum.

8 Q There's been a lot of criticisms from our Members that the January 6
9 defendants have been held pending trial unfairly. What's your response to that?

10 A We seek detention where we're lawfully able to do so and we believe it is
11 appropriate. I'd also note, in terms of our overall Federal prosecutions -- and I could get
12 you the specific numbers, but just kind of knowing our docket -- the percentage of
13 January 6 defendants that are detained or have been detained pretrial is greatly smaller
14 than, in general, our Federal defendants who are detained pretrial.

15 Q Okay. I mean, there's no bail in the Federal system. But what is the
16 analysis that goes through to determine whether someone is held over to trial?

17 A In general, it comes down to, are they at risk of flight, or are they a danger?

18 Q Okay. And everyone that's been held is either one or the other?

19 A Correct.

20 Q Is there any opportunity for those defendants waiting trial to appeal?

21 A Yes. And, to be clear, we don't unilaterally make the determination. We
22 seek detention. It goes to a magistrate judge. A magistrate judge makes the
23 determination. That magistrate judge's determination can be appealed by either party
24 to the Article III district court judge. The district court judge then can hear an appeal.

25 And defendants who are still detained after that process have the ability to take

1 an expedited appeal to the D.C. Circuit, which several defendants have done in the
2 January 6 context.

3 Q Do you believe some of the reporting on the January 6 cases and some of
4 the criticism you've received has been unfair?

5 A I'm not sure what you're talking about, like, with the reporting generally.

6 Q Just about individuals being treated more harshly because of their role in
7 January 6 than they would in a similarly situated crime.

8 A What I can say generally is I am not aware of a similarly situated crime to
9 January 6.

10 Q I want to call your attention to exhibit 5.

11 A Is that the June 7 letter?

12 Q Yeah. I just wanted to point out for the record the procedural history for
13 this letter is remarkably odd.

14 Mr. Weiss responds to Mr. Jordan -- he responds to -- Mr. Jordan writes the
15 Attorney General in May, and apparently, the Attorney General forwarded it to Mr. Weiss
16 to respond. Have you ever seen anything like that before?

17 A I mean, I don't know, with the caveat that I, in general, don't track filings
18 going back and forth between Congress and the Department.

19 Q No, but has the Attorney General ever asked you to respond to a letter
20 directly?

21 A Me to directly respond? No.

22 Q To Congress?

23 A Yeah.

24 Q The first sentence of the second paragraph states: While your letter does
25 not specify by name the ongoing investigation that is the subject of the committee's

1 oversight, its content suggests your inquiry is related to an investigation in my district.

2 Isn't that a weird sentence?

3 A I don't know.

4 Q It's sort of jumping to a conclusion that, although your letter doesn't specify
5 by name an ongoing investigation, I'm going to answer it anyway. I'm going to answer a
6 letter that's not written to me.

7 A [Nonverbal response.]

8 Q The letter goes on to -- are you familiar with the Linder letter?

9 A Not the letter itself.

10 Q The concept of it?

11 A The principle, yeah.

12 Q And the Linder letter lays out all the reasons Congress doesn't want to -- or
13 the executive branch and Justice Department doesn't want to give information to
14 Congress, right?

15 A I mean, I think specifically, it's about the dangers of ongoing investigations,
16 as I understand it. But I haven't reviewed the letter.

17 Q But there are other -- I mean, I can represent to you there's other topics in
18 there --

19 A Yeah. Okay.

20 Q -- that sort of covers the whole list of reasons why DOJ doesn't cooperate
21 with Congress. And a lot of that is included in this letter.

22 And I was just curious as to whether letters of this sort -- do you have any idea
23 who prepares them? Is it drafted by somebody in Main Justice?

24 A These kinds of letters, I have no -- I don't know.

25 Q You've been on the receiving end of letters from Congress?

1 A Yes.

2 Q How does the process normally work to respond?

3 A So, as with all things with elected Representatives, our responses are
4 coordinated through the Office of Legislative Affairs.

5 Q And do they just take that off your plate and handle it for you?

6 A I mean, no. I mean, while they take the lead on it, by definition, there's
7 information that only the component knows, so they have to work with the component
8 sometimes.

9 Q So how does it ordinarily work? Would you or your staff draft the response
10 for the Office of Legislative Affairs?

11 A So I don't know that I can speak to how it ordinarily works because, while
12 I've gone through this, my experience has been pretty limited.

13 Q Okay. In the limited experience that you do have, how has it worked?

14 A It was a collaborative effort in the limited experience I do have.

15 Q And who writes the first draft?

16 A I can't recall --

17 Q Okay.

18 A -- about who -- I can't recall.

19 Q During your prep for today, how many prep sessions did you have before
20 you came here today?

21 A I think that we had three sessions where the subject of the meeting was
22 today's appearance.

23 Q Okay. And were you shown any documents?

24 A I was not shown any documents in those meetings.

25 Q Okay. And did Department counsel tell you the types of questions we have

1 asked other witnesses?

2 A No.

3 Q Okay. Did they give you any guidance as to whether the interview would
4 proceed if there was a government shutdown?

5 A We did discuss that at one point in time. We did discuss that at a couple
6 points in time last week.

7 Q Okay. And what was the plan? Were you going to be appearing?

8 A Well, I was ready to follow the direction. I understood, I mean, like --

9 Q What was the direction, I guess?

10 A Whatever ultimately was reached with the committee. I mean, I think
11 there were practical questions about, if we were going to shut down, whether, for
12 instance, we'd be authorized to have a court reporter here. Things like that.

13 Q We would. We would.

14 A Yeah. So I think those were the kinds of practical things that people were
15 wondering about, but it wasn't -- I mean, I was ready to appear one way or another.

16 Q Of course. I appreciate that.

17 But, if there was a government shutdown, was it your -- did you believe you would
18 not be appearing today?

19 Ms. Zdeb. This is getting into internal deliberations at the Department around
20 the impacts of a potential shutdown that didn't ultimately materialize. He's here today
21 voluntarily, and beyond that --

22 Mr. Castor. It's not a hard question. He can either answer it or not. It's a
23 voluntary question. A voluntary interview.

24 Mr. Graves. I agree with the scope. I hope this puts it to an end. I thought it
25 was a possibility, like all of us, up until late Saturday night. It was uncertain as to what

1 was going to happen this week on a number of different fronts.

2 BY MR. CASTOR:

3 Q So there was a possibility if there was a shutdown you wouldn't be able to
4 come?

5 A I thought that that was a possibility. I thought it was a possibility that I
6 would be able to come. You're asking, like, my view.

7 Q Okay. But you didn't receive ultimate guidance before the shutdown?

8 A To my recollection, it was still -- we were trying to work through the issue
9 over the weekend.

10 Q Okay. I think I understood what you were saying before that you have
11 worked with special counsels in your role as U.S. attorney. Probably not Mueller, but
12 Durham. Is that right?

13 A I can't get into --

14 Q Well, the Durham matter is over with.

15 A Yeah. So -- but, again, it would be internal deliberations.

16 Q Okay. Any other special counsels? How many special counsels have you
17 worked with? The number, not names.

18 A So, I mean, it depends. I've had interactions with, I guess, now four special
19 counsel's offices.

20 Q And would that be Hur, Durham, Smith, and what's the fourth?

21 A We're getting into, like, specifics now, and this is so far beyond my
22 conversations with then-U.S. Attorney Weiss about proceeding in my jurisdiction.

23 Q Okay. I mean, it has a relationship here because of Weiss' special counsel
24 status.

25 A Yes.

1 Q So I'm just asking for your experience, like -- okay. So it's four or five
2 special counsels that you've worked with?

3 A Yes. To my best recollection, it was four that I've had interactions -- I want
4 to be very clear --

5 Q Right.

6 A -- that I or my office have had interactions with.

7 Q And so how does it work with the special counsels? Do they have their
8 own prosecution teams, or do they use AUSAs from D.C.?

9 A Special counsels, in general, form their own prosecution teams. But, I
10 mean, they often go to preexisting people who are already prosecutors within the
11 Department to form their teams.

12 Q Okay. And so what types of coordination has to happen with your office
13 for a special counsel to bring a case?

14 A That is -- well, coordination to bring a case?

15 Q You know, you used the grand jury.

16 A A special counsel in general? They don't have to coordinate --

17 Q Well, the ones you've worked with.

18 A They don't have to do anything with our office to bring a case. That's the
19 virtue of special counsel in terms of --

20 Q So they have to coordinate with the grand jury?

21 A They have to coordinate with grand jury, yes.

22 Q Okay. Have you proposed with any of the special counsels you worked
23 with -- other than Weiss -- that they should form a hybrid type of prosecution team?

24 A So I'm not going to get into the deliberation and the ongoing -- and the
25 communications we've had with the special counsel in the ongoing investigations.

1 Q Okay. So the situation that you were working through with Weiss'
2 office -- which I guess we resolved after a bunch of back-and-forth -- that it was a bit of a
3 hybrid that you were evaluating?

4 A I think it is fair to say that -- I think the easiest way to say it to get past, like,
5 the labeling issues that we're all struggling with -- is whether we were going to cross-staff
6 the investigation or the investigation would just be his existing investigators.

7 Q Are you cross-staffing any other investigation with special counsels? Or
8 have you?

9 Ms. Zdeb. That's a little outside the scope of what he's authorized to talk about,
10 staffing of other special counsel investigations.

11 BY MR. CASTOR:

12 Q So you're not going to answer?

13 A I agree it's outside the scope. I could say it's a matter of public record that
14 the office has cross-staffed with other special counsels.

15 Q Okay. Have you ever recommended to another special counsel that they
16 shouldn't move forward with a case?

17 A I could say, in general, I don't recall weighing in or opining on a matter that is
18 not in my office what that component head should or should not do, special counsel or
19 regardless. That's for them to decide.

20 Q Okay. Do you recall any discussions about a campaign finance charge
21 related to the Hunter Biden tax matter?

22 Ms. Zdeb. Just even answering yes or no to that question, as I think you know,
23 gets into questions associated with the ongoing investigation and prosecution, and it's
24 outside the scope of what he's authorized to discuss.

25 BY MR. CASTOR:

1 Q And do you know the answer to the question?

2 A So, again, if I said I knew the answer to the question, that would be a
3 backdoor way of answering a question I have not been authorized to cover.

4 Q No, it wouldn't because your answer might be no. So your answer to my
5 subsequent question is, do you know the answer, is yes. And so I don't think that is a
6 backdoor way of getting information here.

7 A So, I mean, I guess we just see it differently.

8 Q So you're not willing to testify whether you're aware of a campaign finance
9 allegation that some -- you know, a Democrat donor paid off Hunter Biden's taxes?
10 Whether that was a campaign finance issue?

11 A I am not authorized to discuss anything substantively to the case because
12 this is an ongoing investigation, and none of us want to do anything that in any way
13 compromises the ongoing investigation.

14 Mr. Castor. Okay. I think we're done.

15 We can go off the record.

16 [Discussion off the record.]

17 [REDACTED]. It is 2:08. We can go back on the record.

18 BY [REDACTED]:

19 Q I actually want to clarify my own line from the previous round.

20 We were talking about grand jury and steps that they might take, and you said you
21 didn't actually know if you'd ever been in a situation where a grand jury had declined to
22 indict, correct?

23 A I was saying I couldn't recall a specific case. I generally recall that having
24 happened and having to deal with it. I don't think it was -- I mean, it was not one of my
25 cases.

1 Q So it's pretty rare that a grand jury doesn't indict somebody when a true bill
2 is sought?

3 A That is correct.

4 Q Okay. And we also said that grand juries can issue subpoenas. There can
5 be grand jury subpoenas that bring back relevant information?

6 A That is correct.

7 Q And it may be the case that a grand jury subpoena produces relevant
8 information that could help the prosecutors decide not to move forward and seek a true
9 bill, correct?

10 A That is correct.

11 Q And so just the process of having the grand jury can help to inform the
12 investigation?

13 A Yes. The grand jury, in most investigations, is the main investigative tool.

14 Q Okay. Thank you.

15 You were asked some questions just now about the potential for a government
16 shutdown and what may or may not have happened.

17 You're appearing today willfully of your own accord, correct?

18 A That is correct.

19 Q Voluntarily, I should say.

20 A Voluntarily, yes. Correct.

21 Q And you've sat here for 5, 6 hours and answered, to the best of your ability
22 and consistent with your authorization, every question presented to you?

23 A That's correct. I think we're -- what are we -- a shade over 4 now. Yes.

24 Q I'm terrible at math.

25 A Yes.

1 Q Okay. And so it was never your intent to obstruct this investigation,
2 correct?

3 A That is correct.

4 Q Okay. The fact of the matter is, there was a lot of news about a
5 government shutdown, and nobody really knew what might happen?

6 A That is correct.

7 Q Okay. You were asked a number of questions just now about Ray Epps?

8 A Yes.

9 [REDACTED]: I want to introduce as exhibit 9 an AP News article dated September
10 20th, 2023.

11 [REDACTED] Exhibit No. 9

12 Was marked for identification.]

13 BY [REDACTED]:

14 Q It's entitled "Ray Epps, Trump supporter targeted by January 6 conspiracy
15 theory, pleads guilty to Capitol riot charge."

16 A Yes.

17 Q Have you seen this before?

18 A I have not seen this article before.

19 Q I'll give you a minute to review it.

20 A Do you want me to read the whole --

21 Q I can tell you, I'm going to focus on -- actually, I'll just ask the question.

22 A Okay.

23 Q On page 2 of this article, the -- I guess it's the third full paragraph down, it
24 says: After the riot, Epps -- meaning Ray Epps -- became the focus of a conspiracy
25 theory echoed by right wing news outlets that he was a secret government agent who

1 incited the Capitol attack.

2 Are you familiar with that conspiracy theory?

3 A I am familiar with that conspiracy theory.

4 Q Do you have any information to suggest that Mr. Epps is, in fact, a secret
5 government agent who incited the Capitol attack?

6 A No. And, in fact, at his plea hearing, we put on the record that he -- and in
7 as a clear and unambiguous fashion as we could -- that he has never been a source,
8 government agent, or anything of that nature.

9 Q And, in fact, that's reflected in this article at the bottom of this page,
10 correct?

11 It says: Assistant U.S. Attorney -- it provides the name of the U.S. attorney --

12 A Yeah.

13 Q -- said during the hearing that Epps was not a confidential source for the FBI
14 or any other law enforcement agency.

15 A Yes. That's correct.

16 Q And that is a true statement that was made by that assistant U.S. attorney?

17 A Yes. That's correct.

18 Q And, in fact, on the next page, about halfway down, it says: A barrage of
19 death threats would force Epps and his wife to sell their home in Mesa, Arizona, and live
20 in a recreational vehicle in the Rocky Mountains, he said in an interview this year on CBS'
21 60 Minutes.

22 Are you aware of the fact that Mr. Epps has had to sell his home because of the
23 conspiracy theory and the impact that's had on him?

24 A I was not aware that he had to sell his home. I was aware that he was the
25 subject of harassment and threats.

1 Q Okay. And, in fact, as reflected here, he has said publicly that, because of
2 those threats which resulted from that conspiracy theory, he's had to sell his home, and
3 it's had a pretty profound impact on him and his wife, correct?

4 A I am generally aware that he has made public statements describing the
5 impact that these false allegations have had on his life.

6 Q Okay. Thank you.

7 I don't have any further questions, but I did want to ask, do you have anything
8 that you wanted to add based on the questions that you have not been able to address?

9 A I don't think there's anything else that we want to add that we haven't
10 covered in the last 4 or so hours.

11 [REDACTED]. Great. All right. Thank you.

12 We can go off the record.

13 [Whereupon, at 2:13 p.m., the interview was concluded.]

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Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit R

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4

5 COMMITTEE ON THE JUDICIARY,

6 U.S. HOUSE OF REPRESENTATIVES,

7 WASHINGTON, D.C.

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13 INTERVIEW OF: ESTEBAN MARTIN ESTRADA

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17

18 Tuesday, October 24, 2023

19

20 Washington, D.C.

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23 The interview in the above matter was held in room 2237, Rayburn House Office

24 Building, commencing at 10:00 a.m.

1

2 Appearances:

3

4

5 For the COMMITTEE ON THE JUDICIARY:

6

7 CLARK ABOURISK, COUNSEL

8 STEVE CASTOR, GENERAL COUNSEL

9 DILLON CHEPP, COUNSEL

10 SEAN CLERGET, COUNSEL

11 BETSY FERGUSON, DEPUTY GENERAL COUNSEL

12 BRITTANY HAVENS, PROFESSIONAL STAFF MEMBER

13 RACHEL JAG, COUNSEL

14 CAROLINE NABITY, CHIEF COUNSEL FOR OVERSIGHT

15 BRIAN NIEVES, COUNSEL

16 [REDACTED], MINORITY OVERSIGHT COUNSEL

17 [REDACTED], MINORITY CHIEF OVERSIGHT COUNSEL

18 [REDACTED], MINORITY OVERSIGHT COUNSEL

19 [REDACTED], MINORITY PROFESSIONAL STAFF MEMBER

20

21 For the SUBCOMMITTEE ON CRIME AND

22 FEDERAL GOVERNMENT SURVEILLANCE:

23

24 [REDACTED], MINORITY DETAILEE

1

2 For the U.S. DEPARTMENT OF JUSTICE:

3

4 GRETA GAO, SPECIAL COUNSEL,

5 OFFICE OF LEGISLATIVE AFFAIRS

6 SARA ZDEB, DEPUTY ASSISTANT ATTORNEY GENERAL,

7 OFFICE OF LEGISLATIVE AFFAIRS

1 Mr. Castor. Good morning. This is a transcribed interview of Mr. Martin
2 Estrada, the U.S. Attorney for the Central District of California.

3 Chairman Jordan has requested this transcribed interview as part of the
4 committee's oversight of the Justice Department's handling of the investigation of Hunter
5 Biden.

6 The Committee on the Judiciary has legislative and oversight jurisdiction of the
7 Department pursuant to rule X of the Rules of the House of Representatives.

8 My name is Steve Castor. I'm a staffer with the House Judiciary Committee with
9 Mr. Jordan.

10 I'll have the rest of my colleagues introduce themselves for you, starting with
11 Ms. Nabity.

12 Ms. Nabity. Caroline Nabity with Chairman Jordan's staff.

13 Mr. Clerget. Sean Clerget, Chairman Jordan's staff.

14 [REDACTED], Ranking Member Nadler's staff.

15 [REDACTED], Ranking Member Nadler's staff.

16 [REDACTED], Ranking Member Nadler's staff.

17 [REDACTED], Ranking Member Nadler's staff.

18 [REDACTED], Ranking Member Nadler's staff.

19 Ms. Havens. Brittany Havens, Chairman Jordan's staff.

20 Mr. Abourisk. Clark Abourisk, Chairman Jordan's staff.

21 Ms. Ferguson. Betsy Ferguson, Chairman Jordan's staff.

22 Mr. Chepp. Dillon Chepp, Chairman Jordan's staff.

23 Mr. Nieves. Brian Nieves, Chairman Jordan.

24 Ms. Jag. Rachel Jag, Chairman Jordan's staff.

25 Mr. Castor. I understand you're here with DOJ counsel.

1 Would you introduce yourselves for the record.

2 Ms. Zdeb. Sara Zdeb, Department of Justice.

3 Ms. Gao. Greta Gao, Department of Justice.

4 Mr. Castor. And you understand the Department lawyers have a duty to
5 represent the Department, not you personally?

6 Mr. Estrada. I understand they represent the Department and I'm an employee
7 of the Department.

8 Mr. Castor. Okay. But, to the extent your interests diverge, they represent the
9 Department, and you're comfortable with that?

10 Mr. Estrada. I'm comfortable with them representing the Department and me
11 being an employee of the Department and testifying here voluntarily.

12 Mr. Castor. Okay. We will have questions for you. We'll go in rounds. First,
13 the majority will ask questions for an hour. Then the minority will go for an hour. We
14 often takes breaks at the end of each hour or whenever you'd like. You're here
15 voluntarily, of course, so to the extent you want to confer with DOJ counsel or take a
16 break for any reason or no reason, feel free to do that.

17 We'd like to make your experience here today as comfortable as possible, given
18 the fact that we have a court reporter, and it's not necessarily a, obviously, comfortable
19 environment.

20 We'll do our best to limit the number of people asking you questions just for the
21 benefit of the court reporter. Usually, it's just one person per round, and then maybe a
22 second jumps in to ask a clarifying question, but we will do our best to keep it limited.

23 We want you to answer our questions in the most complete and truthful manner
24 as possible. If you have any questions or if you don't understand one of our questions,
25 let us know.

1 If you don't know the answer to a question or you don't remember, it's best not to
2 guess. Please give us your best recollection, and it's okay to tell us if you learned of
3 information from somebody else. The hearsay rules and so forth don't apply in this
4 setting.

5 You understand you're required to be truthful in the questioning with Congress?

6 Mr. Estrada. Yes.

7 Mr. Castor. And 18 United States code 1001 makes it a crime to knowingly
8 provide false or misleading information to Congress.

9 You're aware of that?

10 Mr. Estrada. Yes. I'm familiar with 1001.

11 Mr. Castor. And we say that to all witnesses, so certainly mean no disrespect.
12 Obviously, as a U.S. Attorney, you are very familiar with those obligations.

13 Mr. Estrada. Understood.

14 Mr. Castor. We will -- to the extent we mark exhibits, we'll keep them. So, you
15 know, we try to keep as much of the proceedings confidential as we can.

16 That's the end of my welcoming remarks.

17 ██████████, do you have any greetings?

18 ██████████: We would just thank the witness for traveling cross-country to join us
19 today.

20 Mr. Estrada. Thank you.

21 Mr. Castor. Ms. Zdeb, would you like to offer your welcoming remarks?

22 Ms. Zdeb. I would. Thank you. As you acknowledged, Mr. Estrada is here
23 voluntarily and, as you know, the committee's inquiry implicates an ongoing criminal
24 investigation and prosecution.

25 At this juncture, Mr. Estrada is going to be able to answer questions that can be

1 answered without compromising the ongoing matter. Specifically, the Department has
2 authorized him to discuss United States Attorney Weiss' authority, and this includes the
3 committee's interest in whether Mr. Estrada and his office somehow prevented or denied
4 Mr. Weiss the ability to bring charges related to his investigation in the Central District of
5 California. There may be some additional information Mr. Estrada can share, depending
6 on the question and, again, consistent with the need to protect the ongoing investigation
7 and prosecution.

8 To the extent you have questions outside the scope of what the Department has
9 authorized him to discuss at this juncture, we reiterate our willingness, as always, to take
10 those questions back and consider what additional information might be able to be
11 shared at a future juncture. But, that said, our goal is to facilitate Mr. Estrada in sharing
12 as much information as he can today, consistent with the scope of his authorization.

13 Mr. Castor. All right. Thank you.

14 EXAMINATION

15 BY MR. CASTOR:

16 Q Sir, when were you nominated to be the U.S. Attorney?

17 A I don't recall the exact date, but I believe it was in June of 2022.

18 Q Okay. And you were confirmed by the Senate subsequently in September,
19 as I understand it?

20 A I was confirmed by the Senate. I don't know the exact timeframe, but I
21 believe it was around the September timeframe.

22 Q Okay. And you were sworn in as the U.S. Attorney shortly thereafter?

23 A Yes.

24 Q And do you know the date?

25 A I know the date I took the seat, which was September 19th of 2022.

1 Q Okay. And, prior to joining the U.S. Attorney's Office, what was your
2 experience with the Justice Department?

3 A Can you repeat the question, please?

4 Q Prior to joining the U.S. Attorney's Office in September of 2022, what was
5 your DOJ experience?

6 A Okay. So my DOJ experience was I previously served as an Assistant United
7 States Attorney for about 7 and a half years, from 2007 through 2014. I externed for the
8 U.S. Attorney's Office as well in the summer of 2000.

9 Q Okay. How many attorneys are there in your office?

10 A There are about 300 attorneys that cover both civil matters, tax matters,
11 criminal matters and national security matters.

12 Q And how is your -- how is the office organized?

13 A So we have five divisions. We have an Administrative Division, which is
14 mostly staff and -- professional staff and nonattorneys. Then we have a Tax Division,
15 which handles mostly civil tax matters. We have a Civil Division, which handles defense
16 of the government and also forms of litigation dealing with civil rights and civil fraud.
17 We also have a National Security Division, which handles matters of national security and
18 cyber matters. And we have a Criminal Division, which handles all criminal prosecutions
19 that don't fall within the ambit of national security.

20 Q Okay. And, as far as reporting up to Main Justice, how does that work for
21 you in your office? Who do you report to at headquarters?

22 A So, in terms of the organizational chart, I am under the Deputy Attorney
23 General, who is currently Lisa Monaco. But, in terms of reporting, we operate
24 somewhat independently. And certainly in terms of the cases we choose to litigate on
25 the civil side, tax side, criminal side, national security side, we operate independently.

1 But, obviously, there's a collaborative relationship with the folks at Main Justice.

2 Q In terms of the DAG's office, who is your primary contact?

3 A Primarily, the Deputy Attorney General and also her principal assistant.

4 Q Is that Mr. Miller?

5 A Yes.

6 Q Anyone else in the DAG's office that you have frequent communication with?

7 A I have communications on occasion with others in the Deputy Attorney
8 General's Office in different areas, such as national security, when we talk about cyber
9 matters, things of that sort, but no regular communication.

10 Q Okay. As it relates to the Hunter Biden matter, did you have any
11 communications with the DAG's Office?

12 A None.

13 Q So you didn't have any emails or telephone calls with Marshall Miller, the
14 PADAG, on this topic?

15 A No. But I should qualify that. When you're talking about the Hunter
16 Biden matter, I'm referring to my dealings with Mr. Weiss. I did have communications
17 with a career attorney within the Office of the Deputy Attorney General, Brad
18 Weinsheimer, when I got contacted by the media in the spring of 2023 and also with
19 regard to the testimony I'm giving here today. But that's the only contact I've had with
20 anyone within the Office of the Deputy Attorney General.

21 Q And what were the nature of the contact you had with Mr. Weinsheimer?

22 A So, most recently, I received a letter on October 18th of 2023, authorizing
23 me to appear before this committee but also limiting the scope of what I can discuss
24 before this committee. And then, previously, in the spring of 2023, when I received
25 media inquiries to discuss what statement I would be making to the media.

1 Q Okay. And what statement did you make to the media?

2 A I don't know the exact statement. It's probably a matter of public record.
3 But it was something to the effect of, as the Attorney General has stated, U.S. Attorney
4 Weiss had full authority to conduct the investigation, prosecute the case as he saw fit.

5 Q Okay. And the letter from Mr. Weinsheimer about your testimony here
6 today, is that something you can provide to the committee?

7 A It is something that I had received, but in order to provide anything, I need
8 to consult with Department of Justice attorneys, given I'm an employee of the
9 Department of Justice. So I'll consult with them and see what their position is.

10 Ms. Zdeb. If the committee is requesting the letter, we can provide it. I don't
11 have it with me today, but we can share it with you.

12 Mr. Castor. That would be great. Thank you. Is this the same basic letter that
13 we've seen for other witnesses?

14 Ms. Zdeb. I think that the letter will speak for itself. It is tailored to Mr.
15 Estrada, but otherwise it is the same.

16 Mr. Castor. But is it materially different than the one we had for Mr. Graves, the
17 other U.S. Attorney that we spoke with?

18 Ms. Zdeb. Well, insofar as it pertains to the Central District of California and not
19 the District of Columbia. Otherwise, the scope of the authorization is the same in that
20 neither one of them can speak about the ongoing investigation.

21 Mr. Castor. Okay. But you'll give us a copy of that?

22 Ms. Zdeb. Yes.

23 Mr. Castor. Okay.

24 BY MR. CASTOR:

25 Q How often does your office interact with the Tax Division out of Main Justice,

1 and can you explain that ordinary relationship?

2 A So there's some interaction between my office and the Tax Division. We
3 need Tax Division authorization to file certain tax charges. I don't know those specific
4 code sections off the top of my mind, but there are certain ones that we need
5 authorization for. But that would be done at the line and supervisory level, not myself.

6 Q Okay.

7 A I have had no interactions directly with the Tax Division myself since
8 becoming U.S. Attorney.

9 Q Okay. So you haven't had any communications with Mr. Goldberg,
10 the head of the Tax Division?

11 A No, I have not.

12 Ms. Zdeb. Could I just clarify for the record. Mr. Goldberg is not the head of
13 the Tax Division. And I know that the committee is scheduled to hear from him.

14 Mr. Castor. Okay.

15 Ms. Zdeb. But he is an Acting Deputy Assistant Attorney General in the Tax
16 Division.

17 Mr. Castor. Is he the top official in the Tax Division?

18 Ms. Zdeb. Well, you can ask him tomorrow.

19 Mr. Castor. Okay. Is there someone more senior to him? I mean, should I be
20 asking about a different witness -- or a different individual?

21 Ms. Zdeb. You should -- I wouldn't presume to tell you who you should be asking
22 about. I'm simply saying he is the Acting Deputy Assistant Attorney General.

23 Mr. Castor. Okay.

24 BY MR. CASTOR:

25 Q Do you know who is the top official in the Tax Division --

1 A No.

2 Q -- at Main Justice?

3 A I do not.

4 Q You do not, okay.

5 A No.

6 Q If there is a disagreement between your office and DOJ Tax about
7 proceeding on a tax matter, how is that ordinarily resolved?

8 A I haven't had that situation come up during my tenure, so I don't know how
9 it's normally resolved. But the Tax Division can, just like many components of the
10 Department of Justice, I believe can bring cases in whatever district they would choose to
11 bring the cases, just like my office can bring cases in our district that we believe are
12 appropriate to bring.

13 Q Right. But, if your office is bringing a tax case, there's certain types of tax
14 cases where before you bring it you have to get the okay, the authorization of DOJ Tax
15 out of headquarters, correct?

16 A Certain statutes you need to get authorization from the Tax Division, yes.

17 Q Okay. And, in your experience, has there ever been a disagreement
18 between your line AUSAs and the Tax Division on how to proceed?

19 A Not that I'm aware of. But, again, these issues and questions don't usually
20 rise to my level. I usually don't deal with disputes between line attorneys and folks in
21 the Tax Division about tax prosecutions. So they may have happened. I'm just not
22 aware.

23 Q Okay. How does it ordinarily work when a U.S. Attorney from outside of
24 your district has a case that needs to be venued in your district?

25 A So there are often prosecutions by other districts that touch on our district.

1 Generally speaking, those are cases that can be venued in multiple jurisdictions, and they
2 happen to be prosecuted by a different jurisdiction.

3 We generally will support that prosecution. If search warrants need to be
4 executed, if process needs to be done, we'll support that. But, generally, they are
5 prosecuted out of the district where the investigation arose.

6 Q Okay. And how does it ordinarily work? Like, what does support look like
7 when you need to support a U.S. Attorney from a different district move a case in your
8 district?

9 A So I think -- I just want to be clear on what we're talking about, move a case
10 in our district. The more typical thing -- I'll give you an example: Varsity Blues, which
11 was prosecuted by the District of Massachusetts. It was -- involved many defendants in
12 our district, so they executed search warrants there, and we assisted with those search
13 warrants.

14 But, ultimately, all those defendants were called to appear in the District of
15 Massachusetts, and the case was prosecuted in the courts of the District of
16 Massachusetts. That is a more typical scenario.

17 Q Okay. Is it ever the case where a U.S. Attorney from outside of your district
18 prosecutes a case in the Central District of California?

19 A I have not had that occur during my tenure.

20 Q Okay. Are you aware, has it occurred in the past before your tenure?

21 A I'm not aware of it occurring in the past. It could have happened. It could
22 not have happened. I'm just not aware.

23 Q So, if a case arises in a different district but has venue in your district, how
24 does that ordinarily resolve, get resolved?

25 A So I don't think there's an ordinary process there that I'm familiar with.

1 Generally speaking, that situation doesn't arise where another district is prosecuting a
2 case that can only be venued in our district.

3 I'm aware of at least one instance in the past where a court issued an order that
4 venue was improper in a certain district so it had to be transferred to our district. And
5 the AUSAs from that office prosecuted the case in our office because it was transferred,
6 but that was under a court order.

7 Q Okay. And how did that work? Did you need to provide them special U.S.
8 Attorney status or --

9 A So they would become appointed special assistant United States attorneys,
10 otherwise known as SAUSAs. That gives them the permission to litigate within our
11 district. And that's my understanding what occurred. And then those attorneys from
12 the other district handled the case entirely.

13 Q Okay. So you didn't -- there wasn't an AUSA from the Central District of
14 California on that prosecution team?

15 A On the prosecution I'm thinking of, there was not.

16 Q Was that particular matter -- did that occur before you were the U.S.
17 Attorney?

18 A That occurred when I was an Assistant United States Attorney.

19 Q During your tenure as an AUSA, did any other case like that occur?

20 A Not that I'm familiar with, but I was one AUSA, one criminal AUSA out of
21 180. So that's all I was aware of.

22 Q Okay. When did you first learn that the Hunter Biden case might have a
23 nexus with your district?

24 A I first learned about -- that there was a Hunter Biden investigation touching
25 on our district shortly after taking the seat. So it would have been late September 2022

1 or early October 2022.

2 Q How did you learn about that?

3 A I learned from attorneys in my office, career attorneys in my office, that
4 there was a request from the District of Delaware to partner or cocounsel on certain
5 charges that they were investigating; that our career attorneys had communicated that
6 they were recommending against partnering or cocounseling in the charges being
7 contemplated; and that the District of Delaware, through Mr. Weiss, wanted to speak to
8 me about that.

9 Q When did the District of Delaware Attorneys first contact your office on this
10 case?

11 A That I don't know, when they first contacted -- my office -- just to give some
12 context, we have 300 lawyers but, at the time I came in, about 140 criminal AUSAs. We
13 were down about 40 bodies in the criminal section. But nonetheless, we have a district
14 of almost 20 million people, the largest district in the country.

15 I don't deal with cases on a day-to-day basis. I rely on section chiefs. The
16 Criminal Divisions are separated into sections, and there are deputy chiefs within those
17 sections. They deal with the day-to-day running of cases. I don't deal with those
18 matters unless, of course, it -- they rise an issue -- they raise an issue that I need to look
19 at.

20 So there may have been interaction at the line level or the deputy chief or the
21 chief level with the District of Delaware, but I would not be aware of when that would
22 have started.

23 Q So what do you recall when this matter was first brought to your attention?
24 Like, who brought it to your attention and when was it? Was it late September or early
25 October?

1 A There's a few questions there. So the timing, late September-early October
2 2022. With regard to your question of who brought it to my attention, my then First
3 Assistant United States Attorney, otherwise known as a FAUSA, which is the only AUSA
4 that I have a direct report to --

5 Q And who is that?

6 A So I'm not comfortable giving names of AUSAs, and I won't be doing that
7 going forward in this -- in this interview. They sacrifice enough financially, in terms of
8 time and in terms of safety, with regard to the cases that we prosecute in our district, and
9 I'm not comfortable giving up names here.

10 I'm here voluntarily. I'm happy to talk to you all voluntarily. But my AUSAs
11 didn't sign up for this, so I'm not going to give individual names.

12 Q Okay. So your first assistant brought this matter to your attention?

13 A My first assistant, my then First Assistant United States Attorney
14 brought -- told me that there had been this request from the District of Delaware to
15 cocounsel or partner on the case; that the chief of my Major Frauds Section, who would
16 be the person who makes these decisions, was recommending against doing so; and that
17 that had been communicated to the District of Delaware.

18 Q And this occurred before you were installed?

19 A I don't know if that occurred before I was installed because the issue came
20 to me in late September-early October, and I came in on September 19th. So I don't
21 know if it occurred before or after I was installed.

22 Q Okay.

23 A But, going back, I was told that this issue had arose, and there was this
24 request there, and my Major Frauds chief was recommending not partnering or
25 cocounseling; my criminal chief, which would be the person directly above the Major

1 Frauds Section chief, was agreeing with that recommendation to not partner or
2 cocounsel; and that the District of Delaware, through Mr. Weiss, wanted to speak to me
3 about that.

4 Q What is the difference between partner or cocounsel?

5 A I see them as the same.

6 Q The same, okay. And how would that work if you had reached a different
7 conclusion, your office had wanted to proceed as the District of Delaware had requested?

8 A I don't understand your question.

9 Q So, if your office did want to partner or cocounsel with Mr. Weiss, how
10 would that have looked? Would your AUSAs have been on the prosecution team, or
11 would the District of Delaware lawyers, AUSAs, be granted Special Assistant U.S. Attorney
12 status?

13 A So a couple things there, and I should have mentioned this. It's a good
14 point you raised. My understanding when the issue was brought to my attention was
15 that certain attorneys within the District of Delaware -- I didn't know their names or who
16 they were -- had already been appointed Special Assistant United States Attorneys in my
17 district.

18 Q Okay.

19 A So they were SAUSAs able to litigate in my district. That had already
20 happened before the question came to me.

21 In terms of how that would look, I don't have personal experience with ever
22 cocounseling with another U.S. Attorney's Office during my time as U.S. Attorney or
23 during my time as an Assistant United States Attorney.

24 Q Okay. Who made them Special Assistant United States Attorneys?

25 A That needs to get approved by the U.S. Attorney. So it would have been

1 my predecessor, either the Acting U.S. Attorney or the Acting U.S. Attorney before that
2 person.

3 Q Okay. And who was that?

4 A So, again, I don't want to give names, but I'm sure it's public record.

5 Q Okay. So you're not willing to tell us who the Acting U.S. Attorney for your
6 district was?

7 A I don't want to give names of people who didn't voluntarily come before you
8 to testify.

9 Q Okay. I mean, that's kind of ridiculous.

10 A I'm sure --

11 Q I mean, we can look it up on the internet. And you're not willing to just tell
12 us the name?

13 A You can look it up on the internet if you like, but I'm not willing to give
14 names of people who didn't voluntarily come before this committee.

15 Q Okay. How many Delaware AUSAs were granted the SAUSA status?

16 A I don't know how many. I just know that it was more than one.

17 Q And do you know what timeframe that happened in?

18 A When they were appointed?

19 Q Yes.

20 A I do not.

21 Q Did you ask?

22 A I did not.

23 Q Okay. Why not?

24 A I didn't ask because it didn't seem relevant. At the time I was being asked
25 the question I had been told that they had already been appointed special Assistant

1 United States Attorney status and can litigate in the district.

2 Q Okay. And so what did they -- what did they need from your office then?
3 Like, why did they request to partner or cocounsel?

4 A So I can't get into the mind of Mr. Weiss or his staff as to why they were
5 making that request. So I don't know why they were asking for this. But I do know
6 that --

7 Q Presumably, you asked the chief of the Major Frauds Section or you asked
8 the criminal chief that question, right?

9 A What I was going to say before you cut me off is that I can't get into the mind
10 of what -- of what they were thinking. They had the ability to litigate in my district.
11 And they were asking me this question, which I was going along with the
12 recommendation of my career attorneys.

13 Q Okay. Did you then make that decision based on the recommendation?

14 A Based on the recommendation of my major frauds chief and my then
15 Criminal Division chief who, combined, had over 40 years' experience as prosecutors, I
16 agreed that we would not partner or cocounsel in the prosecution; but I did tell Mr. Weiss
17 that we'd provide office space and administrative support for his attorneys in their
18 prosecution.

19 Q How many meetings did you have with your chief of the Major Frauds
20 Section and the then criminal chief on this topic?

21 A I had two meetings with them on this topic.

22 Q And when was the first meeting?

23 A The first meeting was sometime in early October 2022, before my phone call
24 with Mr. Weiss, which would have been October -- sorry -- yes, October 19th of 2022.

25 Q Okay. So the first meeting happened in early October 2022. And who

1 was in that meeting with you?

2 A So in that meeting was my First Assistant United States Attorney, was my
3 then chief of the Criminal Division, and my Major Frauds Section chief.

4 Q Anyone else?

5 A That's it.

6 Q And what information did they convey to you during that meeting?

7 Ms. Zdeb. And he can answer that question to the extent it doesn't implicate
8 deliberations or other information related to the ongoing investigation and prosecution.

9 A So the -- before the meeting, I had been provided with materials to review,
10 which I did. And we discussed those materials and their analysis with regard to the
11 question of whether to partner or cocounsel in the charges that were being
12 contemplated.

13 BY MR. CASTOR:

14 Q And what materials were provided?

15 A So I'm limited in what I can discuss. I've been given a letter which limits
16 what I can discuss. I have to be very careful about not getting into specifics. But it was
17 memoranda analyzing facts and law.

18 Q Just one or more than one memo?

19 A Multiple.

20 Q Okay. How many?

21 A There were three that I reviewed.

22 Q And what were the differences in the three?

23 Ms. Zdeb. And he's not able to get into the differences. He just made clear
24 that they analyzed the facts and the law, and he is not able to talk about the specifics of
25 the memos that are part of an ongoing case.

1 BY MR. CASTOR:

2 Q Okay. So you received three memos prior to your first meeting. You read
3 those memos and then you had the meeting.

4 What else can you tell us happened at that meeting, the first meeting?

5 A So, again, I'm limited in what I can discuss with regard to the process of
6 reviewing and analyzing charges and the specific charges, but that is generally what we
7 discussed.

8 Q Okay. And was there a conclusion reached by the four of you at the end of
9 that meeting?

10 A Ultimately, it was my -- my conclusion. They had already made
11 recommendations. And having reviewed the materials and doing analysis and then
12 speaking with them about materials and analysis, I agreed with their recommendation.

13 Q Okay. And then when was your second meeting on this topic?

14 A The second meeting was after my call with Mr. Weiss.

15 Q Okay. So maybe just going chronologically, the next key event was a call
16 with Mr. Weiss?

17 A Yes.

18 Q Okay. And when was that call?

19 A That was October 19th of 2022.

20 Q And you said the meeting where you reached the decision was early October
21 2022, and then the call was October 19th. So a couple weeks had elapsed?

22 A I can't say whether a couple weeks, 1 week, days. I can't be more specific
23 than what I gave you.

24 Q Okay. Did anything else occur during the -- after the conclusion of your
25 meeting and before your call with Mr. Weiss relative to the case?

1 A I don't know what else might have occurred that I was not privy to, but in
2 terms of my dealings, after that meeting I had no other interactions or discussions of the
3 case until the call with Mr. Weiss.

4 Q Okay. And who initiated the call with Mr. Weiss?

5 A Sorry; I don't understand your question.

6 Q Well, you had a telephone call with Mr. Weiss.

7 A Uh-huh.

8 Q The question is, who initiated that call? Did he call you? Did you call
9 him? Did you schedule the call? Did he schedule the call?

10 A Mr. Weiss asked for a call and we scheduled a call.

11 Q And who was on the call?

12 A The call was me and Mr. Weiss.

13 Q No other staff on the call?

14 A No. Well, not that I'm aware of. I don't know who was on his line. On
15 my line, it was just me.

16 Q Okay. And what did you communicate to Mr. Weiss on the October 19th
17 call?

18 A So, again, I have to be careful about what I discuss. I can't get into the
19 deliberative process. But I discussed our analysis of facts and law to explain to him why
20 we would not be cocounseling on the case, but then I told him that we were happy to
21 provide office space, administrative support for his attorneys. He thanked me for that
22 and the call ended.

23 Q In terms of office space and administrative support, did you also make
24 available the grand jury, the grand jury process in your district?

25 A I'm concerned about answering that question because it might get into the

1 deliberative process, but all administrative support would have been available to Mr.
2 Weiss.

3 Q So, if his AUSAs that had been granted SAUSA status wanted to prosecute a
4 case on their own in your district, they had the ability to do that?

5 A To -- my understanding is if they wanted to prosecute the case as SAUSAs,
6 they had the ability from my standpoint to do that. It would have been supported
7 administratively from my standpoint to do that.

8 I can't speak to any limitations within the District of Delaware or within Maine, but
9 I can just talk about my office.

10 Q As the U.S. Attorney, did you have the ability to revoke the SAUSA status?

11 A Yes.

12 Q And was the SAUSA status -- and correct me or --

13 A And I'll just clarify. I never revoked the SAUSA status. To my knowledge,
14 they're -- I never revoked the SAUSA status.

15 Q And how many -- how many lawyers have this SAUSA status, do you know?

16 A All I can say is more than one.

17 Q Okay. More than five? Like, more than five? Like, what's the ballpark?
18 What's the upper -- if you don't know the specific number, what's the range?

19 A I can't say more than -- more than one; that's all I can say.

20 Q Is that something you could take back and get a definitive answer, how many
21 Delaware U.S. Attorney AUSAs have the SAUSA status?

22 A I'm happy to consult with the attorneys for the Department and see if that's
23 something I can discuss or provide or whether I'm even able to provide it at this point.
24 But I'm happy to discuss it with the Department's attorneys.

25 Mr. Castor. Okay. I think we'd like to know the number of SAUSAs and the

1 date that they were granted that status, if you could take that back, Sara.

2 Ms. Zdeb. We can certainly take that back.

3 BY MR. CASTOR:

4 Q How long was the call with Mr. Weiss on October 19th, to the extent you
5 remember?

6 A I don't know specifically, but I would approximate 5 minutes maybe.

7 Q It was a very short call. Okay.

8 And you said you discussed your analysis, the facts and the law, and why you
9 didn't want to take the case.

10 Was there any other information you provided Mr. Weiss on the call?

11 A So I didn't say why I didn't want to take the case. So it was his case, his
12 investigation.

13 Q But you didn't want to partner with him on the case.

14 A The question was whether to cocounsel on the case that he had been
15 investigating and was done by his office for many years. So that was the only question
16 on the table.

17 Q Okay. Did you communicate anything else to him that you haven't told us?

18 A In broad strokes, I communicated to him analysis of the facts and law and
19 general reasons why we would not be able to cocounsel on the case; but that
20 nonetheless, we would offer office space, administrative support for his people.

21 Q And then you said you had a second meeting with your team about this topic
22 after the Weiss call?

23 A Correct.

24 Q And when was that?

25 A Shortly after the call with Mr. Weiss on October 19, 2022.

1 Q Okay. And was it a meeting or a conference call with your staff?

2 A It was a meeting.

3 Q Okay. And what do you remember about that meeting? Was it the same
4 group of individuals?

5 A It was the same group of individuals. I told them about my call with Mr.
6 Weiss.

7 Q Was that largely it, just a readout of the call?

8 A That was it.

9 Q And then anything else in terms of meetings or calls on this topic with that
10 group of people?

11 A What do you mean by "anything else," because --

12 Q Did you have any additional meetings or telephone calls deliberating about
13 the decision on this case with that group of people in your office?

14 A So I had one meeting where we discussed the materials that had been
15 provided and their recommendation --

16 Q Right?

17 A -- of the career attorneys not to cocounsel on the case. The second
18 meeting was just me speaking, telling him what occurred in the call.

19 Q No, no, I got that. I'm just sort of -- I'm getting ready to pivot here, to move
20 on. I'm just saying, were there any other meetings or calls? You told us about two
21 meetings with your staff and a call with Mr. Weiss. Were there any other meetings?

22 A Meetings or calls with whom?

23 Q On the Hunter Biden case with either your staff or with the staff from the
24 District of Delaware.

25 A So I've been instructed to not discuss the deliberative process and potential

1 charges and a potential investigation. I will say there has been one subsequent call with
2 Mr. Weiss.

3 Q Okay. When was that?

4 A Fairly recently, which would have been in September, September 19th of
5 this year. But I can't get into the substance of that, because I've been instructed not to
6 discuss the deliberative process or the ongoing investigation.

7 Ms. Zdeb. Can we go off the record for a second.

8 [Discussion off the record.]

9 Mr. Estrada. So the recent call did not involve the question of whether to
10 cocounsel on contemplated charges against Hunter Biden, just to clarify.

11 BY MR. CASTOR:

12 Q What did it involve?

13 A So I can't discuss that, because it goes to an ongoing investigation.

14 Q Was that -- the second call that you just identified, were those the only two
15 calls that you had with Mr. Weiss?

16 A Yes.

17 Q Did you have any telephone calls with anyone else in his office?

18 A No. I never had any calls with anyone else in his office.

19 Q And did you have any meetings with anyone in his office?

20 A No.

21 Q The AUSAs in Delaware that have SAUSA status in your district, have they
22 ever come out to your district that you're aware of?

23 A I don't know.

24 Q So you've never met them?

25 A I've never met them, no.

1 Q Do you know if the District of Delaware had meetings with your staff on
2 these topics?

3 A Whether attorneys in the District of Delaware?

4 Q Yes.

5 A I don't know. They may have. I know there was communication between
6 my Major Frauds chief and Attorneys of the District of Delaware. I know there was
7 communication back and forth there. But I'm not aware of any specifics about meetings
8 or calls or whatnot.

9 Q Do you know if these happened in person or on the telephone?

10 A I don't know.

11 Q So, to your knowledge, the District of Delaware lawyers, have they ever
12 come to your district on this topic?

13 A I don't know. And I'll just say this is normal for every case. I don't interact
14 with SAUSAs on a case-by-case basis. We have SAUSAs from almost all the district
15 Attorney's Offices in our 20 million-person district.

16 They do cases from those kind of cases, fentanyl death cases. We need those
17 resources, but I don't meet with them on their cases on an individual basis. So that's a
18 typical practice not to meet with the SAUSAs on any sort of case.

19 Q Right. I was wondering if the SAUSAs had met with your staff in person
20 that you're aware of.

21 A Not -- well, I don't know one way or the other. It's a typical practice that
22 SAUSAs interact with the line attorneys. That's typical. So I would expect that, but I'm
23 not privy to those meetings.

24 Q Okay. I mean, this is a potential prosecution of the President's son. If the
25 lawyers from the District of Delaware were out in your district discussing the case, don't

1 you think you'd know about it?

2 A So I think a little context would be helpful. So, as I said, we have the largest
3 district in the country. We have a Fentanyl epidemic which is one of the worst in the
4 country's. We've done more death-resulting cases than any other district in the
5 country. We're on pace to do more this year than we ever had before.

6 We've got a violent crime epidemic with firearms. We've done more Hobbs Act
7 cases than we ever have in the past 2 years. We have a National Security Section, a
8 division, unlike most other offices, because we're the gateway to Asia. And we have the
9 People's Republic of China trying to influence our elections, trying to target some of our
10 individuals. We have a lot of high-profile cases. We have a Public Corruption Section
11 which has indicted three City Council members in the past few years and including the
12 sitting sheriff of Los Angeles County. There are a lot of high-profile cases, so I don't
13 meet with attorneys on every single high-profile case.

14 Q Okay. I was just asking you if you were aware of the meetings that the
15 District of Delaware had had with your staff and whether those meetings were in person.

16 A I thought I answered that before, that if there were meetings that occurred,
17 they might have happened, but I wouldn't be privy to those.

18 Q So was that discussed at your meeting when you reviewed the three
19 memoranda?

20 A At the meeting where we discussed the memoranda and the analysis, legal
21 and factual analysis, we didn't discuss meetings with folks from the District of Delaware.
22 But I understood there were communications between my major frauds chief and
23 attorneys in the District of Delaware.

24 Q Okay. Do you know if they prepared any presentations for your staff?

25 A By "presentations," you mean PowerPoint presentations?

1 Q Something along those lines, yeah.

2 A I'm not aware.

3 Q Do you know what type of materials they did submit to your office?

4 A Yes, but I'm not sure I can discuss the nature of those materials. But, as I
5 said, there were many legal memoranda that were written and presented to me in
6 making this decision of whether or not to agree with the career attorneys.

7 Q Who wrote the memoranda?

8 A So, again, I want to be careful about getting into the substance of the
9 deliberative process. Some memoranda were written, as I understand it, by attorneys
10 from the District of Delaware and the Tax Division, and other -- others by folks in my
11 office.

12 Q There were three memos. Do you remember who wrote each one?

13 A Yes.

14 Q Okay. And was there one from the District of Delaware, one from the Tax
15 Division, and one from your office?

16 A I can't get into specifics. I'll just say that there was work done analyzing
17 this by attorneys in the District of Delaware, by attorneys in the Tax Division, and by
18 attorneys in my office.

19 Q Okay. Do you know who from the District of Delaware was the primary
20 point of contact for your office?

21 A I do not.

22 Q Was that discussed during any of your meetings?

23 A The primary point of contact from the District of Delaware, no.

24 Q When you had the subsequent call with Mr. Weiss on September 19th of this
25 year, you mentioned that was your second call with Mr. Weiss?

1 A Sorry; you're asking about what date?

2 Q The one that occurred last month.

3 A That was the second call I've had with Mr. Weiss, yeah.

4 Q So you've only had two calls with him --

5 A Yes.

6 Q -- or have you had subsequent?

7 A I've had two calls with Mr. Weiss since becoming U.S. Attorney and just
8 during my lifetime.

9 Q Okay. The second call, how long did that last?

10 A Maybe 5 minutes or so.

11 Q Did he initiate the call, or did you initiate the call?

12 A He initiated the call.

13 Q Okay. And was he asking for something?

14 Ms. Zdeb. And, at this point, we're getting well beyond the scope of what Mr.
15 Estrada is authorized to discuss. This call, as you know from the dates, took place after
16 the events related to the question of whether to partner or cocounsel. And so he is not
17 able to get into the specifics of the more recent call with Mr. Weiss.

18 Mr. Castor. All right.

19 BY MR. CASTOR:

20 Q Have you received any other materials other than the three memos on this
21 case?

22 A I'm trying to think. The materials I've received on the question of whether
23 to cocounsel was limited to the three memoranda.

24 Q What was your understanding of Mr. Weiss' ability to bring charges in this
25 case?

1 A My understanding was that Mr. Weiss had been doing this investigation for
2 several years, was leading the investigation, and would bring charges if he believed they
3 were appropriate.

4 Q And if charges needed to be brought in your district, what did he need to do
5 to do that?

6 A My understanding was that he could bring charges in my district.

7 Q And how would that work?

8 A I don't know the specifics of how it would work. He had SAUSAs in my
9 office. When I offered him administrative support and office space, he thanked me for
10 that. So it was my belief that he was going to be able to do that.

11 Moreover, DOJ components often litigate in my district and have the authorization
12 to do that. I don't know the specific code that necessarily gives that authorization, but
13 they have the ability to do that.

14 So my understanding was that, if he wanted to bring those charges in my district,
15 he could bring those charges in my district.

16 Q What is the difference between what you offered Mr. Weiss and what he
17 was requesting?

18 A He requested to cocounsel on the case, which, in my experience, having
19 practiced for over 20 years, including in private practice, which is most often where
20 I've -- in fact, I shouldn't say most often. That's my experience cocounseling, in private
21 practice.

22 In private practice, when you cocounsel, you're in completely. You litigate
23 everything. You're at every hearing. You're an equal member for trial. Every aspect
24 of the case you litigate, which obviously entails significant resources and entails
25 significant time on behalf of the attorneys involved.

1 Q Okay. Are you aware of any instance where your office agreed to
2 cocounsel or partner with a different U.S. Attorney's Office?

3 A No, I'm not, with a different U.S. Attorney's Office. We do partner quite
4 often with different components at Main Justice.

5 Q Okay.

6 A But I'm not familiar myself with partnering with another U.S. Attorney's
7 Office on litigation.

8 Q And did you communicate that to Mr. Weiss, that this was a request that
9 was out of the ordinary?

10 A I didn't communicate that it was a request -- that the request was out of the
11 ordinary. I mean, I was -- my goal was to be as polite and helpful to Mr. Weiss as
12 possible.

13 I was down 40 AUSAs at the time, so we were very resource-strapped. We were
14 trying to hire as much as possible and had very limited resources. And every attorney
15 you assign to a case means you can't do another case.

16 And it seemed -- and he didn't push back on -- when I told him the situation, that
17 we wouldn't be cocounseling, but he did express appreciation when I offered
18 administrative support.

19 Q So was his request out of the ordinary?

20 A I don't know if I could characterize it as out of the ordinary, because all I
21 know is my district. I was an AUSA in my district, and I am the U.S. Attorney in my
22 district. Our district is pretty unique.

23 Q Right.

24 A It's different from any other district. We have more than we can handle in
25 our district, so we typically do not go and litigate in other districts. But that may be

1 different, as there's 94 districts in our great country. So I don't know what the typical
2 practice is in other places.

3 Q Okay. But, in your experience -- I mean, before becoming U.S. Attorney
4 you'd been with the office for just shy of 8 years. Is that correct?

5 A Yes.

6 Q And you hadn't witnessed any U.S. Attorney from a district, different district
7 cocounseling or partnering with someone in your district, correct?

8 A In the Central District, that was not my experience. But, again, we are
9 unique. We are, unfortunately, the gang capital of this country. We're also the hub
10 for every cartel in this country.

11 So that means we may prosecute activity that occurs in other parts of the country,
12 but we have venue in our district to prosecute those conspiracies. We do national
13 security cases that go to other districts as well, but we generally have venue because so
14 much activity occurs in our district.

15 So our district is unique. So I would never presume to say that my experience in
16 the Central District of California somehow dictates what is typical for the rest of the
17 country.

18 Q When you told Mr. Weiss that you were unwilling to partner, that you
19 weren't interested in being -- having a cocounsel arrangement, did he indicate to you that
20 he was interested in taking you up on your offer of administrative support and office
21 space?

22 A The only indication he gave me was he thanked me when I told him that, and
23 that's all I can say.

24 Q Okay. Did it seem like Mr. Weiss was relying on you to give an up-or-down
25 decision on whether a case could be brought in your district?

1 A That was not my understanding, given that he had attorneys SAUSAed to my
2 district and that he thanked me when I told him I wouldn't be cocounseling but offered
3 administrative support.

4 Q Okay. Did he indicate to you that he was going to take you up on that offer
5 of administrative support?

6 A All I can say is he thanked me.

7 Q Okay. Can you tell us why your office decided not to cocounsel or partner
8 with Mr. Weiss on this case?

9 A So, again, I don't want to get into the deliberative process of how we analyze
10 which cases to do, which cases not to do.

11 What I can say at a high level is, generally, when we evaluate cases, we do so
12 under the Justice Manual guidelines. We look at whether a Federal offense has been
13 committed and whether we believe that there is admissible evidence sufficient to prove
14 to an unbiased trier of fact that an individual has committed an offense beyond a
15 reasonable doubt.

16 So we follow those guidelines. We also look to the practical impact of limited
17 resources. As I mentioned, we have over -- we have about 20 million people in the
18 district, yet, at the time I came in, about 140 AUSAs. That's just over one AUSA per
19 100,000 people in the district. At the same time, we're dealing with -- as I said, we're
20 the gang capital. We, unfortunately, export MS-13, Crips gangs, Hispanic gangs,
21 Mexican mafia to the rest of the country. Our cartels infect the rest of the country.
22 The fraud we have here infects the rest of the country.

23 So there were a lot of issues I needed to deal with right there and then which
24 called for resources.

25 Q Did you express to Mr. Weiss that your decision not to cocounsel with him or

1 not to partner with him on this case had more to do with the law and the facts, or was it
2 more of a resource issue, from your perspective?

3 Ms. Zdeb. And he's not able to get into the specifics of what he communicated
4 to Mr. Weiss or what his analysis was, as he has made clear.

5 BY MR. CASTOR:

6 Q I think that's a pretty important question, so -- I mean, we're talking about a
7 time period that's relevant for this transcribed interview.

8 So I just ask you again, are you willing to tell us whether you communicated to Mr.
9 Weiss that your decision to, you know, deny him the ability to partner with you had more
10 to do with your resources, or did it have more to do with other issues?

11 A So I've been given very specific instructions in terms of what I'm authorized
12 and not authorized to speak about by Mr. Weinsheimer in the October 18th letter. I do
13 not want to violate those restrictions, so I can't get into the specifics. But, as I
14 mentioned to you, there were two general principles that we look at in terms of whether
15 we're going to devote resources to any case.

1

2 [10:58 a.m.]

3 BY MR. CASTOR:

4 Q Okay. Did you have any additional communications on the Hunter Biden
5 case that you haven't told us about here today?

6 And I can cabin that off to the communications that occurred prior to the plea
7 bargain falling apart, the plea bargain in Delaware falling apart.

8 A Can you give me a date? I don't follow this stuff terribly closely and have
9 the dates in mind. So what date are you giving me?

10 Q Well, you told us about the communications that you had in 2022, in
11 October of 2022.

12 A Uh-huh.

13 Q And then you brought up a call that you had with Mr. Weiss in September
14 of 2023, and I'm just asking, is there any other communications you had either internally
15 or externally of your office on the case?

16 A There were communications that I had with my press folks in the spring of
17 2023 when we started getting press inquiries. As I mentioned to you, that was limited
18 to issuing a brief statement which I described to you earlier.

19 Q Okay. But did you have any communications with Main Justice, either the
20 DAG's office or the Tax Division?

21 A I had the communication with Brad Weinsheimer with regard to that brief
22 statement which I issued.

23 Q Okay.

24 A But beyond that, no.

25 Q Okay. Prior to his appointment as special counsel --

1 A Should we not be concerned about that buzzer?

2 Mr. Castor. Off the record.

3 [Discussion off the record.]

4 Mr. Castor. Going back on the record.

5 BY MR. CASTOR:

6 Q Prior to his appointment as special counsel at the end of the summer, did
7 you believe that Mr. Weiss had ultimate authority over the Hunter Biden prosecution?

8 A So I would disagree with the way you phrased the question.

9 Q Okay.

10 A My understanding, through all of my interactions with Mr. Weiss in
11 Delaware, was that he was leading the investigation and was able to bring whatever
12 charges he wanted at any point.

13 Q Okay. I mean, whether he had ultimate authority or not is a -- I mean,
14 those are words that Mr. Weiss has used. So I was just asking you about that.

15 A I thought he had authority to bring the charges wherever he chose to when
16 he was U.S. Attorney and certainly as he is now special counsel.

17 Q What's your understanding of the meaning of ultimate authority inside of
18 DOJ?

19 A I don't know what that means within DOJ. It could mean lots of different
20 things.

21 Q Okay. If someone has ultimate -- if a U.S. Attorney has ultimate authority
22 to bring charges, does that mean they're the final decisionmaker?

23 A It could. I just don't use that term.

24 Q Okay. Well, Mr. Weiss has used it. So, you know, you're a U.S. Attorney,
25 and so I'm just asking you. So that the term "ultimate authority" doesn't have meaning

1 to you?

2 A It has no special meaning for me in the context of being U.S. Attorney. I
3 would use authority. I have the authority to bring criminal charges, civil offense
4 charges, national security charges, many different types of charges.

5 Q According to the Justice Department's Justice Manual, the final authority for
6 the prosecution or declination of all criminal matters arising under the Internal Revenue
7 laws rests with the.

8 Assistant Attorney General for the Tax Division.

9 Is that something that you're aware of?

10 A So what I'm aware of is that, for certain tax charges, you need authorization
11 from the Tax Division to bring those charges and then also to dismiss those charges --

12 Q Okay.

13 A -- if you choose to dismiss them.

14 Q All right. But if the -- what's the Justice Manual -- maybe we can start
15 there -- to you? What does it mean to you?

16 A So the Justice Manual is what used to be the United States Attorney Manual.

17 Q Okay.

18 A And it is a lengthy set of guidelines for how offices operate and how
19 litigation should be conducted. So it pertains to criminal prosecutions. It pertains to
20 national security matters. It pertains to civil matters, administrative. There are many
21 different provisions.

22 Q Okay. And the Justice Manual with regard to tax matters states: The final
23 authority for the prosecution or declination of all criminal matters arising under the
24 Internal Revenue laws rests with the Assistant Attorney General of the Tax Division.

25 Is that something that you are aware of and something you're familiar with?

1 A I'm familiar with the fact that the Tax Division must approve certain tax
2 charges --

3 Q Okay.

4 A -- in order to have those filed, but also approve the dismissal of those
5 charges if a prosecutor wishes to dismiss them.

6 Q Okay. But, if the Justice Manual says that the Assistant Attorney General
7 for the Tax Division has the final authority, how do you reconcile that with Mr. Weiss'
8 statement that he had ultimate authority?

9 A I'm not going to attempt to reconcile anything. I can't get into the mind of
10 Mr. Weiss of what he meant by the term. You would have to ask him. And my
11 understanding of what the Tax Division's role is as I stated to you.

12 Q Okay. Are you familiar with 28, United States Code, 515, the special
13 counsel authority statute?

14 A I'm aware of 515 in the context of authorizing litigation by components and
15 also by U.S. Attorneys and attorneys for -- and even attorneys outside of the Department.
16 It's a very -- it's a general statute which pertains to the Attorney General being able to
17 authorize litigation. So I don't know that it is a special counsel statute.

18 Q Okay. Outside of 515, is there another way that the U.S. Attorney for
19 Delaware could have acquired ultimate authority from the Attorney General that you're
20 aware of?

21 A I don't know what the ultimate authority -- that's a vague term to me,
22 "ultimate authority."

23 Q Okay.

24 A It's not something I use, not a specialized term I'm familiar with. So I can't
25 answer that.

1 Q Okay. Outside of 515, are there other mechanisms the Department has to
2 grant charging authority to a U.S. Attorney that would supersede the Justice Manual?

3 A I mean, I have charging authority for cases. I don't know if that comes from
4 515 or elsewhere.

5 Q But your charging authority, I mean, you can't -- you can't go against the
6 Justice Manual. Correct?

7 A I don't know what you mean by "go against." They're principles. They're
8 general principles that we're supposed to follow, but the principles are general. So the
9 principle we most often deal with is deciding whether we believe there's sufficient
10 admissible evidence to prove a case beyond a reasonable doubt. That is a principle.
11 It's not going against or not going against. If we believe there's evidence, we believe
12 there's evidence.

13 Q Okay. I mean, what's not a principle, though, is the Justice Manual says the
14 final authority in tax cases, you know, rests with the Assistant Attorney General for the
15 Tax Division. Correct?

16 A I don't know the Justice Manual provision you're talking about. I can tell
17 you my understanding of what the Tax Division's authority is. They approve charges,
18 and you need approval if you're going to dismiss certain charges.

19 Q Right.

20 A Not all tax-related charges, but certain tax charges.

21 Q Right. So, if you're bringing a tax case in your division, you need the
22 approval -- the authorization from the Tax Division? Correct?

23 A I don't -- I can't say in all instances -- I can't say in all instances what the
24 requirements would be.

25 Mr. Castor. Okay. We're out of time. We'll stop there.

1 [Recess.]

2 [REDACTED]: It's 11:22. We can go back on the record.

3 EXAMINATION

4 BY [REDACTED]:

5 Q Good morning again.

6 A Good morning.

7 Q I want to start off with just some followup questions from the prior hour.

8 You mentioned that you talked to a gentleman named Bradley Weinsheimer in

9 the --

10 A Brad Weinsheimer, correct.

11 Q Who is Mr. Weinsheimer?

12 A My understanding is he's the most senior career official in the Department
13 and sits within the office of the Deputy Attorney General. Beyond that, I don't have
14 more on his title.

15 Q And you spoke with him this past spring about media contacts that you had
16 received. Correct?

17 A Correct.

18 Q Why was Mr. Weinsheimer the person that you talked to?

19 A Because he was the person I understood that was handling questions in this
20 regard.

21 Q And, again, he's a career official. Correct?

22 A Yes, that was my understanding -- well, he is a career official. I know that
23 to be a fact, yeah.

24 Q Okay. And you spoke with him again in the lead up to today's interview.
25 Correct?

1 A I did not. So I received a letter from him --

2 Q I'm sorry.

3 A -- on October 18th regarding the scope of my authority to speak today.

4 Q And is it your understanding that you received that letter from him again
5 because he is the highest ranking career official?

6 A I don't have an understanding beyond the fact that he's the person that's
7 designated to handle this, and he's the highest ranking career official.

8 Q Okay. I want to turn to the discussion of SAUSAs again and just make sure
9 that I have my facts straight on this.

10 A SAUSA is a Special Assistant United States Attorney; correct?

11 A Correct.

12 Q And is it correct that the SAUSAs from Mr. Weiss' office that were appointed
13 as SAUSAs in the Central District of California had already been so appointed by the time
14 that you came to the office in September of last year?

15 A They had been appointed already, yes.

16 Q Okay. So you don't recall the exact date -- or you can't recall the exact
17 date, but it was before you came to the office?

18 A So, when I -- I usually get the request to authorize a SAUSA or to terminate a
19 SAUSA, and that request is made by folks at the line level, and it goes up through
20 the -- that division without attorneys, the Administrative Division. And then it comes to
21 me for signature. So I did not -- the authorization came before, and that's the extent to
22 which I know, and I've never authorized termination.

23 Q Okay. And, with respect to SAUSAs, just generally speaking, what can a
24 SAUSA do in your office when they're assigned to your office?

25 A So a SAUSA has full authority to litigate within our office. Most often

1 SAUSAs come from State practice. So, right now, I mentioned before we have a fentanyl
2 epidemic, and the State is unable to prosecute those cases as homicides. They're
3 limited in their authority of what they can do on those cases. So many of the State
4 District Attorney's Offices have given us State prosecutors to work as SAUSAs to do what
5 we call death resulting cases. Those are title 841 -- or section 841 cases, 21, 841, where
6 an individual sells a controlled substance, and that results in the death of another person.
7 That's a statute we didn't used to use very often before. But now that kids are taking
8 what they think is an Oxy or what they think is a Percocet and waking up dead the next
9 morning and the State is hamstrung by what they can do, we're getting more and more
10 SAUSAs to do those cases. The SAUSAs have the authority to investigate the cases, to
11 indict the cases, to try the cases, and they do that. We have a lot of those cases in our
12 district.

13 Q When a SAUSA is assigned to your office, can they consult with other
14 attorneys in the office, meaning, for example, regular assistant U.S. attorneys?

15 A They generally do because they don't know all the practices. So, just like
16 other AUSAs, they will consult with a supervisor. If there are questions about an
17 indictment or how to get grand jury time, or any sort of questions they may have, they
18 consult with supervisors in the office.

19 Q Okay. So they're not walled off. They're effectively part of the office. Is
20 that fair to say?

21 A Generally speaking, I'm not aware of any SAUSAs being ever walled off, so I
22 don't even know what necessarily that would mean. But I -- yeah, I'm not aware of
23 SAUSAs ever being walled off.

24 Q I want to move on and talk about your background a little bit and especially
25 prior to joining -- prior to your appointment as the U.S. Attorney in the Central District.

1 You said you first joined the Central District of California as an assistant U.S. Attorney in
2 approximately 2007. Is that right?

3 A Correct.

4 Q What was your role?

5 A When I first started I was in the General Crimes Section. I was a rookie, so
6 that was my role. I was a rookie learning how to prosecute cases.

7 Q And those were criminal cases?

8 A Those were criminal cases because I was hired for the Criminal Division. So
9 I started out learning how to do criminal prosecutions. I was in the General Crimes
10 Section for about 6 months. Then I went to what's known as the Violent Organized
11 Crime Section. And so, for the rest of my career I became a supervisor there and was
12 the international organized crime coordinator, which meant that I handled mostly
13 organized crime work in the office. I did mostly Eurasian organized crime,
14 Russian-Armenian organized crime cases. I also did gang cases in the context of
15 Mexican Mafia cases. We indicted one of the largest Mexican Mafia cases in the country
16 involving eight verified members. I also did some work on Crips gangs that were
17 manufacturing and distributing PCP and some cases on MS-13, which is a gang that
18 originated in Los Angeles but is largely Central American and is now present all over the
19 country, including in this area.

20 Q During that time, did you have the opportunity to try cases before a jury?

21 A Yes.

22 Q Could you estimate approximately how many cases you tried before a jury?

23 A Yes. I tried -- as an AUSA, I had 22 cases. I tried 22 cases. And, in
24 general, in my overall practice, I've tried over 35 cases in Federal and State court.

25 Q And, when you say "in general," that includes your time in private practice?

1 A Correct.

2 Q I want to talk through some of the cases that you have overseen since you
3 became the U.S. Attorney in September of last year.

4 Are you familiar with a defendant named Jose Huizar?

5 A Yeah. Jose Huizar was a member of the Los Angeles City Council for about
6 15 years. He was one of the highest ranking members in the city council. He was the
7 first Latino to be a fellow of Princeton University. He was a very sort of high-riser in
8 California politics. We indicted him actually on RICO charges, and he pled guilty I believe
9 either late last year or early this year.

10 Q And which political party was Mr. Huizar a member of?

11 A He was a Democrat.

12 Q So is it fair to say that, while -- and was he also -- did he also plead guilty to a
13 count of tax evasion?

14 A My understanding is yes.

15 Q Okay. So is it fair to say that while you were serving as U.S. Attorney, your
16 office actually prosecuted a Democratic politician for tax-related crimes?

17 A While I've been U.S. Attorney, we've prosecuted several Democratic
18 politicians for a variety of crimes. The most prominent one, we tried an individual
19 named Mark Ridley-Thomas. He was one of the most powerful African-American
20 politicians in the State, if not the country. He served in the city council but also as a
21 member of the county board of supervisors, also in the State assembly and also in the
22 State senate. We charged him with bribery with regard to funneling money to his son
23 who had left his position in the State senate after there were allegations of sexual
24 harassment. And his father, Mark Ridley-Thomas, funneled money through USC to his
25 son inappropriately.

1 But there's many beyond that. We've indicted three different city council
2 members in the last few years, all Democrats. We also have indicted several other
3 politicians in the L.A. area. L.A. is not just the city of Los Angeles. There are many
4 other cities around there, and we've indicted many individuals.

5 Q Is it fair to say that your office is not swayed by political party when
6 considering whether to charge an individual?

7 A We are -- we adhere to the Justice Manual and the principle of validating
8 cases unbiasedly and just based on the facts and law, and we take the facts and law
9 where they take us. And that could mean any individual, regardless of his or hers fame,
10 position, power. It doesn't matter.

11 Q I want to turn to the Justice Manual. And you've mentioned it a couple of
12 times that your office follows the Justice Manual.

13 [REDACTED]: I want to introduce as, I guess it's exhibit number 1 --

14 Mr. Estrada. Okay.

15 [REDACTED]: -- an excerpt from the Justice Manual's principles of Federal
16 prosecution. It's section 9-27.220, and it's entitled "Grounds for Commencing or
17 Declining Prosecution."

18 [Estrada Exhibit No. 1

19 Was marked for identification.]

20 Mr. Estrada. Is it just these two pages?

21 BY [REDACTED]:

22 Q So this is the cover page of the section, and then it's section 9-27.220. So it
23 is on the bottom of the second page -- of the third page, I guess.

24 A Okay.

25 Q And I should say we printed this off online. The full section; I think it's

1 30-some pages. So, in this exhibit, we're only including the excerpt that we're going to
2 talk through.

3 A Understood.

4 Q I'm going to read out loud the section entitled "Grounds for Commencing or
5 Declining Prosecution."

6 It says: The attorney for the government should commence or recommend
7 Federal prosecution if he or she believes that the person's conduct constitutes a Federal
8 offense, and that the admissible evidence will probably be sufficient to obtain and sustain
9 a conviction, unless, number one, the prosecution would serve no substantial Federal
10 interest; number two, the person is subject to effective prosecution in another
11 jurisdiction; or, number three, there exists an adequate noncriminal alternative to
12 prosecution.

13 Did I read that correctly?

14 A Yes.

15 Q Okay. This section refers to the term "admissible evidence." And you also
16 used it in the first hour.

17 In layperson's terms, what does "admissible evidence" mean?

18 A It means evidence we can present to a jury. So, in many instances, we may
19 be aware of information, scuttlebutt that may be out there. For instance, very often in
20 gang murders everyone in the neighborhood knows who did it. It doesn't mean we can
21 admit that at trial. That would often be hearsay or lack of foundation, so it wouldn't be
22 admissible.

23 So we need to be sure that the evidence that we're admitting is admissible under
24 the Federal Rules of Evidence, and it's sufficient to sustain a conviction beyond a
25 reasonable doubt. And sustain is important because that means not just obtaining a

1 conviction but also making sure that we will sustain that throughout the appellate
2 process.

3 Q And you referenced "beyond a reasonable doubt." "Beyond a reasonable
4 doubt" is actually the highest evidentiary standard in law; correct?

5 A As defense attorneys always like to say, yes, it is.

6 Q And it's a higher standard than, for example, the probable cause standard
7 that is needed just to obtain an indictment; correct?

8 A Correct.

9 Q And it's a higher standard than the preponderance of the evidence standard
10 that's often needed to obtain a judgment in your favor in a civil case. Correct?

11 A Correct, yes.

12 Q In layperson's terms, to the best of your ability, can you explain what
13 "beyond a reasonable doubt" is?

14 A So "beyond a reasonable doubt" is evidence -- there's a Ninth Circuit
15 instruction on this -- that leads you firmly convinced in the guilt of an individual. It's not
16 beyond all possible doubt, but it's based on reason and common sense. But it is the
17 highest standard that exists under law.

18 Q So --

19 A The other important part of that when we talk about sustaining a conviction
20 is, to get a conviction under criminal law, you need a unanimous jury of all 12 jurors
21 voting to convict. And that's an important distinction from civil practice where you
22 don't need a unanimous jury to find even by a lesser standard, which is the
23 preponderance standard.

24 Q Have you ever had an experience as a prosecutor where you felt strongly
25 that you had presented the jury with sufficient evidence to prove a case beyond a

1 reasonable doubt and sustained that conviction, but there was maybe one juror who
2 didn't agree, and so, as a result, that defendant was not convicted?

3 A I've had that occur several times in my career, yes.

4 Q Can you describe those cases just broadly speaking for us?

5 A Sure. Those are known as often hung juries where the jury can't come to a
6 decision. I've had that occur at least four, five times. That's why I've tried so many
7 cases. I've had to repeat some of them. You know, it helps you understand the
8 difficulty of proving proof beyond a reasonable doubt because one person can be
9 unconvinced and prevent a conviction from going forward.

10 I had one instance in my career where we had an individual visiting the United
11 States from Armenia, from the Sochi area -- not Armenia, but Russia, from the Sochi area.
12 He was kidnapped and shot several times by an Armenian group that wanted to extort
13 him and demand money from him. He was held for 5 days and forced to different stash
14 locations. We rescued him on fourth day. SWAT went in. There's videos of SWAT
15 going in rescuing him. He was suffering from significant injuries from the untreated
16 gunshot wound.

17 And I'll never forget the testimony from the trauma surgeon who testified that,
18 when he made the first incision into the individual's stomach, out erupted a fountain of
19 liquid stool. He had to go through four different surgeries. He ultimately survived
20 after 2 months.

21 We tried three individuals for the kidnapping, and it hung, and it was two jurors
22 who hung it, and it was largely what we call jury nullification. They didn't like the
23 prosecution because they believed that the victim was himself involved in criminal
24 activity and had connections to powerful people in Russia, what's known as thieves in
25 law, which is essentially the godfather in Russian organized crime. And, because of that,

1 they didn't want to convict. So we had to retry that case, much shorter, and ultimately
2 got a conviction on that case.

3 But we had -- the evidence was, in our view, extremely strong, but still some
4 jurors didn't agree in the first instance.

5 Q So, turning to the Hunter Biden investigation specifically -- and I don't want
6 to ask you about deliberations, but I want to talk about the kind of considerations that
7 your office had to think through under the Justice Manual and in particular the
8 decision -- or the recommendation that was made to you by the chief of the Major Frauds
9 Section and the Criminal Section.

10 And you said -- before I go there, the chief of the Major Frauds Section and the
11 Criminal Division chief in the Central District are both career employees. Correct?

12 A They are, yes.

13 Q And can you say again for the record how many years of experience they
14 have?

15 A They have at least over 40 years of experience combined, probably more in
16 the ballpark getting to 50 years.

17 Q So, without revealing -- and they made a recommendation to you; correct?

18 A Correct.

19 Q And you accepted that recommendation?

20 A The recommendation was not to cocounsel on this matter, yes, and I
21 accepted that.

22 Q Without revealing your actual deliberations or your discussions on the
23 matter, was one thing that you considered whether there was sufficient admissible
24 evidence such that prosecutors could sustain a conviction from a jury in your district?

25 Ms. Zdeb. And he can answer that question, not about this case specifically

1 because that involves the ongoing case, but he can talk about his general process. To
2 the extent he can talk about his general process, he needs to do it with respect to broadly
3 speaking in all cases. But he cannot speak about the considerations that he evaluated in
4 this case.

5 A So I can't get into the specifics what was discussed and what law or facts
6 were analyzed in this case. I'll say the general matter that we discuss when looking at all
7 matters are the Justice Manual requirement that we only prosecute cases where we
8 believe a Federal offense has been committed and where we believe there will be
9 sufficient admissible evidence to prove a case beyond a reasonable doubt to an unbiased
10 trier of fact.

11 And we also discuss the second principle of ensuring the practical aspect of having
12 limited resources and ensuring we prosecute cases in light of those limited resources.

13 BY [REDACTED]:

14 Q And that's the case -- and you said you apply those principles -- or you
15 consider those two principles in all cases that come before you. Correct?

16 A Yes.

17 Q And this was one of the questions that came before you was pertaining to
18 the Hunter Biden matter. Correct?

19 A The question of whether to cocounsel on this investigation, which was being
20 led by the District of Delaware.

21 Q In addition to the probability of obtaining and sustaining a conviction at trial,
22 the Justice Manual's principles of prosecution also instruct prosecutors to consider
23 whether there exists an adequate noncriminal alternative to prosecution; correct?

24 A Yes.

25 Q And that applies in all cases; correct?

1 A Yes. We have what's known as a CASA program, which is Conviction
2 Alternative and Sentencing Alternatives program, in which some individuals we send to a
3 program where they go through course work for a period of time, and after that, either
4 they receive a probationary sentence or, in a different, track the charges are dismissed.
5 Those are often for individuals who commit crimes as a result of substance abuse,
6 but -- and also as a result of being pressured into committing crimes by gangs and cartels
7 and things of that sort.

8 So we do have a program for that, which I believe ours was one of the first in the
9 country, so we're proud of it.

10 Q And, in tax-related cases in particular, there are alternatives to criminal
11 prosecution that are routinely pursued, such as a payment of civil penalties. Correct?

12 A In our district, we actually have a Tax Division. We have a Tax Division
13 which handles tax matters, and they do it on the civil side, not criminal. But, even their
14 cases largely pertain to tax preparers and accountants and firms that on a routine basis
15 are helping individuals not pay their full amount of taxes. And they'll also prosecute
16 cases against individual taxpayers where they fail to pay the tax or hiding accounts
17 overseas or things of that sort. But those are all done generally on the civil side.

18 Q To the best of your knowledge, has the Central District ever prosecuted an
19 individual for tax-related crimes when that individual has paid the taxes in question? I
20 mean criminally prosecuted.

21 A My understanding is where an individual has not paid taxes in the first
22 instance but later paid those taxes with penalties and interest before a prosecution is
23 initiated or an investigation is initiated, we have never brought criminal charges.

24 Q Is willfulness something that prosecutors have to prove in a tax evasion
25 case?

1 A Under most tax statutes, felony and misdemeanor, for a criminal case, one
2 would need to prove willfulness.

3 Q And what does "willfulness" mean again in layman's terms?

4 A Willfulness means the knowing violation of a legal duty. So it's
5 essentially -- specific intent is another way it's sometimes described -- that you know
6 you're violating the law, not just that you violate the law, but you know you're violating
7 the law.

8 Q If an individual has paid taxes that are due, might that make it challenging to
9 prove willfulness?

10 A That could add to the defense argument that the individual did not
11 knowingly violate the law. But there's lots of factors that go into whether an individual
12 knowingly violated the law, such as whether they hired an attorney or a tax
13 preparer -- that's often part of a defense because they hired trained individuals to do it
14 for them -- whether an individual falsified books and records or kept double books, so
15 that's another factor as to whether or not there's willfulness, and whether or not there
16 was concealment of assets from the IRS. That's another factor that goes to willfulness.
17 When we don't have those facts, it becomes much harder to prove willfulness.

18 Q Can it matter if an individual was suffering from substance abuse, for
19 example, at the time that they allegedly failed to pay their taxes?

20 A It depends on the facts and circumstances. If the defense becomes that
21 the substance abuse was such that they did not have full control of their faculties or
22 unaware of actions they were doing, I'm sure they would present that as a defense and
23 try to convince a jury they didn't act -- they were in violation of a legal duty.

24 Q You said over and over again that, when Mr. Weiss asked your office to join
25 or cocounsel on this prosecution, your response was guided by -- or your response and

1 your office's recommendation and, ultimately, your decision was guided by consideration
2 of the Justice Manual's Principles of Federal Prosecution. Correct?

3 A Yes. That was at least guided by those principles.

4 Q Was your response and your decision influenced in any way by personal,
5 political, or partisan considerations of any kind?

6 A It was not.

7 Q Was your decision influenced in any way by people outside your office, such
8 as people at the White House or the Deputy Attorney General or the Attorney General's
9 Office who sought to affect your decision?

10 A No. And I had no contact with those individuals when making decisions.

11 Q What impact, if any, do you believe that your decision not to cocounsel on
12 this case had on Mr. Weiss' efforts to potentially prosecute Hunter Biden in the Central
13 District of California?

14 A None. I believe then, I believe now that he had full authority to bring the
15 case if he chose to do so. It was his investigation. He knew it best. His prosecutors
16 knew it best. They've had it for several years, and it was up to them to decide whether
17 to bring it or not. And whether or not we cocounseled would be immaterial to whether
18 he could bring the charges that he found appropriate.

19 Q And is it fair to say that you never took any steps to block Mr. Weiss from
20 bringing charges in the Central District of California?

21 A Never. In fact, to the contrary, my office before I had come in had
22 appointed as SAUSAs people from his office, and I had offered him administrative support
23 and office space to pursue his case, which he thanked me for.

24 Q And, when you say "administrative support," can you explain what that
25 means?

1 A It can mean a lot of things. And I use the term in part because I don't want
2 to reveal aspects of the deliberative process. But it could involve secretarial support,
3 filing support, how to file in the Central District, how many copies are required, paper, IT
4 support, trial presentation support, how to do a PowerPoint, folks that help you prepare
5 the PowerPoint, and we have a grand jury administrator who reserves grand jury time,
6 the number of copies that need to be filed with the court after you get a true bill from a
7 grand jury, a lot of things that, thankfully, lawyers don't have to work on, but we have
8 great staff that handle those things.

9 Q And, when you offered Mr. Weiss all administrative support, he understood
10 that this was the type of support you were providing to him?

11 A I believed that he had that understanding given how he thanked me for it,
12 but I always say I can't get into his head.

13 Q You said in the earlier hour that, when you relayed to Mr. Weiss that you
14 weren't interested in cocounseling, joining as cocounsel, but you would be willing to
15 provide any administrative support that he might need, he didn't push back on the
16 decision not to join as cocounsel.

17 Do you remember saying that?

18 A I don't recall specifically, but if you say so.

19 Q Well, what does not push back -- does that mean that he didn't try and
20 convince you to join?

21 A We didn't have a discussion, a back-and-forth, about whether or not to
22 partner on the case or a discussion about the charges he was contemplating. It was
23 simply him listening to me for a short period of time. It seemed like he already had an
24 understanding of my reasons, given that there was little discussion, and it was such a
25 short conversation; I didn't need to say much to him. And then I proceeded to tell him

1 he would have support and administrative support, and he thanked me for it.

2 Q You were nominated in June 2022. Correct?

3 A I believe so.

4 Q As part of your nomination, did you make any assurances or promises to
5 anybody regarding how you would handle the Hunter Biden matter?

6 A No. Sorry to laugh. I was not aware of the Hunter Biden matter until late
7 September, early October of 2022.

8 Q So, during the entirety of your nomination and ultimate confirmation, you
9 had no knowledge of the Hunter Biden matter whatsoever?

10 A I did not have any knowledge of it. But also I partly laugh because of the
11 absurdity of agreeing on any particular case of how I would handle it. I wouldn't have
12 taken the job if I had to make assurances to people of how I would handle the criminal
13 cases. The reasons to do the job is for the love of the office, for the love of the country,
14 and to do the right thing. So I would have never made such assurances.

15 Q The suggestion was made in the earlier hour that perhaps this case should
16 be treated differently because it involves the son of the President, so, for example,
17 perhaps you should be talking to the SAUSAs on the case or something like that. But, in
18 fact, you have treated this case like any other case; correct?

19 A Yes. In terms of how to analyze whether to cocounsel on the case, I've
20 treated it like every case we get.

21 Q And why is that?

22 A Because that's the appropriate way for the Department of Justice to conduct
23 its business. The Department of Justice is not partisan. That's always been one of the
24 abiding principles of the Department. That's why we get some of the best lawyers in the
25 country to work for us because -- and they're of all different stripes, every associated

1 background, every part of the country. They want to work for us because we play it
2 straight, and we take every case where the facts and the law go, regardless of any
3 considerations -- inappropriate considerations who the individual is. That's the reason
4 people love the job, love the office, love the Department and are so proud to serve our
5 client which is the United States of America.

6 [REDACTED]: Thank you.

7 I'm going to turn it over to my cocounsel, [REDACTED].

8 BY [REDACTED]:

9 Q Hi, Mr. Estrada.

10 A Hello.

11 Q I just want to ask you a couple of questions about your experience with the
12 need to go to the Tax Division on certain types of charges.

13 In the previous hour, you indicated that for certain tax charges you need authority
14 to bring or dismiss those. Is that your understanding?

15 A My understanding is, for certain tax charges, you need authority from the
16 Tax Division to indict them, to file them, and also if you later want to dismiss them.

17 Q Okay. And, when you are referring to that authority from the Tax Division,
18 is that something in the Justice Manual that led you to believe that you needed that
19 authority from the Tax Division?

20 A So I acquired that understanding from my time as an AUSA. I had
21 matter -- another organized crime matter where there was a group of individuals who
22 were stealing identities and submitting false tax returns on a massive scale and made over
23 \$20 million through that scheme. And, when I was investigating that case and looking at
24 what charges I could bring, I looked into potential tax charges since they were false tax
25 returns and consulted with the Tax Division and came to the understanding that they

1 needed to approve any sort of specific tax evasion type charges if I was to file those.

2 Q And so the Tax Division was referring themselves to the Justice Manual in
3 terms of the need to get that authority. Is that right?

4 A I was told by a supervisor you have got to go to the Tax Division if you want
5 to bring these charges.

6 Q Okay. But you, yourself, never looked at the Justice Manual with respect to
7 that authority or --

8 A I can't recall if I did or not. This would have been probably 13, 14 years
9 ago, so --

10 Q I understand.

11 A -- I can't recall.

12 Q Okay.

13 [REDACTED]: I'm going to introduce as exhibit 2 -- this is a part of the Justice
14 Manual.

15 [Estrada Exhibit No. 2

16 Was marked for identification.]

17 BY [REDACTED]:

18 Q It's section 6-1.100 entitled "Department of Justice Policy and
19 Responsibilities - Tax Division."

20 A So the previous document I can give back or --

21 Q You can set it aside or -- either way.

22 This one is just one page --

23 A Okay.

24 Q -- the first part of that section.

25 A So you're asking about which provision?

1 Q So, yeah, let me direct your attention. The first section of the sentence
2 actually -- this is that bold paragraph there underneath the headline. It says: The
3 Assistant Attorney General for the Tax Division, subject to the general supervision of the
4 Attorney General and under the direction of the Associate Attorney General, is
5 responsible for conducting, handling, or supervising the following matters.

6 And then it lists certain types of cases; correct?

7 A I see that.

8 Q Okay. I guess what I want to emphasize is the very first part that says that
9 these matters, even these specific ones that are identified as kind of special under the Tax
10 Code, these are under the general supervision of the Attorney General according to the
11 Justice Manual.

12 Is that fair to say? I'm sorry. That's the very first line of the --

13 A Subject to the general supervision of the Attorney General and under the
14 direction of the Associate Attorney General, yes.

15 Q Right. Okay. And the Justice Manual itself, you indicated earlier it's a set
16 of principles in your mind?

17 A Many of them are principles. It's a very extensive document, so I wouldn't
18 attempt to characterize the entire thing, but there are many principles that we need to
19 follow.

20 Q They're regulations; is that right?

21 A I don't know if it's in the Code of Federal Regulations, if they're CFRs or not.

22 Q I need you to look at the bottom of the page here. You can see a cite to 28,
23 CFR, sections .70 and .71, but I don't want to --

24 A Apparently they are.

25 Q But they're not statutes. Is that fair to say?

1 A I never understood it to be a statute.

2 Q And you indicated earlier that you understand, as the United States
3 Attorney, that you have authority to bring criminal charges in your district; correct?

4 A Yes.

5 Q And that authority does derive by statute, correct, section 515?

6 A That's my understanding.

7 Q Okay. And the statutory authority to prosecute Federal offenses in the
8 United States rests in the Attorney General ultimately. Correct?

9 A That's my understanding. We have an org chart. I report technically to
10 the Deputy Attorney General, and the Deputy Attorney General reports to the Attorney
11 General.

12 Q Okay. And the Attorney General can delegate authority as he wishes within
13 the Department of Justice --

14 A Yes.

15 Q -- to some extent?

16 A Yes.

17 Q I guess my point is this. If there's something in the Justice Manual that asks
18 an attorney to seek approval or authority from another part of the Justice Department
19 like the Tax Division, do you see any reason that the Attorney General, him or herself,
20 could not make an exception to that policy just because it's written down in the Justice
21 Manual? Do you think that they would have the authority to direct the Tax Division, for
22 example, to allow charges to go if that's what he chose?

23 A So I've never encountered any situation of that sort. Every Attorney
24 General has broad powers to delegate within the Department and revise aspects of the
25 Justice Manual. The Attorney General is the ultimate authority for the entire

1 Department of Justice.

2 Q Okay. So, if the Attorney General Merrick Garland says with respect to the
3 issue that we've been discussing today that a U.S. Attorney, Mr. Weiss, had full authority
4 to bring charges with respect to a certain person, Mr. Biden, do you believe -- do you
5 have any reason to believe that he was not being truthful when he said that just because
6 there might be something in the Justice Manual that asks for consultation or authority
7 from the Tax Division?

8 A I had no reason to believe that the Attorney General's statement was not
9 accurate. I believe it was accurate, given that was my understanding when Mr. Weiss
10 and his office first sought to have us partner on the case and my career folks
11 recommended not doing it. So my understanding was and is that he, Mr. Weiss, had the
12 authority to bring the case where he chose. And, when the media reached out, that's
13 why we put out a very brief statement echoing what the Attorney General had stated.
14 As the Attorney General stated, Mr. Weiss had full authority over the investigation.

15 Q And, if a career attorney or supervisor or someone else in Main Tax had
16 decided "I'm going to advise you not to bring these charges," do you think that the
17 Attorney General himself could have weighed in on that and made sure that, like he said
18 publicly, Mr. Weiss had ultimate authority to bring those charges, notwithstanding what
19 some other person in Tax Division's opinion might have been?

20 A I would think so, but I never worked in the Tax Division. I don't know how
21 they operate. I don't know how they do things. I only had that one interaction. And
22 we actually declined to bring tax charges because we didn't want to have to go to the Tax
23 Division to decide whether to dismiss them. So it was a limited interaction with the Tax
24 Division that I had.

25 Q Okay. But, in your position with the Justice Department and various

1 positions that you've held, can you imagine situations where you might have to deviate
2 from something that is policy within the Justice Manual by going higher up and asking for
3 permission to deviate in a special circumstance?

4 A I can imagine situations even with the Deputy Attorney General or the
5 Attorney General to directing certain courses of action or changing aspects of the Justice
6 Manual, it's certainly possible. I just haven't encountered it myself.

7 Q All right. And through your career as the former U.S. -- it was actually
8 formerly called the U.S. Attorneys' Manual, and then it changed to the Justice Manual?

9 A It was the USAM, U.S. Attorneys' Manual, yes.

10 Q So, through your career, have you ever seen changes to policies as they've
11 been sort of memorialized in those manuals?

12 A Very frequently.

13 Q Okay.

14 A In fact, this one says: Updated June 2020.

15 [REDACTED]. Okay.

16 BY [REDACTED]:

17 Q And so I think just to wrap up what [REDACTED] was asking, ultimately the
18 Attorney General is in charge of Justice Department; correct?

19 A Correct.

20 Q And the Attorney General has final say over what happens in the Justice
21 Department; is that fair to say?

22 A Yes, yeah.

23 Q And so, ultimately, if the Attorney General wants to effectively override
24 what's written down in the Justice Manual, the Attorney General can do that; correct?

25 A That would be my understanding, but I've never had a situation where I have

1 encountered that.

2 Q I want to move on. You've mentioned a couple of times resource
3 considerations --

4 A Yes.

5 Q -- in your office.

6 A Uh-huh.

7 Q And I want to talk about that in a little more detail. The Central District of
8 California covers the largest Federal district in the Nation; correct?

9 A We're the largest district in the country, correct.

10 Q How many people does the Central District of California cover?

11 A We have just under 20 million people, seven counties, going from Los
12 Angeles County, Orange County in the south, which has about three-something million
13 people. We have the Inland Empire, Riverside, San Bernardino -- San Bernardino being
14 the fastest growing county in the country, about 4 million something -- and to the north
15 we have Ventura, Santa Barbara, and San Luis Obispo.

16 Q And you said I think earlier that your office currently employs around 300
17 Assistant U.S. Attorneys. Is that right?

18 A We have 300, but that's overall. Criminal prosecutors, we have about 170.

19 Q 170. And I think you also said that, in September of last year, so when the
20 decision about whether to cocounsel on this case was first brought to you, you were
21 down about 40. So you would have had 130, approximately, Criminal Division
22 prosecutors?

23 A We were down 40. It was more like 140 because at the same time that I
24 had been hiring as much as possible, we had continued attrition. Our office is one
25 where people often leave for different opportunities, whether it be judgeships, whether it

1 be private practice, whether it be going to another public sector office. So we get
2 attrition too. So I think we're more at the 140 area and are now at 170.

3 Q And you said earlier that 140 -- approximately 140 is equal to one U.S.
4 Attorney for every 100,000 citizens or residents of your district; correct?

5 A Just around that. I mean, just to put it into perspective, it was a crisis mode
6 when I came in because one of the major areas we have is national security. National
7 Security covers not just foreign actors. It includes terrorist actors. It includes domestic
8 extremism. And I've had to double the size of that division during the time I've been
9 there, and we still can't handle all of the cases we have there.

10 Q And that's today, even doubled, you don't have sufficient attorneys to
11 handle all of the cases?

12 A Well, that's true in every one of our areas. We don't have enough AUSAs
13 to handle our national security matters. We could be doing -- every AUSA in my office
14 could be doing PPP fraud cases we have so much PPP fraud. Every --

15 Q PPP is the --

16 A That's the COVID fraud, COVID-19 money fraud. Every AUSA in my office
17 could be doing healthcare fraud cases we have so much healthcare fraud. We have to
18 deploy our resources in the most effective manner to address the needs of the district.
19 As I mentioned, we have a fentanyl epidemic. That includes not just death-resulting
20 cases, it includes going after cartels which are distributing these pills, not just in powder
21 form but in pill form. We routinely seize over a million pills at a time from vehicles, and
22 we need to prosecute those cases. Each pill could be a death. And routinely now
23 we're finding cartels transporting fentanyl in liquid form, which is a new thing that they're
24 doing. So we have to do those cases.

25 We have a violent crime crisis where, for a variety of reasons, including some of

1 the local policies, there has been an increase, certainly in our view, of violent crime and
2 use of handguns in crimes. We have taco vendors on the streets getting robbed at
3 gunpoint. So we are doing more of those types of offenses than we ever have before.
4 We don't have enough resources to do those.

5 And, as I mentioned, the public corruption area is one where we've been very
6 active. We've been trying to do as much as we can there, but even there it's very
7 resource strapped.

8 BY [REDACTED]:

9 Q You've talked a lot about the different types of cases that your office
10 handles. Some of those fall outside of the typical buckets, and I just want to ask you one
11 question about one of those.

12 While you're sitting here today answering questions about your decision not to
13 partner on the prosecution of Hunter Biden, your office is beginning trial in a case
14 involving the death of 34 individuals who were killed in a fire on a dive boat; correct?

15 A Uh-huh.

16 Q And that's starting today?

17 A Yes. Sorry.

18 Q I'm sorry to bring up an emotional subject. I will ask one followup
19 question.

20 A Uh-huh.

21 Q Do you feel that your time would be better spent if you were in the office
22 supporting your team on that case?

23 A So we have a -- I'm sorry to get a little emotional, but it's 33 individuals who
24 died. It's a ship called the Conception, which was out on Labor Day weekend of 2019.
25 It was all families, young people, retirees went out for a diving expedition off Santa Cruz

1 Island, which is an island that's rural, has no development, no gas stations, no
2 convenience stores, nothing. And, because the captain hadn't trained his crew on how
3 to use fire equipment that was on the ship, did not, contrary to Coast Guard regulations,
4 have a watch person at all times, allowed a small fire to become a conflagration, which
5 erupted and killed all of the passengers on board except for the captain and a few crew,
6 who were first off the ship and allowed this tragedy to happen.

7 And I get a little emotional because we've been dealing a lot with the victims on
8 the case, the victims' families, and they have been going through hell on the case. So it's
9 a very difficult matter to talk about.

10 [REDACTED]. Thank you. And I apologize.

11 BY [REDACTED]:

12 Q I want to move on to -- we have a little bit of time left.

13 A Sure.

14 Q -- to another topic that I guess might also be a little emotional.

15 You referenced the media inquiries that you received for the handling this case in
16 the spring of this year.

17 A Uh-huh.

18 Q Is it fair to say that this investigation, the Republican investigation, into Mr.
19 Weiss' investigation in particular has received substantial press coverage?

20 A I am aware that there has been press coverage. I don't track this on a
21 day-to-day basis. In fact, as executives of the Department, we get a daily email which
22 has snippets from various criminal prosecutions and issues around the country, and that's
23 where I've seen some articles on this topic. But I don't track it myself, but I've seen
24 articles on this topic.

25 Q And your office specifically has been in the public eye because of this

1 investigation; correct? I mean, you got a media inquiry.

2 A I've gotten media inquiries. I wouldn't say we're -- we're not obsessing
3 over the media inquiries that we get. We get a lot of media inquiries. We respond to
4 those media inquiries and move on.

5 Q Have you personally received any incoming communications from the public
6 about this investigation?

7 A Those I wouldn't categorize as media inquiries. But, yes, I have received
8 what I would categorize as hate mail, hate emails on this matter.

9 Q Can you estimate how many hate emails you've received because of this
10 investigation?

11 A Dozens. I don't fixate on it because I try to move those and not let it take
12 up most of my days. I don't focus on it, but it's been dozens of hate communications.

13 Q Can you describe any of the hate communications that you've received?

14 A Again, I don't focus a lot on it. I try to leave it aside, but I have been
15 slandered using epithets, the N word, certain derogatory terms reserved for Latinos. So
16 I've gotten a lot of communications from the public showing a lot of hatred.

1

2 [12:11 p.m.]

3 BY [REDACTED]:

4 Q Do you have any concerns for your safety because of these communications?

5 A So I've forwarded many of the communications to the Marshals Service, so
6 they've been assisting with security issues.

7 Q Uh-huh.

8 A I have confidence in the Marshals Service, but I've always -- because of the
9 nature of the work I do and what I did as an AUSA with organized crime work, I've always
10 taken precautions. So, if you notice, I don't have a wedding ring. I tend to not -- and I
11 don't have, generally, screensavers with my kids and things like that. So I try to -- I take
12 precautions always because of the nature of the work we do.

13 Q And the work you did prior, in your prior time with the U.S. Attorney's Office,
14 was violent-crime- and organized-crime-focused. Is that right?

15 A Yes.

16 Q And it's fair to say that you were the target of some threats or other
17 threatening communications because of that work?

18 A I received seven verified threats during the time I was an AUSA.

19 Q In your time now, is it fair to say that you're also receiving threats and hate
20 mail because of your work and because of the investigation into Hunter Biden
21 specifically?

22 A I receive a lot of hate mail and threats as a result of doing this work, and
23 there was certainly an uptick when the news came out in the spring regarding the Hunter
24 Biden investigation.

25 BY [REDACTED]:

1 Q Mr. Estrada, you mentioned during the previous hour --

2 A Uh-huh.

3 Q -- your office, when you were a line AUSA, there was a case that was
4 prosecuted in your office from another district where venue had been transferred to the
5 Central District of California, correct?

6 A Yes.

7 Q And that was a case that came from North Carolina, correct?

8 A No. The case I was thinking of was one that came from the Eastern District
9 of New York.

10 Q So you're not aware of a case from North Carolina, U.S. v. Avedis Djeredjian,
11 that was prosecuted by prosecutors from North Carolina while you were an AUSA?

12 A That one doesn't ring a bell with me, no.

13 Q Okay. Fair enough. And the one that you recall was from the Eastern
14 District of New York?

15 A Yes.

16 Q And that's Brooklyn and Queens?

17 A I don't know if they have Queens. They definitely have Brooklyn. I think
18 it's Long Island. I'm not sure of their full district.

19 Q Fair enough. And, in that case, do you know, was your office asked to
20 partner?

21 A We were not asked to partner. It was transferred by a judge out to our
22 district, so the AUSA on that case had to come out to our district. I know because I
23 helped that AUSA navigate our court system and filing system and things like that.

24 Q Is that the type of administrative support that you offered to Mr. Weiss?

25 A Yeah. Well, that sort and more. I mean, I got direction from the

1 supervisor, you're going to help with this case. But I'm sure that person got other
2 support from our staff, IT support, things of that sort, that I wasn't directly involved in.

3 Q Fair enough. And are you aware of whether that case concluded? Was it
4 a jury trial? Do you know what happened?

5 A Ended up as a change of plea, as a plea agreement, later while it was being
6 litigated in our district.

7 Q And the defendant was sentenced in your district as well?

8 A Yes.

9 Q Okay.

10 [REDACTED]: Thank you. We can go off the record.

11 [Recess.]

12 Mr. Castor. Back on the record.

13 BY MR. CASTOR:

14 Q At the end of our last hour, when I was asking you questions, I asked you
15 about Mr. Weiss's use of the term "ultimate authority," and I think you characterized that
16 as not a very precise --

17 A Well, I cannot say what he meant by "ultimate authority." It's not, sort of,
18 terminology that I use as U.S. Attorney, so I can't say what he meant by "ultimate
19 authority."

20 Q But could there be anything more than ultimate authority? Like, just as an
21 American reading those words, like, what else could he have meant? Like, if he didn't
22 have ultimate authority, I mean, like, who else could block his attempt to prosecute?

23 A I mean, I would just be guessing. All I know is that, in my situation, my
24 understanding was he had the authority to proceed on the charges he was
25 contemplating.

1 Q Okay. Do you know if the Tax Division had signed off on the charges?

2 A I do not.

3 Q Okay. But you had received the Tax Division's memoranda in your October
4 meeting.

5 A So I have limitations in terms of what I can testify to --

6 Q Right.

7 A -- in terms of the decision-making process.

8 Q Right.

9 A So I'll say, I received memoranda --

10 Q Uh-huh.

11 A -- and they were authored by attorneys in the three different areas I
12 mentioned -- my office, Delaware, and the Tax Division.

13 Q So you weren't aware that the Tax Division had told Mr. Weiss he couldn't
14 prosecute?

15 A Are you saying the Tax Division, in fact, told Mr. Weiss he couldn't prosecute
16 and you're asking me if I know that?

17 Q Yeah, I'm asking you if you know that.

18 A I'm not aware of whether that's a fact --

19 Q Okay.

20 A -- whether they, in fact, told him that, or anything that would've transpired
21 there. All I know is the specific question that was before me --

22 Q Right.

23 A -- and what I told him.

24 Q But if Mr. Weiss characterized his authority as "ultimate authority" going
25 back to last June, you know, before he was the special counsel, do you think that meant

1 that he had received the okay from the Tax Division to prosecute?

2 A I don't know what that means. I don't know what he did with the Tax
3 Division. My understanding was, if he wanted to bring those certain tax charges in my
4 district, he had full power to do so.

5 Q Okay.

6 You indicated that you offered resources to him, including office space, access to
7 your grand jury, I presume --

8 A I said office space and administrative support.

9 Q Uh-huh.

10 A And I don't want to get into the specifics of the grand jury, because I'm
11 concerned it goes beyond the scope of what I'm permitted to testify about.

12 Q But -- and correct me if I'm wrong, but I understood your use of the word
13 "administrative support" to include that, if he needed to use the grand jury, that you
14 would allow him to schedule it.

15 I mean, to schedule a grand jury in the Central District of California, certainly a
16 prosecutor has to go through an individual that arranges that. That's under your
17 purview, correct?

18 A We have staff that help schedule grand jury time.

19 Q Uh-huh. Under your purview, right?

20 A What do you mean by under my purview?

21 Q It's staff of the U.S. Attorney's Office in the Central District of California,
22 which you're U.S. Attorney for.

23 A I don't look at the grand jury schedule on a weekly basis and see who's
24 scheduled for what time or -- I don't micromanage that.

25 Q Of course not.

1 A There's staff that handle those issues.

2 Q But they work for you.

3 A I have various supervisors, so that person would report to a different
4 person --

5 Q I understand you're a very high-level guy. But, ultimately, they work for
6 you. Like, you know, if somebody is going to need access to a grand jury, they would
7 have to ask somebody who works for you, maybe very far down the chain, but ultimately
8 there is somebody that is under your purview, correct?

9 A I'm not trying to say I'm a high-level person. What I'm trying to give you an
10 understanding of is the size of the office and how I don't know specifics of who's using the
11 grand jury on a particular day. I need to, as a matter of functioning and running the
12 office, delegate that to others. It --

13 Q Of course.

14 A -- has nothing to do with self-importance or anything. It's just a matter of
15 running an office.

16 Q Understood. But if Mr. Weiss -- you said Mr. Weiss could prosecute a case
17 in your district, correct, if he wanted to?

18 A My understanding was he could do that.

19 Q And if he needed the use of the grand jury to prosecute the case, you were
20 going to make that available to him, correct?

21 A He could have any administrative support he needed to prosecute the case.

22 Q And do you consider access to a grand jury part of that?

23 A Yes.

24 Q Okay. Do you know if he took you up on any of your -- you know, you
25 invited him to avail himself of some of these resources. Do you know if he took you up

1 on any of that?

2 Ms. Zdeb. And, at this point, we're getting a bit beyond the question of whether
3 Mr. Estrada blocked Mr. Weiss from pursuing charges, which I think he has clearly said he
4 did not.

5 And your question is more getting into whether certain steps were or were not
6 taken subsequent to that as part of an investigation that is ongoing. And so that is
7 outside the scope of what he is authorized to testify about.

8 Mr. Castor. Okay. Well, I was asking about the grand jury to see if that fell into
9 the basket of administrative offerings. And, as I take it, it was.

10 Ms. Zdeb. He just answered that question. But the question you had just
11 posed, unless I misunderstood it, was whether Mr. Weiss, in fact, availed himself of
12 various types of administrative support. And my point is that the answer to that
13 question necessarily --

14 Mr. Castor. Okay.

15 Ms. Zdeb. -- gets into an ongoing investigation and --

16 Mr. Castor. Okay. I can unpack that.

17 BY MR. CASTOR:

18 Q Do you know if anyone in the District of Delaware has an office in the Central
19 District of California? You said you offered office space. Do you know if anyone has
20 taken you up on that offer?

21 Ms. Zdeb. And I'm not sure unpacking it helps, because the question you just
22 asked is a subset of the broader question.

23 Mr. Castor. He doesn't have to answer it, Sara. Like -- you know. So, it's a
24 voluntary interview. He said he offered office space, and now I'm asking the question,
25 do you know if they took you up on that offer?

1 Mr. Estrada. So I want to be cautious not to get into the details of an ongoing
2 investigation, and because your question has no, sort of, scope in time --

3 Mr. Castor. Okay.

4 Mr. Estrada. -- it's hard for me to answer that.

5 BY MR. CASTOR:

6 Q Okay. What types of scope in time would you like me to put on that
7 question? How about, do you know if anyone from the District of Delaware took you up
8 on the offer of office space prior to June of 2023?

9 A That I don't know. I don't know if anyone took us up on office space,
10 whether they did or did not.

11 Q Okay. Do you know if anyone in the District of Delaware took you up on
12 your offer of office space after June of 2023?

13 A There have been requests made since that time, yes.

14 Q Okay. And have they, in fact, occupied any offices?

15 A I can't get into that. All I can say is, the offer was made, and I don't want to
16 reveal an ongoing investigation.

17 Q So you know the answer to my question, then?

18 A Which question?

19 Q About whether they've occupied offices.

20 A I don't know the answer to that. I don't know the answer to that.

21 Q Even subsequent to June 2023?

22 A I don't know that, and I'm concerned that it's going into territory that might
23 reveal an ongoing investigation.

24 Q I understand you don't want to answer the question, but I'm just saying, if
25 you did want to answer the question, would you be able to answer it accurately?

1 A It's not that I don't want to answer the question. It's that I have an
2 obligation not to reveal an ongoing investigation --

3 Q Okay.

4 A -- being handled by others.

5 Q Okay.

6 A I mean, it's a courtesy --

7 Q I understand --

8 A -- it's a courtesy to others not to reveal their ongoing investigation.

9 Q Okay. Whether it's -- okay. Whether it's a courtesy or not, I'm just -- as I
10 understand your testimony, you're not going to answer the question.

11 And so my followup is: Do you know the answer to that question of whether
12 they've availed themselves of office space?

13 A I don't know.

14 Q You don't know the answer?

15 A No.

16 Q Okay.

17 And as we discussed this morning, the number of AUSAs from Delaware that have
18 the SAUSA status, you don't know the answer to that question either?

19 A I know it's more than one.

20 Q It's more than one?

21 A I know it's plural.

22 Q Okay. But you don't know whether it's more than two?

23 A I just know more than one.

24 Q Okay. But it's less than 10, right?

25 A All I know is it's plural. That's all I can tell you.

1 Q Okay.

2 And the question -- and I apologize for asking this again, but do you know the
3 answer to the question and you don't want to tell me? Or you can't tell me because of
4 what DOJ has --

5 A I don't know the answer to the question.

6 Q You don't know the answer. Okay. Fair enough.

7 Getting back to Mr. Weiss's use of the term "ultimate authority," would you agree
8 that someone who has ultimate authority does not require someone else's permission to
9 act with regard to the matter?

10 A I don't understand your question.

11 Q Okay.

12 In a letter to Chairman Jordan in June of 2023, Mr. Weiss wrote, quote, "I have
13 been granted ultimate authority over this matter, including responsibility for deciding
14 where, when, and whether to file charges and for making decisions necessary to preserve
15 the integrity of the prosecution, consistent with Federal law, the Principles of Federal
16 Prosecution, and Departmental regulations."

17 So that's the context in which Mr. Weiss identified his authority as being the
18 ultimate authority.

19 A Uh-huh.

20 Q And so my question is, would you agree that someone that has ultimate
21 authority, as Mr. Weiss said he did in June of 2023, does not require another official at
22 the Department to act with regard to that matter?

23 A I don't know what he meant when he wrote that.

24 Q Okay.

25 A I don't speak that way. I don't tell folks in my office I have ultimate

1 authority.

2 Q Okay.

3 A So I don't know what he meant by that.

4 Q Okay.

5 A You know, I can interpret it as it's written, just like you can, and --

6 Q Right.

7 A -- that's all I can say.

8 Q Okay.

9 I mean, he said, "I have been granted ultimate authority over this matter,
10 including responsibility for deciding where, when, and whether to file charges."

11 That statement seems pretty comprehensive. Do you see it a different way?

12 A I understood it as being consistent with my understanding in October of
13 2022 when we spoke --

14 Q Uh-huh.

15 A -- that he had the authority to bring the charges that were being
16 contemplated in the Central District of California. And when I offered him support and
17 he thanked me for it --

18 Q Okay.

19 A -- that further confirmed my view.

20 Q Okay. And do you know whether he had that authority specifically from
21 the Attorney General or through the Attorney General under 28 U.S.C. 515?

22 A At that time, I didn't know exactly where, except for the fact that he had
23 SAUSAs in the district which could litigate. It seemed like he was partnering with the
24 Tax Division.

25 Q Uh-huh.

1 A So it appeared to me and I was under the understanding that he could bring
2 the case in the district. And his response to our phone call further confirmed that for
3 me.

4 Q Okay.

5 What was your understanding of his partnership with the Tax Division?

6 A My understanding was that attorneys from his office and attorneys from the
7 Tax Division were working on the matter.

8 Q Okay. And was it your understanding as of October 2022 that they had an
9 agreement on how to proceed?

10 A I didn't know one way or the other.

11 Q Okay. And the memorandum that you read in advance of the October
12 2022 meeting didn't further inform you, the Tax Division component of the
13 memorandum?

14 A That what? What's the question?

15 Q I'm just asking whether it was your understanding that the Tax Division and
16 Weiss's office were on the same page, that they were partnering.

17 A It seemed to me that certain attorneys in the Tax Division were working with
18 attorneys in the District of Delaware.

19 Q And do you know whether the Tax Division at that point in time had reached
20 a final determination?

21 A That I don't know. I don't know how high up this was being reviewed or if
22 final authorizations had been granted. That I don't know.

23 Q Were you aware of any dissent within the Tax Division?

24 A I was not.

25 Q Okay.

1 Mr. Weiss followed up on his June 7th letter on June 30th, and he -- to Mr. Jordan,
2 and he wrote, "I stand by what I wrote and wish to expand on what this means. As the
3 U.S. Attorney for the District of Delaware, my charging authority is geographically limited
4 to my home district. If venue for a case lies elsewhere, common Departmental practice
5 is to contact the United States Attorney's Office for the district in question and determine
6 whether it wants to partner on the case. If not, I may request Special Attorney status
7 from the Attorney General pursuant to 28 U.S.C. 515. Here, I have been assured that, if
8 necessary after the above process, I would be granted 515 Authority in the District of
9 Columbia, the Central District of California, or any other district where charges could be
10 brought in this matter."

11 Were you aware of Mr. Weiss's letter to Mr. Jordan? Had you reviewed, sort of,
12 this correspondence as it was occurring?

13 A So there's two questions there. Am I familiar with it? Yes. As it was
14 occurring? No.

15 Q Okay. And when did you become familiar with it? Was it in prep for
16 today?

17 A More recently.

18 Q Okay. In prep for the questioning that you were getting ready for here?

19 A I don't want to reveal any attorney-client communications or work product.

20 I know that, as an employee of the Department --

21 Q Yeah. I mean, there's no attorney-client privilege between you and Ms.
22 Zdeb, but --

23 A Well, my understanding is different, actually --

24 Q Okay.

25 A -- that, as an employee of the Department, there is a privilege. And I'm not

1 authorized to reveal --

2 Q Okay.

3 A -- privileged communications.

4 Q Okay.

5 Going back to the -- do we have a copy of the June 30th letter? Maybe we
6 should just make it an exhibit. What number are we up to?

7 Ms. Nabity. Three.

8 Mr. Castor. Okay. I'm going to make this No. 4. Because we have the first
9 letter, the June 7th letter -- so the June 7th letter I'll make exhibit 3, and then the
10 June 30th -- sorry.

11 [Estrada Exhibit No. 3

12 Was marked for identification.]

13 [Estrada Exhibit No. 4

14 Was marked for identification.]

15 Mr. Estrada. Thank you.

16 BY MR. CASTOR:

17 Q So the June 7th letter, you know, the statement I read about "granted
18 ultimate authority over this matter, including responsibility for deciding where, when, and
19 whether to file charges," that seems to me to be consistent with your understanding as of
20 October 2022. Is that correct?

21 A That he had authority to bring the case?

22 Q Yeah.

23 A That was my understanding. He had authority to bring the case in my
24 district.

25 Q Okay. But then his June 30th letter sort of goes the opposite direction.

1 Do you see where it does that?

2 A Where are you looking?

3 Q "I stand by what I wrote" is at the bottom of the first page. And then the
4 first paragraph on the second page --

5 A Uh-huh.

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

14 It seems to us that this paragraph is in conflict with what your understanding was
15 in October of 2022 and with the June 7th letter. What are your thoughts?

16 A I don't read them as being in conflict, because he quotes that statement on
17 the first page and is expanding on it. So the way I interpret it is: I have authority to
18 bring charges in my district; some of those charges I, nonetheless, need to get approval
19 from Main on.

20 Q Uh-huh.

21 A So, for instance, national security cases, I need to get approval from the
22 Assistant Attorney General for National Security. On civil rights cases --

23 Q Right.

24 A -- I need to get approval from the Assistant Attorney General for the Civil
25 Rights Division. But it's a collaborative process.

1 Q Right.

2 A We provide our case, provide the facts of the case, and get approval, and
3 then we file the charges.

4 Q But he makes it clear that, if venue for a case lies elsewhere, he needs to
5 contact the U.S. Attorney's Office for the district in question and determine whether it
6 wants to partner on the case.

7 That's what happened in October of 2022. Your office decided that you did not
8 want to partner, or co-counsel, or whatever term you used or want to use.

9 So, because you didn't want to partner, he didn't have the authority -- under his
10 words of the June 30th letter, he didn't have the ability to just bring the case, which is in
11 conflict with the June 7th letter and also what he told you or what your understanding
12 was of the October 22nd call -- October of 2022, the call you had.

13 A So my understanding was, he could bring the case in my district if he chose
14 to.

15 Q Uh-huh.

16 A The mechanism by which he would need to do that I don't know. I don't
17 know what mechanisms he would need to do that.

18 Q Okay.

19 A He'd already had SAUSAs. He had administrative support if he needed it.
20 It seemed to me he was working with the Tax Division. Components of DOJ file cases in
21 other districts all the time.

22 So I don't know the specific mechanism --

23 Q Okay.

24 A -- but my understanding was, he had the ability to do it if he thought it was
25 appropriate.

1 Q Okay.

2 And then on July 10, 2023 -- I don't know that we need to mark this, but -- he
3 clarifies in a letter to Senator Graham that, as of July of 2023, he had not requested
4 special counsel designation under the CFR or under the statute, which would've allowed
5 him to file charges in a district outside of his own without the partnership -- and, again,
6 he uses the term "partnership" -- of the local U.S. Attorney.

7 And my question is: His letters to us make it seem like, in his own mind, he
8 needed you to partner with him to bring these cases, whether it was in D.C. or the Central
9 District of California. What are your thoughts?

10 A I can just tell you my understanding. When we were having the
11 conversation, my understanding was he could bring the case if he so chose, given that he
12 had SAUSAs, given that I had offered him administrative support and he thanked me for
13 it, didn't say anything else regarding that.

14 I don't know what mechanisms he would need to use.

15 Q Uh-huh.

16 A I bring cases in the hate-crime context all the time, and I believe I have the
17 authority to bring hate-crime charges, but I still need to go through the AG to get
18 approval on those.

19 Q Uh-huh.

20 A That often happens within a day.

21 Q Uh-huh.

22 A So I thought he had the ability to do it. I believed he did. All indications
23 were. That was my understanding.

24 Q Okay. Do you know why he didn't bring them in the October 2022
25 timeframe?

1 A I, one, will not get into deliberative process of whether or not to bring
2 charges.

3 Q Uh-huh.

4 A And, two, I'm not going to speculate and try to jump into the head of
5 another person and figure out why they did or did not do something.

6 Q Right. But I'm not asking you to jump into his head. But, you know, your
7 staff has been in communication with their staff. Do you have any idea, you know, from
8 talking with your staff, as to why they had not proceeded?

9 A Had not proceeded on what?

10 Q On bringing a case in the Central District.

11 A On filing -- my understanding was, there was some sort of plea deal that was
12 reached.

13 Q Okay. In the District of Delaware?

14 A I don't know the full contours of it. I don't know if certain charges were
15 waived, venue, or whatnot. I don't know. But I understand there was a plea deal that
16 was reached.

17 Q Okay.

18 After the whistleblowers came forward, this case received more public attention.
19 You talked about working with your press office. Did you have any communications
20 with your staff, when this became public, about what's been going on since October
21 2022?

22 A I had communications with my public affairs person in terms of the
23 appropriate response to the media inquiries we were getting.

24 I had communications with my first assistant U.S. Attorney and the executive
25 United States Attorney on the threats I was receiving and what to do about the threats

1 and who to send those to. I had communications with the Marshals Service about those
2 threats.

3 But in terms of the decision of whether or not to co-counsel, that wasn't discussed
4 at all.

5 Q You mentioned you were dealing with your first assistant and then the chief
6 of the Major Frauds division and the chief of the Criminal Division? Or was it the chief of
7 the Major Frauds Section?

8 A What time context are you referring to?

9 Q In October 2022.

10 A October 2022, it was the First Assistant United States Attorney, the Criminal
11 Division chief, and the Major Frauds Section chief.

12 Q Okay.

13 When the whistleblowers came forward and this was in the news, did you have
14 any communications with these three officials on an update on, you know, what has
15 Delaware tried to do in our district, if anything?

16 A I did not. No.

17 Q Okay.

18 Off the record for a second.

19 [Discussion off the record.]

20 Mr. Castor. My colleague Mr. Clerget has some questions.

21 Mr. Clerget. Good afternoon.

22 Mr. Estrada. Good afternoon.

23 BY MR. CLERGET:

24 Q You testified that after you took your post and you met with your team and
25 learned about the Hunter Biden matter that the request was pending on whether or not

1 your office would partner with the District of Delaware and that Mr. Weiss wanted to talk
2 to you about that.

3 Do I have that right?

4 A So my understanding was that, at some point shortly after I started, I was
5 told that there was a request from the District of Delaware to co-counsel, partner on the
6 case; that my career attorneys had recommended against doing so; that had been
7 communicated to the District of Delaware; and the District of Delaware then, through Mr.
8 Weiss, wanted to talk to me about it.

9 The timing in terms of when those communications happened, because I came in
10 on September 19th and I was told about this late September/early October, I can't say
11 whether it was before or after the 19th.

12 Q You can't say whether the request to your office came before or after the
13 19th?

14 A You had stated that there were communications between my office on this
15 request before September 19th. I can't say whether it was before or after.

16 Q And do you know if the assistant United States attorneys from the District of
17 Delaware who were designated special assistant United States attorneys, were they
18 already designated on the date you took your post?

19 A Yes, I know that, because I was not the one who approved it.

20 Q And you don't -- do you know whether the request to designate those
21 assistant United States attorneys came before or after the request to partner on the
22 case?

23 A I don't know the timing of that.

24 Q And I'm sorry if you answered this already, but do you know when the
25 request for -- to designate special assistant United States attorneys came to your office?

1 A Can you repeat the question?

2 Q So I'm trying to -- do you know -- you said you're not sure of the timing of
3 the request for partnering on the case. Is that right?

4 A I know that it was presented to me in late September/early October that the
5 career attorneys had recommended against it; communicated that to Delaware; now
6 Delaware wanted to talk to me about it.

7 Just for context, when I came into the seat, I mentioned we were down 40 AUSAs.
8 We had to hire a lot. So I was out there hiring as much as possible. I was meeting with
9 the assistant director in charge of the FBI, meeting with the chief of the LAPD, meeting
10 with the then-sheriff of Los Angeles Sheriff's Department, making the rounds through the
11 seven counties to meet with all the law enforcement.

12 So there were a lot of things on the plate, and there were things waiting for me to
13 decide, like hiring decisions. So there were a lot of things that were happening. This
14 issue did not arise, to my recollection, until late September/early October 2022.

15 Q Do you know whether an Acting U.S. Attorney could make the decision to
16 agree to partner? Hypothetically. Not on this case, but on any case. A request like
17 this, would your predecessor, who was an acting United States Attorney, have the
18 authority to say yes or no?

19 A I believe so.

20 Q I'm trying to understand whether this request was waiting for you to be
21 confirmed so that you could make the decision or whether or not it was requested after
22 you took the position.

23 A I mean, I don't know for certain, but I know some of the memos were dated
24 after I took the seat.

25 Q And --

1 A So it would seem to me that, once the package was prepared, they
2 presented it to the person who was sitting in that chair, which happened to be me at the
3 time.

4 Q And I know you said that this kind of thing doesn't happen very often or
5 perhaps hasn't happened in your time as U.S. Attorney, but do you have any sense for
6 how long it would take your team to do an evaluation and make a recommendation to
7 you in a case like this?

8 A Well, yes. I think it would take several weeks of analysis, legal research.
9 Usually -- I shouldn't say "usually." It's the case that my staff does a thorough analysis
10 before it's presented to me, and I generally expect a memorandum to be drafted. That
11 all takes time. So I would expect a thorough analysis.

12 Q So, if you received, you know, the information at the end of September or in
13 early October, is it fair to say that this request was made either before the 19th or very
14 shortly after the 19th for your staff to get up to speed and be prepared to make a
15 recommendation and brief you?

16 A I can't say. I can't say.

17 Q But if it takes weeks, generally, to do that -- the 19th to even early October
18 would be 2 weeks, approximately, maybe 3.

19 A I can't say about the timing. I know when -- I expect my attorneys to do a
20 thorough analysis. A thorough analysis was done in this case. So -- I don't make
21 decisions until I get a thorough analysis.

22 Mr. Clerget. That's all I have.

23 Mr. Castor. Okay.

24 [Recess.]

25 [REDACTED]. It is 12:59. We can go back on the record.

1 BY [REDACTED]:

2 Q In the prior hour, you were asked some questions about the administrative
3 support that your office offered to Mr. Weiss. And I understand you can't get into the
4 specifics, but I just want to ask some overarching questions.

5 Did you ever receive any indication from Mr. Weiss that he did not have the
6 support he needed from your office?

7 A No.

8 Q To the best of your knowledge, did any of your staff ever receive any
9 indication from Mr. Weiss that he did not have the support he needed from your office?

10 A I was never informed of that.

11 Q And, to the best of your knowledge, did anyone in your office receive any
12 indication from anyone on Mr. Weiss's staff, such as the SAUSAs, that they did not have
13 the support they needed from your office?

14 A I never heard that, and I would've expected to get a call from Mr. Weiss if
15 that were the case.

16 Q Okay. And you didn't get such a call?

17 A No.

18 Q Okay.

19 You were just asked some questions about the timeline of the decision coming to
20 you or being presented to you. Was it your impression that the decision was held for
21 you, you know, pending your confirmation?

22 A I did not get that impression.

23 Q It just happened that that was the timeline that it came to you,
24 late-September-ish?

25 A So what I can say is that I was made aware of this and presented with a

1 package of material, and the package included materials dated after I had taken the seat.

2 BY [REDACTED]:

3 Q Okay.

4 Moving on, in our first hour, so the second hour of questioning overall, we talked
5 through some of the considerations that prosecutors take into account when deciding
6 whether to bring charges. Do you remember that conversation?

7 A Yes.

8 Q Okay. How do prosecutors learn how to assess and evaluate the type of
9 concerns that you described, such as having to prove cases beyond a reasonable doubt,
10 sustain a conviction? How do prosecutors learn that?

11 A Through experience, through having done many cases and seeing what is
12 required. Through legal ability, knowing the elements of an offense, knowing the law
13 that pertains to an offense, and analyzing those facts and the law together, and having
14 the experience to know that.

15 So experience matters a lot in this context, including having seen many other
16 cases.

17 Q Okay. So it's fair to say that prosecutors have unique training and/or
18 experience, as you said, in assessing the sufficiency of the admissible evidence. Is that
19 fair to say?

20 A I think so. And I think the more experience a prosecutor has, generally, the
21 better at evaluating those sorts of things.

22 Q And along the same lines, prosecutors have unique training, unique
23 experience in assessing the likelihood that the admissible evidence will be persuasive to a
24 jury, correct?

25 A Yes.

1 Q And again along the same lines, it's fair to say that prosecutors have unique
2 training, unique experience in assessing whether the admissible evidence is reasonably
3 likely to result in a conviction, correct?

4 A Doing the analysis required under the Justice Manual -- doing that analysis is
5 something that takes training, takes experience, and consultation with supervisors.

6 Q Now, when prosecutors are working on a case, they work with investigators,
7 correct?

8 A We work generally with agencies, and the agencies will have investigators.

9 Q Okay. And the investigators that prosecutors work with, so the
10 investigators, the people who actually help gather the evidence for the case, for example,
11 they generally don't have the same experience in assessing the admissible evidence -- in
12 other words, in assessing how that evidence -- whether that evidence might be
13 convincing to a jury?

14 A Generally, they do not.

15 Q Okay.

16 Is it fair to say that one, kind of, unique difference between investigators and
17 prosecutors is that investigators typically do their work before trial, before the stage
18 where evidence is tested by defenses at trial, and before jurors are asked to confront the
19 contested evidence?

20 A I mean, it depends, honestly, on the investigator and how experienced that
21 person is. But, I mean, generally speaking, the attorneys are the ones that have the
22 experience, the know-how, the training to determine whether a case can be proven
23 beyond a reasonable doubt.

24 Q Okay. And it's prosecutors that actually have to present the evidence in
25 court, correct?

1 A Correct.

2 Q So it's prosecutors that have to consider the adversarial setting of the trial,
3 including how the evidence will look in light of possible defenses, correct?

4 A Correct.

5 Q And prosecutors are the ones who have to consider how persuasive the
6 evidence will ultimately be at a trial, where 12 jurors have to consider whether it proves a
7 charge beyond a reasonable doubt?

8 A That is our job, yes.

9 Q Okay.

10 Given the differences between what prosecutors do and what investigators do, is
11 it surprising that there might be differences in opinion among investigators and
12 prosecutors about the strength of the evidence and the likelihood of success at trial?

13 A There are sometimes disagreements between agents and AUSAs about a
14 case, whether it should proceed or not. That will occur on some occasions.

15 Q And as a supervisor, you've seen that happen with cases under your purview.
16 Is that fair to say?

17 A It happens fairly often.

18 Q In those cases where prosecutors and investigators disagree about the
19 likelihood of success at trial, it's prosecutors that have the final say on whether to bring
20 charges, correct?

21 A Absolutely.

22 Q And why is that?

23 A Well, because we have the training, we have the know-how, the experience.
24 We can play devil's advocate and see what the defenses will be.

25 Just about in every gang case I've done, the agents have wanted to indict those

1 extra 10 defendants or extra 12 defendants. And it's the prosecutor's job to look at the
2 evidence objectively, not emotionally, and determine whether it can really be proven
3 beyond a reasonable doubt and whether it serves the interest of justice.

4 Q Thank you.

5 I want to move on and talk about questions of venue and plea agreements. This
6 came up briefly in the prior round of questioning.

7 Briefly, in layperson's terms, what's your understanding of what "venue" means?

8 A So "venue" refers to the location. In the Federal context, it would be the
9 district where the misconduct or conduct took place. "Venue" also factors in where
10 defendants, witnesses can be located. But generally it's where the conduct took place.

11 Q And if prosecutors don't bring cases in the appropriate jurisdiction or the
12 appropriate venue, then the court can dismiss the charges, correct?

13 A The court can dismiss. The court can also transfer venue.

14 Q Okay. All that said, a defendant can waive his or her right to challenge
15 venue as part of a plea agreement, correct?

16 A Venue can be waived, correct.

17 Q Okay.

18 I want to introduce as exhibit 5 the memorandum of plea, of the plea agreement,
19 in United States v. Robert Hunter Biden.

20 [Estrada Exhibit No. 5

21 Was marked for identification.]

22 BY [REDACTED]:

23 Q This document was signed on July 26, 2023, and filed in the Delaware District
24 Court on August 2, 2023.

25 A It's just the one stapled copy?

1 Q Yes. Sorry. I think we gave you extras for your counsel.

2 It's Document No. 28 in Delaware Federal District Court case number
3 1:23-mj-00274-MN.

4 A I see that.

5 Q And I just want to look at the very first paragraph here, the -- sorry, I should
6 say the paragraph numbered 1, not the official first paragraph but the first numbered
7 paragraph.

8 A Okay.

9 Q That paragraph reads, "The defendant waives any challenge to the
10 Information based on venue and agrees to plead guilty in the United States District Court
11 for the District of Delaware to: Counts One and Two of the Information, which charge
12 the defendant with willful failure to pay tax, in violation of Title 26, United States Code,
13 Section 7203."

14 Did I read that correctly?

15 A I see that. Yes.

16 Q So, putting aside the process around the plea agreement and what
17 happened after it was signed --

18 A Uh-huh.

19 Q -- the defendant in this case, Robert Hunter Biden, did agree to waive venue,
20 correct?

21 A It appears so. The defendant waived any challenge based on venue.

22 Q Okay.

23 And the paragraph also says that the charges against Mr. Biden were laid out in an
24 information, correct?

25 A Yes.

1 Q An information is different than an indictment, correct?

2 A Yes. An information is something a defendant can agree to. It doesn't
3 require presentation to a grand jury.

4 Q And are you familiar with the difference between a pre-indictment plea
5 agreement and a post-indictment plea agreement?

6 A Yes.

7 Q Can you explain what that is?

8 A So a pre-indictment plea agreement is one that's reached before charges are
9 filed through the grand jury process. And a post-indictment plea agreement is one
10 where the indictment is issued and then a plea agreement is arranged to one or more
11 charges in the indictment. Although it doesn't have to be that way. You could do an
12 information after an indictment's been issued too.

13 Q And can you also explain, if you know, what a global plea agreement is?

14 A So a global plea agreement will often be in the context of where charges
15 either are pending or could be brought in multiple jurisdictions, and the global will cover
16 all the defendant's exposure in those different jurisdictions.

17 Q So, just to sum up, if a prosecutor and a defendant are working towards a
18 pre-indictment global plea agreement in which venue is waived, then there would be no
19 need to bring charges before a grand jury seated in the district where the alleged criminal
20 conduct actually took place. Is that fair to say?

21 A Yes. But, also, there'd be -- the plea agreement already covers that, so -- I
22 don't know if I fully understand the question.

23 Q My point is that, in a case like this, where there is a pre-indictment global
24 plea agreement that waives venue -- and, in this case, you know, the venue might have
25 been in Central District of California, for example --

1 A Uh-huh.

2 Q -- venue is waived. And so U.S. Attorney Weiss, for example, wouldn't
3 really need to do anything in your district in that case, because venue has been waived.
4 Is that fair to say?

5 A Yeah. They've already wrapped up the entire case.

6 Q Okay.

7 I want to move on and turn to the letters that we walked through --

8 A Okay.

9 Q -- in the prior round. And I know you've answered a lot of questions about
10 these already, but I just want to make a clean record so there's not any confusion in the
11 record.

12 A Okay.

13 Q So, looking at what's marked as exhibit 3, it's the June 7th letter.

14 A Okay.

15 Q The second paragraph of the letter reads, "While your letter does not specify
16 by name the ongoing investigation that is the subject of the Committee's oversight, its
17 content suggests your inquiry is related to an investigation in my District. If my
18 assumption is correct, I want to make clear that, as the Attorney General has stated, I
19 have been granted ultimate authority over this matter, including responsibility for
20 deciding where, when, and whether to file charges and for making decisions necessary to
21 preserve the integrity of the prosecution, consistent with Federal law, the Principles of
22 Federal Prosecution, and Departmental regulations."

23 Did I read that correctly?

24 A Yes.

25 Q Are you aware of any information that contradicts Mr. Weiss's statement

1 that he was granted ultimate authority over this matter?

2 A I'm not.

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

6 A I am not.

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

10 A I'm not.

11 Q Okay.

12 And I want to turn to the last paragraph in this letter, which is on page 3.

13 A Okay.

14 Q That paragraph reads, quote, "In February 2021, I was asked to remain as
15 United States Attorney for the District of Delaware to continue my oversight of this
16 matter. Since that time, I have fulfilled my responsibilities, consistent with Department
17 practices and procedures, and will continue to do so. Throughout my tenure as U.S.
18 Attorney my decisions have been made -- and with respect to the matter must be
19 made -- without reference to political considerations."

20 Did I read that correctly?

21 A Yes.

22 Q Are you aware of any information that contradicts Mr. Weiss's statement
23 that his decisions in this matter had been made without reference to political
24 considerations?

25 A I am not.

1 Q All right. Thank you.

2 I want to move on to exhibit 4, which is the June 30th letter. And I want to look
3 at the third paragraph on the front page of this letter.

4 A Okay.

5 Q It says, "First, the Department of Justice did not retaliate against 'an Internal
6 Revenue Service ("IRS") Criminal Supervisory Special Agent and whistleblower, as well as
7 his entire investigative team... for making protected disclosures to Congress.'"

8 Did I read that correctly?

9 A I see that.

10 Q Are you aware of any information that contradicts this statement from Mr.
11 Weiss?

12 A I am not.

13 Q Okay.

14 The letter then quotes his June 7th letter saying that he had been granted ultimate
15 authority over the matter.

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

25 Did I read that correctly?

1 A Yes.

2 Q Were you aware of any information that would contradict Mr. Weiss's
3 statement that he had been assured that he would be granted Section 515 authority if
4 another U.S. Attorney -- if necessary, if, for example, another office declined to partner
5 with him?

6 A I'm not aware of any information of that kind.

7 Q Okay. To your knowledge, did Mr. Weiss ever actually request Section 515
8 authority?

9 A I don't know one way or the other.

10 Q Okay.

11 And I want to introduce as exhibit 6 a letter that was referenced in the prior hour
12 but not actually introduced.

13 A Uh-huh.

14 Q It is the July 10, 2023, letter from Mr. Weiss to Senator Lindsey Graham.
15 Lindsey Graham is the Republican ranking member on the Senate Judiciary Committee.

16 A Okay.

17 Q This will be exhibit 6.

18 [Estrada Exhibit No. 6

19 Was marked for identification.]

20 BY [REDACTED]:

21 Q Have you seen this letter?

22 A I don't believe I have.

23 Q Do you want to take a minute to read it?

24 A Sure.

25 Okay. I see it.

1 Q I want to look at the third paragraph. The first sentence of that paragraph
2 reads: "To clarify an apparent misperception and to avoid future confusion, I wish to
3 make one point clear: in this case, I have not requested Special Counsel designation
4 pursuant to 28 CFR Section 600 et seq."

5 Did I read that correctly?

6 A Yes.

7 Q 28 CFR Section 600 et seq gives the Attorney General authority to appoint a
8 special counsel, correct?

9 A I am not completely familiar with the regulation. If he writes that, I have
10 no reason to not agree with it.

11 Q Okay.

12 A I've never had occasion to request to be special counsel.

13 Q Okay.

14 We'll introduce for the record the special counsel regulations. It's 28 CFR Section
15 600.1. This will be exhibit 7.

16 [Estrada Exhibit No. 7

17 Was marked for identification.]

18 Mr. Estrada. Okay. I see that.

19 BY [REDACTED]:

20 Q So, having had a minute to review 28 CFR Section 600.1, you agree that
21 these are the regulations that give the Attorney General the authority to appoint a special
22 counsel when he or she determines that it's appropriate?

23 A It appears to be so, yes.

24 Q Okay.

25 Turning back to the Senator Graham letter, are you aware of any information that

1 contradicts Mr. Weiss's statement that, as of July 10, 2023, when this letter was sent, he
2 had not requested special counsel designation pursuant to 28 CFR Section 600.1?

3 A I'm not aware of any information that contradicts that.

4 Q Okay.

5 That July 10 letter continues, quote, "Rather, I had discussions with Departmental
6 officials regarding potential appointment under 28 U.S.C. Section 515, which would have
7 allowed me to file charges in a district outside my own without the partnership of the
8 local U.S. Attorney. I was assured that I would be granted this authority if it proved
9 necessary. And this assurance came months before the October 7, 2022, meeting
10 referenced throughout the whistleblowers' allegations. In this case, I've followed the
11 process outlined in my June 30 letter and have never been denied the authority to bring
12 charges in any jurisdiction."

13 Did I read that correctly?

14 A Yes.

15 Q To the best of your knowledge, is it accurate that Mr. Weiss was never
16 denied the authority to bring charges in any jurisdiction?

17 A I have no reason to think he was denied that authority. Certainly, in my
18 district, I never denied him the ability to bring the case. In fact, I offered him support to
19 bring the case if he chose to.

20 Q On September 20th of this year, Attorney General Garland testified before
21 the House Judiciary Committee. He told the committee that, quote, "Mr. Weiss has full
22 authority to conduct his investigation however he wishes."

23 Do you have any information to contradict the Attorney General's statement?

24 A No.

1

2 [1:20 p.m.]

3 BY [REDACTED]:

4 Q The Attorney General also told the committee that, quote, "Mr. Weiss had,
5 as I said at the very beginning, that he had authority over all matters that pertained to
6 Hunter Biden."

7 Do you have any information to contradict the Attorney General's statement?

8 A I do not.

9 Q To sum up, do you have any reason to believe that David Weiss lied to
10 Congress or was misleading to Congress when he described the extent of authority he
11 had been granted by the Attorney General?

12 A I have no reason to think he lied. And what he did say seems consistent
13 with my experience in dealing with him in October of 2022.

14 Q Okay.

15 Do you have any reason to believe that the Attorney General prevented Mr. Weiss
16 from taking any particular investigative step?

17 A I have no reason to believe that.

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

20 A I have no reason to believe that.

21 Q Do you have any reason to believe that President Biden interfered in this
22 investigation in any way?

23 A I have no reason to believe that.

24 Q Did you ever tell Mr. Weiss that he could not bring charges in the Central
25 District of California?

1 A I never told him he couldn't bring charges. To the contrary, we had allowed
2 attorneys from his office to be SAUSA'ed to litigate in our district, and we had offered him
3 administrative support. So it's quite the opposite.

4 Q Did you ever take any steps to prevent Mr. Weiss -- I'm sorry.

5 To the best of your knowledge, did anyone else in your office ever take any steps
6 to prevent Mr. Weiss from bringing charges in the Central District of California?

7 A No.

8 Q Okay.

9 Did you do anything to delay the investigation into Hunter Biden?

10 A No, I did not.

11 Q Okay.

12 Throughout your tenure as U.S. Attorney, have you made all decisions without
13 reference to political considerations?

14 A Throughout my tenure as U.S. Attorney, Assistant United States Attorney,
15 frankly as a practicing lawyer, yes.

16 Q Okay.

17 [REDACTED]: All right. We can go off the record. Thank you.

18 [Whereupon, at 1:22 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

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit S

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5 COMMITTEE ON THE JUDICIARY,

6 U.S. HOUSE OF REPRESENTATIVES,

7 WASHINGTON, D.C.

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13 INTERVIEW OF: DAVID WEISS

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18 Tuesday, November 7, 2023

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20 Washington, D.C.

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23 The interview in the above matter was held in room 5480, O'Neill House Office
24 Building, commencing at 10:03 a.m.

25 Present: Representatives Jordan, Armstrong, Gaetz, Biggs, Fry, McClintock,

- 1 Tiffany, Spartz, Nadler, Lieu, Scanlon, Neguse, Dean, Ivey, Balint, and Goldman.

1 Appearances:

2

3

4

5 For the COMMITTEE ON THE JUDICIARY:

6

7 CLARK ABOURISK, COUNSEL

8 STEVE CASTOR, GENERAL COUNSEL

9 DILLON CHEPP, COUNSEL

10 SEAN CLERGET, COUNSEL

11 RUSSELL DYE, COMMUNICATIONS DIRECTOR AND COUNSEL

12 BETSY FERGUSON, DEPUTY GENERAL COUNSEL

13 BRITTANY HAVENS, PROFESSIONAL STAFF MEMBER

14 RACHEL JAG, COUNSEL

15 LILLIAN MEADOWS, COUNSEL

16 CAROLINE NABITY, CHIEF COUNSEL FOR OVERSIGHT

17 [REDACTED], MINORITY OVERSIGHT COUNSEL

18 [REDACTED], MINORITY CHIEF OVERSIGHT COUNSEL

19 [REDACTED], MINORITY INTERN

20 [REDACTED], MINORITY CHIEF COUNSEL

21 AND DEPUTY STAFF DIRECTOR

22 [REDACTED], MINORITY LEGAL INTERN

23 [REDACTED], MINORITY STAFF ASSISTANT

24 [REDACTED], MINORITY OVERSIGHT COUNSEL

25 [REDACTED], MINORITY PROFESSIONAL STAFF MEMBER

1 For the SUBCOMMITTEE ON CRIME AND
2 FEDERAL GOVERNMENT SURVEILLANCE:

3

4 [REDACTED], MINORITY DETAILEE

5

6 For the U.S. DEPARTMENT OF JUSTICE:

7

8 GRETA GAO, SPECIAL COUNSEL,

9 OFFICE OF LEGISLATIVE AFFAIRS

10 SARA ZDEB, DEPUTY ASSISTANT ATTORNEY GENERAL,

11 OFFICE OF LEGISLATIVE AFFAIRS

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1 Mr. Castor. Good morning. This is a transcribed interview of Special Counsel
2 David Weiss. Chairman Jordan has requested this interview as part of the committee's
3 oversight of the Justice Department's commitment to impartial justice in its handling of
4 the Hunter Biden investigation.

5 We're also investigating protected disclosures made by two whistleblowers who
6 were an integral part of the investigative team before, as we understand it, you asked for
7 their removal.

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

9 Mr. Weiss. David Weiss.

10 Mr. Castor. And you're joined here with agency counsel?

11 Mr. Weiss. Correct.

12 Mr. Castor. State your name for the record.

13 Ms. Zdeb. Sarah Zdeb, Department of Justice.

14 Ms. Gao. Greta Gao, Department of Justice.

15 Mr. Castor. And, Mr. Weiss, you understand that agency counsel has a legal duty
16 to protect the interests of the Department and not you personally?

17 Mr. Weiss. I do.

18 Mr. Castor. And you've decided to go forward with that arrangement?

19 Mr. Weiss. I have.

20 Mr. Castor. Okay. On behalf of the committee, I would like to thank you for
21 appearing here today to answer our questions, and we appreciate you coming down from
22 Delaware voluntarily.

23 My name is Steve Castor. I'm with Chairman Jordan's Judiciary Committee staff.

24 I'll have the staffers in the room introduce themselves, starting with my colleague
25 Ms. Nabity.

1 Ms. Nabity. Caroline Nabity with Chairman Jordan's staff.
2 Chairman Jordan. Jim Jordan.
3 Mr. Armstrong. Kelly Armstrong.
4 Mr. Nadler. Jerry Nadler. Not staff.
5 [REDACTED], Ranking Member Nadler's staff.
6 [REDACTED], Ranking Member Nadler's staff.
7 [REDACTED], Ranking Member Nadler's staff.
8 Ms. Scanlon. Mary Gay Scanlon, PA-5.
9 Mr. Ivey. Glenn Ivey, member of the committee.
10 Ms. Havens. Brittany Havens, Chairman Jordan's staff.
11 Ms. Ferguson. Betsy Ferguson, Chairman Jordan's staff.
12 Mr. Chepp. Dillon Chepp, Chairman Jordan's staff.
13 Ms. Meadows. Lillian Meadows, Chairman Jordan's staff.
14 Mr. Clerget. Sean Clerget, Chairman Jordan's staff.
15 Mr. Abourisk. Clark Abourisk, Chairman Jordan's staff.
16 [REDACTED], with Ranking Member Nadler's staff.
17 [REDACTED], Ranking Member Nadler's staff.
18 [REDACTED], with Mr. Nadler.
19 Mr. Castor. Now there's going to be a quiz about each of their names.
20 Mr. Weiss. I'll fail miserably.
21 Mr. Ivey. Read the transcript.
22 Mr. Castor. I would like to go over the interview process that we'll follow today.
23 Our questioning will proceed in rounds. The majority will ask questions first for
24 an hour, and then the minority will have a chance to ask questions for an hour as well.
25 We'll alternate back and forth until we're done.

1 We often take a short break at the end of each hour, but if you need to take a
2 break apart from that to confer with counsel or for any other reason, let us know.

3 As you can see, there's an official House reporter taking down everything we say
4 to make a written record, so we will do our best to go slowly and give verbal responses.
5 Are you comfortable with that?

6 Mr. Weiss. Yes, I am.

7 Mr. Castor. We'll do our best to limit the number of people directing questions
8 to you during any given hour. Usually, it's just one staffer. But, of course, the
9 members -- and we're joined here by five members. The Republican members may
10 jump in during my questioning, and the Democratic members may jump in during their
11 hour as well.

12 We want you to answer our questions in the most complete and truthful manner
13 possible. If you honestly don't know the answer to a question or don't remember, it's
14 best not to guess. Please do give us your best recollection. And it's okay to tell us if
15 you learned something from a third party. The rules of hearsay don't apply in this
16 setting. Just indicate how you came to know the information.

17 And, if there are things you don't know or can't remember, just say so. And we
18 would appreciate it if you, to the extent you don't remember an entire set of facts, that
19 you just help us with as much as you do remember.

20 You also understand that, by law, you are required to answer questions before
21 Congress truthfully. Do you understand that?

22 Mr. Weiss. I do understand that.

23 Mr. Castor. And this applies to questions posed by congressional staffers in an
24 interview. Do you understand that as well?

25 Mr. Weiss. Yes.

1 Mr. Castor. Witnesses that knowingly provide false testimony could be subject
2 to criminal prosecution for making false statements under 18 United States Code 1001.
3 Do you understand that?

4 Mr. Weiss. I am familiar with that.

5 Mr. Castor. Thank you. Is there any reason you're unable to provide complete
6 and truthful answers to today's questions?

7 Mr. Weiss. There is not.

8 Mr. Castor. Okay. That's the end of my opening remarks.

9 Ms. Zdeb, do you have anything?

10 Ms. Zdeb. I don't, but Mr. Weiss has a couple of brief remarks.

11 Mr. Castor. Okay. Let me ask [REDACTED] if she wants to --

12 [REDACTED]: Yeah. We just thank the Special Counsel for taking time out of your
13 very busy schedule to come in and join us today.

14 Mr. Weiss. Thank you.

15 Mr. Castor. Or any of the members, did you have anything you would like to
16 say?

17 Okay, sir.

18 Mr. Weiss. Thank you.

19 I have voluntarily agreed to appear before this committee. To my knowledge, I
20 am the first Special Counsel to testify before the submission of the special counsel's
21 report. I have done so out of respect for the committee's oversight responsibilities and
22 to respond to questions raised about the scope of my authority.

23 I am in the midst of conducting an ongoing investigation and prosecution and will
24 be limited as to what I can say at this point. I will prepare a report at the conclusion of
25 the work by the Special Counsel's Office and will be able to share more information at

1 that time.

2 Today, I am prepared to address misunderstandings about the scope of my
3 authority to decide where, when, and whether to bring charges in this matter. I do not
4 intend to answer questions that could jeopardize the ongoing litigation, our
5 investigations, or the rights of defendants or other individuals involved in these matters.

6 I am and have been the decisionmaker in this case. I do not, however, make
7 these decisions in a vacuum. I am bound by Federal law, the principles of Federal
8 prosecution, and DOJ guidelines.

9 As a result, there are processes that I must adhere to in making investigative and
10 charging decisions. These processes did not interfere with my decisionmaking authority.
11 At no time was I blocked or otherwise prevented from pursuing charges or taking the
12 steps necessary in the investigation by other U.S. Attorneys, the Tax Division, or anyone
13 else in the Department of Justice.

14 As I have said previously, I did not request Special Counsel status until August of
15 2023. When I made that request, it was promptly granted. Throughout this
16 investigation, the career prosecutors on my team and I have made decisions based on the
17 facts and the law. Political considerations played no part in our decisionmaking.

18 Our analysis has been moored to the principles of Federal prosecution, and going
19 forward, my team and I will continue to abide by these same principles as we try to bring
20 this matter to a just conclusion. Thanks.

21 Mr. Castor. Thank you.

22 Just at the top, I'm going to mark three letters that you sent to Congress.

23 The first is exhibit 1, a June 7th letter.

24 [Weiss Exhibit No. 1

25 Was marked for identification.]

1 Mr. Castor. Exhibit 2 is a June 30th letter, both to Chairman Jordan.

2 [Weiss Exhibit No. 2

3 Was marked for identification.]

4 Mr. Castor. And the third is a July 10th letter.

5 [Weiss Exhibit No. 3

6 Was marked for identification.]

7 Mr. Castor. We'll get into the specifics of these later, but I just thought it would
8 be helpful to have it marked as exhibits 1, 2, and 3 right at the top.

9 Mr. Weiss. Thank you.

10 Mr. Castor. I'll start the clock. It's 10:11.

11 EXAMINATION

12 BY MR. CASTOR:

13 Q When were you nominated to be the U.S. Attorney for the District of
14 Delaware?

15 A I believe in late 2000- -- sometime in 2017, I believe, to the best of my
16 recollection.

17 Q Okay. And you were confirmed by the Senate?

18 A I was.

19 Q And when was that?

20 A That was several months thereafter. 2018.

21 Q Okay. And then you began your tenure as U.S. Attorney when?

22 A I was acting for some time since the spring, I believe, of 2017. And I was
23 confirmed, as I said, in the spring of 2018, I believe, or there so.

24 Q Okay. And you were supported by both Democratic Senators from
25 Delaware. Is that correct?

1 A That is correct.

2 Q Are you familiar with the Blue Slip Process?

3 A Generally.

4 Q Okay. What's your understanding of that?

5 A My understanding is you -- in all jurisdictions, you are typically
6 recommended or not by your local Senators.

7 Q Okay.

8 A And the Senators -- my understanding is the senators supported my position
9 as U.S. Attorney.

10 Q Okay. So both Senators Coons and Carper recommended you to the White
11 House?

12 A That's my understanding.

13 Q Okay. Now, after the conclusion of the previous administration in January
14 of 2021, you were asked to stay on?

15 A I believe it was end of January, early February. And, yes, I was asked to
16 stay on.

17 Q And who asked you to stay?

18 A It was a telephone call, and it was the Acting Attorney General at that point
19 in time that asked me to stay.

20 Q And was that Mr. Wilkinson?

21 A Yes, it was.

22 Q And what do you remember from that call?

23 A Just that. That he asked if I would be willing to continue to serve as U.S.
24 Attorney for the District of Delaware.

25 Q And did you expect that call?

1 A I wouldn't say that I expected it, nor would I say I was shocked by it.

2 Q Okay. So you had prepared your resignation just like the rest of the U.S.

3 Attorneys?

4 A I don't know that I had actually prepared my resignation.

5 Q Okay.

6 A I mean, I understood the process that was going on, and there were other
7 U.S. Attorneys that either resigned or would be asked to end their tenure at some point.
8 But I had not prepared a resignation letter.

9 Q So you generally didn't know what was going to happen?

10 A I didn't know what was going to happen.

11 Q Okay. But you suspected maybe they'd ask you to stay on?

12 A I suspected that it was a possibility.

13 Q Okay. Before Mr. Wilkinson called you and asked you to stay on, had you
14 had any conversations with Department officials or White House officials or transition
15 team officials about staying on?

16 A I had not.

17 Q Okay. So, when Mr. Wilkinson called you, that was the first time that you
18 were talking to somebody in a position of authority about staying on?

19 A In the new administration, yes.

20 Q Okay. And these decisions are ultimately made by the President, correct?

21 A I don't know who made this decision, to tell you the truth. I know what
22 was communicated to me during that conversation.

23 Q But U.S. Attorneys serve at the pleasure of the President, correct?

24 A U.S. Attorneys serve at the pleasure of the President. That is correct.

25 Q So currently you serve at the pleasure of President Biden, correct?

1 A I do.

2 Q And, when the decision was made to ask you to stay on, that was a decision
3 made by President Biden, correct?

4 A Again, I can't speak to that. All I can say is, as I have said before, that it was
5 communicated to me by the Acting Attorney General.

6 Q Okay. But certainly, if President Biden didn't want you to stay on, you
7 would have been removed like all U.S. Attorneys are when a President wants that to
8 happen, correct?

9 A As we discussed a moment ago, I serve at the pleasure of the President.

10 Q Okay. How many attorneys are in your office?

11 A Approximately --

12 Q I know, obviously, it changes.

13 A Yeah. We just had two additions. So I think we're at 24, 25, including the
14 U.S. Attorney.

15 Q Okay. And how many work on criminal matters?

16 A So I have six in the Civil Division. About 14.

17 Chairman Jordan. Did Mr. Wilkinson give you any specific reason why he wanted
18 you to stay?

19 Mr. Weiss. He did not.

20 BY MR. CASTOR:

21 Q When you have interactions with Justice Department Headquarters or Main
22 Justice, how does that ordinarily happen? Who is your primary point of contact?

23 A I don't know that there is an ordinary. I don't know that I would designate
24 anyone in particular.

25 Q Under the reporting structure, though, you report up through the Deputy

1 Attorney General. Is that correct?

2 A That's correct.

3 Q And how often do you talk with Ms. Monaco?

4 A I have never spoken with Ms. Monaco.

5 Q You've never spoken to her?

6 A Never.

7 Q Okay. And do you have communications with someone else in the office?

8 Maybe the PADAG?

9 A I have -- my point of contact for the last year, year and a half has been
10 Associate Deputy Attorney General Weinsheimer.

11 Q Okay. So you're not in contact on a regular basis with the PADAG, Mr.
12 Miller?

13 A I am not.

14 Q Have you ever had communications with him?

15 A I have not.

16 Q Okay. So you've never had any communications with Marshall Miller or
17 Lisa Monaco?

18 A I have not.

19 Q Okay. And how often do you have communications with

20 Mr. Weinsheimer?

21 A It varies depending upon what's going on. But I would say we've spoken,
22 before August of 2023, approximately once a month, sometimes more frequently.

23 Q And was it related to the Hunter Biden case, or was it related to your
24 ordinary duties?

25 A Generally, it was related to the Hunter Biden case investigation.

1 Q Okay. And when did Mr. Weinsheimer first start having communications
2 with you about the Hunter Biden case?

3 A I think we first spoke about the case in the spring of 2022.

4 Q And, to the extent you can tell us, what were the nature of those
5 discussions?

6 A In 2022?

7 Q Yeah.

8 A Actually, more accurately, February of 2022, I think, was the first time we
9 spoke. And I would have reached out because we were looking to bring certain portions
10 of our investigation to either D.C. or L.A. At that time, D.C.

11 Q Okay. Did you call him, or did he call you?

12 A I reached out by email to the Principal Deputy Attorney General at that time,
13 John Carlin.

14 Q Okay. So he was the PADAG before Mr. Barr?

15 A Correct.

16 Q And how often had you spoken with Mr. Carlin?

17 A Before this? Never.

18 Q Okay. So you initiated email contact with Mr. Carlin, and he referred you
19 to Mr. Weinsheimer?

20 A I initiated email contact with Mr. Carlin, and I subsequently had a
21 conversation with John Carlin, and I believe Brad Weinsheimer was on the call.

22 Q Okay. And what did they tell you about bringing the case in D.C. or
23 different jurisdictions from yours?

24 A We discussed the fact that I would -- they wanted me to proceed in the way
25 it would typically be done, and that would involve ultimately reaching out to the U.S.

1 Attorney in the District of Columbia.

2 I raised the idea of 515 authority at that time because I had been handling the
3 investigation for some period of time. And, as I said, they suggested let's go through the
4 typical process and reach out to D.C. and see if D.C. would be interested in joining or
5 otherwise participating in the investigation.

6 Q Okay. And you mentioned 515 authority, and in your June 30th letter, you
7 refer to that as Special Attorney status?

8 A I don't know that I referred to it as Special Attorney status at that time. I
9 typically referred to it as 515 authority.

10 Q Okay.

11 A For whatever reason, that's the way -- my recollection is that's the way I
12 referenced it.

13 Q Okay. I mean, the text of the statute talks about Special Attorney.

14 A Special Attorney. That's correct.

15 Q So, from your point of view, is there a difference between being a Special
16 Attorney under 515 and being a Special Counsel?

17 A Yes, there is a difference.

18 Q And what's that difference, as you understand it?

19 A As I understand it, the Special Attorney under 515 was for the purpose of
20 allowing me, as a U.S. Attorney in one jurisdiction, to possibly proceed with charges in
21 another jurisdiction.

22 Q Okay.

23 A It has to be approved by the Attorney General or his designee.

24 Q Okay. And what's your understanding then of Special Counsel authority?

25 A Special Counsel is permitted to bring charges in any jurisdiction in which

1 Special Counsel determines -- which Special Counsel determines is appropriate,
2 consistent with the order and the authority bestowed on Special Counsel through that
3 order.

4 Q Okay.

5 A You know, which describes, in general terms, my investigative authority.

6 Q Okay. But it's all 515 authority, right?

7 A It's all 515 authority?

8 Q Are both the Special Attorney and the Special Counsel status that we've
9 been discussing here flow from the 28 United States Code 515?

10 A I think perhaps in -- there's the 500 series, but there are also regulations that
11 attend these Special Counsel --

12 Q Okay.

13 A -- authority.

14 Q Okay. So, when you initially were pursuing or discussing 515 authority or
15 considering it, you know, when you were speaking with Mr. Weinsheimer, in your mind,
16 that was different from Special Counsel authority?

17 A Absolutely.

18 Q Okay. And what did Mr. Weinsheimer or Mr. Carlin say about 515
19 authority?

20 A As I said, they said let's proceed as we would in the normal process. We
21 talked a bit about the fact that it's often the case in D.C. that a DOJ component, whether
22 it's Tax Division or Public Integrity, would develop a case and reach out to the U.S.
23 Attorney's Office in D.C. and give them an opportunity to participate. So the discussion
24 was let's proceed in a typical fashion.

25 And, as you know, ultimately -- this didn't happen in this conversation, but down

1 the road -- I was given the authority to proceed if I chose to do so.

2 Q Okay. Are you familiar with the term "SAUSA"?

3 A I am familiar with the term "SAUSA."

4 Q Okay. What does that term mean to you?

5 A It's a special assistant United States attorney.

6 Q Okay. And what's the difference between, you know, SAUSA status and
7 515 status?

8 A You know, to the extent -- I want to make sure I fully understand it.

9 Q Of course.

10 A Look, SAUSA doesn't have to be part and parcel of a 515 authority situation.
11 For instance, if we have a case in Delaware -- a drug investigation, let's say -- that,
12 during the course of the investigation takes us to a neighboring jurisdiction, and both
13 jurisdictions -- we'll start talking with agents and AUSAs in that other jurisdiction to
14 ensure we're deconflicting, proceeding in a safe fashion.

15 And, if we ultimately -- so we'll pursue that investigation in conjunction with one
16 another, and if there comes a time when we're talking about charges, we'll decide how
17 we're going to proceed in the case. We might both move forward. Delaware might
18 take it. It could proceed in any number of fashions.

19 If we chose to continue to play a role in prosecuting a piece of that case in, let's
20 say, the Eastern District of Pennsylvania, we could have an attorney designated as a
21 SAUSA to allow that attorney to participate in the case in the Eastern District of
22 Pennsylvania.

23 Q Okay. So, after your discussion with Mr. Weinsheimer and Mr. Carlin in
24 February of 2022, what was your next step in terms of initiating contact with the D.C. U.S.
25 Attorney's Office?

1 A Ultimately -- and I think it was in early March -- I reached out to Matt Graves,
2 who was the U.S. Attorney in D.C. at that time.

3 Q And, before you reached out to Mr. Graves, had your staff been working
4 with Mr. Graves' staff?

5 A No.

6 Q Okay. So the first contact Mr. Graves' office had from your office was when
7 you telephoned him?

8 A That's my understanding, yes.

9 Q And what's your recollection of that call?

10 A It was about, I think, a 5-, 10-minute call. I had never met or spoken with
11 Mr. Graves before. I explained the situation. I talked a little bit about the
12 investigation, some of the background of the investigation.

13 I mentioned that I had a conversation with the Office of the Deputy Attorney
14 General, that I had raised 515 authority, because I wanted him to know, you know, what I
15 was thinking and that I intended to proceed in any event.

16 And we agreed that we would -- I think we first talked about putting the criminal
17 chiefs together and our staffs so that we would proceed from there.

18 Q And what did Mr. Graves say to that?

19 A He was -- you know, he was receptive. Like I said, we agreed that my
20 criminal chief, I think, would reach out to his, and we would move forward.

21 Q And then what happened next?

22 A I know that the teams met, but ultimately, I received word from my staff
23 that the U.S. Attorney's Office in the District of Columbia had decided not to join the case
24 as a partner or co-counsel moving forward.

25 Q Okay. And what did that mean for the case proceeding?

1 A That meant that I would follow up with respect to the 515 authority --

2 Q Okay.

3 A -- which, ultimately, I did. And I had a conversation with -- again, this
4 conversation, I believe, was with John Carlin and Brad Weinsheimer.

5 Q Okay.

6 A I think it was, best of my recollection, in early May.

7 At that time, we were talking about where we would proceed. There were
8 questions about where we would proceed. I mentioned before that we were
9 considering D.C., which is where we went first, and the Central District of California in L.A.

10 I told Messrs. Carlin and Weinsheimer that D.C. had decided not to join the
11 investigation, that we were reviewing matters, and had not decided whether we would
12 proceed in D.C. And my recollection is that John Carlin at that time said, "Look, if you
13 decide to proceed in D.C., you have the authority to do so, and you have the authority
14 to -- under 515, to bring whatever charges you deem appropriate."

15 Q Mr. Carlin said that?

16 A Mr. Carlin said that.

17 Q And did you have any discussion with Mr. Graves about SAUSA status?
18 About having your lawyers from the District of Delaware come to D.C. and just get a
19 special assistant United States attorney designation?

20 A I don't recall. It may have been. I just don't recall the specifics of that.

21 Q And, at this point in time, we're talking about the 2014 and 2015 tax years
22 for Mr. Biden; is that correct?

23 A I'm not going to comment on, you know, what we were talking about. No.
24 I'm sorry. I'm not going to talk about the merits, the investigation, or any aspect of that.

25 Q Okay. But the 2014 and 2015 tax years, the statute of limitations was

1 about to expire, correct?

2 A Again, I'm not going to talk about something that touches on the
3 investigation.

4 Q Okay. It's our understanding that the statute of limitations had been tolled
5 by a tolling agreement. Is that your understanding?

6 A Again, I'm not going to talk about any aspect of the investigation or what
7 could crop up in the litigation that we're currently involved in.

8 Q Okay. And that the tolling agreement was set to expire in September of
9 2022. Is that your understanding?

10 A Again, I'm not at liberty to discuss the particulars of the investigation or what
11 could impact the litigation. However, look, there will come a time at the preparation
12 and submission of the report when I expect I would address matters such as that.

13 Chairman Jordan. What was the date that you had the conversation with the
14 U.S. Attorney in the District of Columbia?

15 Mr. Weiss. I believe that conversation was in early March of 2022.

16 Chairman Jordan. And then when did he decline to partner with you? Same
17 time?

18 Mr. Weiss. I think we received their feedback within a month.

19 Chairman Jordan. So late March, early April?

20 Mr. Weiss. Yes.

21 Chairman Jordan. And then you had a subsequent conversation with
22 Mr. Weinsheimer and Mr. Carlin?

23 Mr. Weiss. I had a subsequent conversation with Mr. Weinsheimer and
24 Mr. Carlin.

25 Chairman Jordan. So you wanted to partner with him, and he said no. Why

1 didn't you just ask for 515 status right then?

2 Mr. Weiss. I did. In my next conversation with Carlin and Weinsheimer, I did
3 ask for 515 authority.

4 Chairman Jordan. And then why didn't they give it?

5 Mr. Weiss. They did. They said if I intended to proceed -- as I just described,
6 John Carlin told me that if I intended to or was interested in moving forward in D.C., I had
7 the authority to do so, and I had the authority to bring whatever charges I determined
8 were appropriate.

9 Chairman Jordan. But you didn't want to proceed?

10 Mr. Weiss. Excuse me?

11 Chairman Jordan. But you didn't want to proceed, then, in D.C.?

12 Mr. Weiss. I'm not going to talk about what matters are clearly part of the
13 investigation and the deliberative process.

14 BY MR. CASTOR:

15 Q What type of paper flow occurred between your staff and Mr. Graves' staff?
16 I mean, was there an exchange of documents, paper?

17 A We provided them with information so that they could make an informed
18 judgment on deciding whether to participate in the investigation. But I'm not going to
19 get into particulars of documentation. All of that would be matters that are part of the
20 investigation and relevant to the merits of the ongoing litigation.

21 Q Okay. Can you at least tell us, you know, what types of documents were
22 shared?

23 A No.

24 Q Or can you identify them at a privileged level?

25 A No. I can't get into the particulars of documentation that was shared.

1 Again, these would have been part of an ongoing investigation, and this would deal with
2 the deliberative process between ourselves and D.C.

3 Q Okay. Did your staff have in-person meetings with Mr. Graves' staff?
4 Was it all done over the telephone?

5 A I'm not sure. I know they had a detailed discussion at some point in time.

6 Q Was it more than one?

7 A I don't know for sure.

8 Q And was it essentially your staff trying to convince Mr. Graves' staff to
9 partner or to co-counsel?

10 A No. I don't think it was an effort in persuasion. I think it was just an
11 attempt to appropriately inform them.

12 Q Okay. But, obviously, you had an interest in prosecuting a case in D.C. I
13 mean, you wouldn't have called the DAG's office and you wouldn't have initiated contact
14 with Mr. Graves if you didn't want to move forward with the prosecution, correct?

15 A I think it's fair to say there was an interest in moving forward in either D.C.
16 or L.A. or wherever the facts and the law took us.

17 Q Right. Or both, correct? I mean, if you're looking at a tax case, the venue
18 is --

19 A Again, I don't want to get too far into investigation, deliberative process, or
20 the merits. But certainly these were things that were being contemplated.

21 Q Okay. But, if a taxpayer failed to pay the taxes willfully, I mean, the venue
22 for that is where?

23 A If a taxpayer --

24 Q If there's a potential tax -- a criminal tax charge for failure to file, where is
25 venue for that?

1 A It depends where -- you know, where the taxpayer is residing, where the
2 returns are filed, where the returns are prepared. I know there are all kinds of
3 considerations that one has to evaluate in determining appropriate venue.

4 Q But the team had evaluated that and had decided where venue was
5 appropriate for the different tax years, correct?

6 A Again, I'm not going to get into, you know, merits, deliberative process, or
7 matters that are clearly part of the investigation. I'll speak to my authority.

8 Q We're dealing with the tax years of 20- -- for Mr. Biden, 2014 through 2019;
9 is that correct?

10 A You're asking me matters that are not part of the question of authority and
11 clearly go to the merits of the investigation and the litigation.

12 Q Okay. But you know the answer to my question, correct? If you were
13 free from the Department's admonishment that you can't talk about this, you would
14 know the answer to my question; is that correct?

15 A Look, Counsel, I appreciate the question. It's not an admonishment. I am
16 very sensitive to a matter that we are currently investigating. The last thing I want to do
17 here while I am trying to provide answers -- the last thing I want to do is to say or suggest
18 anything that's going to be used against the government in our ongoing litigation or in
19 any investigation.

20 You know, I'm trying to tiptoe and provide what information I can relative to my
21 authority, but I'm not going to get into the other matters.

22 Q In 2022, after a man in Delaware was sentenced to 6 months in prison for tax
23 evasion, you stated, "Tax dodging represents an affront to every member of the taxpaying
24 public, and we will continue to prosecute tax cheats aggressively."

25 Do you remember making that statement?

1 A I don't have a specific recollection.

2 Q Okay. But do you believe in that?

3 A I believe that the laws of the United States, including tax laws, should be
4 enforced.

5 Q In 2021, after a man was sentenced to 1 year in prison in order to pay
6 \$192,529 in restitution for tax evasion, you made the following statement in conjunction
7 with announcing that: "The financial loss in tax cases is shared by every member of the
8 taxpaying public. Our Nation's ability to operate and serve its citizenry depends on
9 voluntary compliance with its tax obligations."

10 Do you remember making that statement?

11 A I don't have a specific recollection, but nor would I divorce myself from any
12 statement of that nature.

13 Q Do you still believe that financial loss in tax cases is shared by every member
14 of the taxpaying public?

15 A I still believe that, yes.

16 Q Do you believe that public figures are exceptions to that?

17 A Nobody is an exception to the tax laws. We have a system that's built on
18 the notion of voluntary compliance.

19 Q All right. Shifting gears a little bit, on politically-sensitive investigations,
20 what policies does DOJ have to prevent a politically-motivated employee from being
21 involved with an investigation that might touch on political sensitivities?

22 A I am not aware of a policy that you're referring to. So, if you could show
23 me something, I'm happy to review it.

24 Q I guess the question is, is there such a policy?

25 A I'm not aware of such a policy, and I haven't run into this situation.

1 Q Okay. Now, if your office was prosecuting, hypothetically, a political figure
2 in Delaware, say an elected official, and someone on your staff, you know, demonstrated
3 a political ideology consistent with the person you're prosecuting, what would be the
4 process to sideline them or --

5 A It's a hypothetical with all kinds of variables, and it's not something I'm going
6 to speculate about.

7 Q Okay. If you're aware, on a politically-sensitive investigation, what
8 protocols does DOJ have to prevent politically-motivated decisions from being made on a
9 particular investigation?

10 A I'm not aware of protocols. And look, my interest and the interest of
11 prosecutors in my office is pursuing cases, and we should be pursuing cases based on the
12 laws and the facts, period.

13 Q But you're not aware of any Department processes or protocols for dealing
14 with --

15 A Look, no, I'm not aware of any policies, and I haven't experienced, to my
16 knowledge, a situation in which I had to deal with the hypothetical that you're describing.

17 Q Okay. On a politically-sensitive investigation, if an investigator or
18 prosecutor makes what is believed to be a politically-motivated statement or decision,
19 how is that reviewed in your office?

20 A There is no policy or practice or procedure. And, again, I'm not aware of
21 such a situation.

22 Q For example, on the Hunter Biden case, if one of your assistant United States
23 attorneys was exhibiting favoritism towards the Biden family or towards Hunter Biden,
24 and that was brought to your attention, what would be the process to sort that out?

25 A Again, I'm not going to comment on any aspect of the investigation or a

1 prosecution, and from my perspective, the prosecutors who participated in this case
2 followed the law and the facts. That was the motivation.

3 Q So your office doesn't have a process or protocol for dealing with that?

4 A My office has no process or protocol for dealing with something like that.
5 It's not something we have engaged in, participated in, or that I have experienced.

6 Q Okay. If a member of the investigative team believes such a thing has
7 occurred, what is their course of action?

8 A Again, you're talking about hypotheticals, and I'm not going to speculate on
9 what their course of action might be.

10 Q Is there an independent review within DOJ that can address that? If a
11 member of the investigative team believes that a politically-motivated decision is being
12 made to protect a target of investigation or a potential defendant, is there somebody in
13 DOJ that can review that?

14 A Again, I don't have an answer for the question, and it calls for a hypothetical
15 or a speculative response on my part. I'm just not going to express an opinion on it.

16 Q Well, it's not that speculative. I mean, we have two whistleblowers that
17 testified about what they asserted was political -- politically-motivated decisions made in
18 the Hunter Biden case, correct?

19 A I am aware that you have two whistleblowers who have testified. That's
20 correct.

21 Q So you're not aware of any independent review within DOJ that can evaluate
22 concerns raised by members of the investigative team?

23 A As I sit here today, I'm not aware of any such reviews.

24 Q Okay. If a special agent assigned to an investigation had concerns with the
25 objectivity of the Justice Department, unethical conduct of DOJ employees assigned to a

1 case, or DOJ employees who have provided preferential treatment to a taxpayer, how
2 would that agent or employee raise those concerns?

3 A Again, that calls for speculation on my part. You're talking about agents or
4 agency-related matters. It's not something I'm going to speculate about.

5 Q I mean, it's not that hypothetical. I mean, we have two senior, you know,
6 criminal investigators that have bravely come forward to Congress and identified what
7 they consider is preferential treatment that was afforded to Hunter Biden.

8 And, you know, I'm just asking you what the process would ordinarily be when a
9 member of the investigative team believes that that's occurred. What's the process
10 inside your office or inside of DOJ? Is there any process?

11 A I've told you. I have no such process. We haven't experienced it in our
12 office. And to generally -- I don't have an answer. I don't --

13 Q Okay.

14 A It's not something I experienced. I understand what your representation is
15 with respect to these whistleblowers, and that would have me commenting on specifics
16 relative to this investigation and this case.

17 Q Okay. What's your understanding of the word "retaliation"?

18 A In the context of retaliation vis-a-vis whistleblowers?

19 Q Uh-huh.

20 A I'm not going to get into anything along those lines.

21 Q Okay. Are you familiar with what a protected disclosure to Congress is? If
22 a whistleblower believes that they've exhausted all avenues and they'd like to come to
23 Congress?

24 A Again, that's not something for me to speak to. I'm here to talk about my
25 authority. I'm not going to get into these other matters.

1 Q Okay. But you are aware that there are avenues for whistleblowers to
2 come to Congress and to make legally-protected disclosures, correct?

3 A As I think I indicated in my first letter to the chairman, I am aware of and
4 appreciate the whistleblower rights. I do. I understand them generally, and I
5 appreciate the importance of those rights.

6 Q Prior to the March of 2022 discussion that you had with Mr. Graves -- and it
7 was March of 2022. Did I get that date right?

8 A That's correct.

9 Q Had the matters that you had brought to Mr. Graves' office -- had they
10 already been approved by the Tax Division?

11 A My recollection is that -- Tax Division?

12 Q Yes.

13 A Right. I'm not going to comment on Tax Division approvals relative to this
14 case. It would entail the deliberative process.

15 Q I mean, you're aware that the Tax Division needs to okay criminal tax
16 charges, right?

17 A I am aware of the Tax Division responsibilities under title -- under the Code
18 of Federal Regulations and the manual.

19 Q Okay. So, under the manual, the final authority for the prosecution or
20 declination of all criminal matters arising under the Internal Revenue laws rest with the
21 Tax Division, correct?

22 A I am aware that Tax Division approves the charging of title 26 offenses.

23 Q Okay. How do you reconcile what the manual says? I mean, the Tax
24 Division also has to approve if you're going to issue, you know, a search warrant and if
25 you're going to go to a grand jury. Before you do that, the Tax Division needs to okay

1 that, correct?

2 A There are certain types of search warrants that require Tax Division
3 approval, to my understanding.

4 Q Okay. But, if you're working a tax case, there's specific investigative steps
5 that need the okay or approval of the Tax Division before you can initiate, correct?

6 A That's my understanding.

7 Q Okay. Would you agree that someone who has ultimate authority does not
8 require someone else's permission to act with regard to the matter over which they have
9 ultimate authority?

10 A Again, I didn't need anybody's permission. I made the decision. From my
11 perspective, the Tax Division was more than comfortable with me making the decision.

12 Q Okay.

13 A I think they wanted me to be the one making the decision.

14 Q Okay.

15 A And, in this case, I never experienced a situation where I ran into any issues
16 with respect to Tax Division approval. If I had, I would have dealt with it.

17 Q Okay. So you believe you had the ultimate authority over the Tax Division
18 officials in this instance?

19 A I believe I was the decisionmaker in the case, as I said in my opening
20 statement.

21 Q Okay. So, even if the Tax Division disagreed, you felt that you could have
22 proceeded anyway?

23 A If Tax Division -- if we came to an impasse -- which, as I said, didn't happen in
24 this case -- and I felt that my position was the one I wanted to pursue, and I felt that my
25 course of action was the appropriate one, I could have appealed to the Deputy Attorney

1 General or the Attorney General.

2 Q I mean, the whistleblowers testified that there were a series of
3 disagreements over, you know, whether the 2014 and 2015 -- the 2014 and 2015 tax
4 years, by the way, with Hunter Biden are pretty crucial years because that's all the
5 Burisma income. That's all the income that flowed from the official acts of the former
6 Vice President.

7 And so, 2014 and 2015, those tax years were crucial to the Hunter Biden
8 prosecution. Isn't that correct?

9 A Again, that's a matter you know I can't comment on, and I shouldn't be
10 commenting on because it implicates the investigation and my ongoing litigation.

11 Q And we heard from the whistleblowers that, during the course of the
12 investigative work, the Tax Division and everyone prosecuting it that was on the
13 prosecution team was in favor of moving forward on the 2014 and 2015 tax years until
14 they weren't. Are you aware of that?

15 A I'm not going to comment on that. That's deliberative process. There will
16 come a time, however, when I look forward to having the opportunity in the submission
17 of a report to address matters such as the one you just spoke to.

18 Q Okay. Are you aware of the special agent report that was prepared by
19 Mr. Ziegler?

20 A I am aware that IRS prepared a report.

21 Q And do you remember when that was?

22 A I believe the report was completed in early 2022, I believe. That's my best
23 recollection.

24 Q And, as we understand it, there was a series of meetings in the fall of 2021
25 with everyone on the prosecution team -- the assistant United States attorneys in your

1 office, you were involved, the Tax Division officials were involved, FBI officials were
2 involved, IRS investigators were involved -- in the fall of 2021 about how to proceed on
3 charging Mr. Biden. Do you remember that?

4 A No, I don't.

5 Q Okay. And, from that, the special agent report resulted -- and Mr. Ziegler
6 testified that, after meetings in October of 2021, he left that meeting with the
7 understanding that he was to prepare the first draft of the special agent report, and he
8 began that over the November timeframe of 2021. Is that your understanding?

9 A I have no idea what Mr. Ziegler's understanding was, nor could I speak to it,
10 nor should I be speaking to it, given the scope of my testimony and the implications to the
11 investigation and the deliberative process.

12 Q But you're aware a special agent report was prepared in this case, correct?

13 A As I said a moment ago, yes, I am aware a special agent report was prepared,
14 and as you have suggested, that's something that apparently should be prepared by the
15 special agent.

16 Q Okay. And you indicated that it was finalized in the beginning part of 2022,
17 correct?

18 A That's the best of my recollection.

19 Q Which was right around the same time that you initiated communications
20 with Mr. Carlin and Mr. -- and ultimately Mr. Weinsheimer, right, and then Mr. Graves?

21 A It is right about the time, or I initiated contact sometime after that.

22 Q Okay. So, before you initiated contact with Mr. Carlin and
23 Mr. Weinsheimer, the team had reached a consensus that that was what it was going to
24 do, correct?

25 A Before I reached out, as I mentioned a moment ago, the special agent's

1 report had been completed.

2 Q Okay. What was the next step after the special agent report was
3 completed?

4 A What do you mean what was the next step? I'm not sure -- I want to make
5 sure I fully understand your question.

6 Q Well, the special agent -- the IRS prepared a special agent report, correct?

7 A Yes.

8 Q And the next step, as we understand it, was that report was analyzed by DOJ
9 officials both in the Tax Division and in your office, correct?

10 A I'm not going to talk about the review, analysis of that report, or any other
11 report that would necessarily get into the deliberative process. That's something I
12 shouldn't be addressing.

13 Q Okay. Was a memo prepared subsequent to the receiving of the special
14 agent report by the Tax Division lawyers?

15 A I'm not going to talk about any memoranda that was prepared during the
16 course of this investigation. That would entail deliberative process.

17 Q Okay. But, before you called Mr. Graves, was there any disagreement
18 about your plan to call Mr. Graves and to proceed in D.C.?

19 A Again, that would entail discussions regarding deliberative process among
20 prosecutors, agents, others. So, no, it's not a matter I can discuss.

21 Q Okay. At that point in time, had the Tax Division given you discretion to
22 move forward on all the tax years or just 2014 and 2015?

23 A Again, those are matters that are related to the deliberative process, go to
24 the investigation, and are matters that, at this point in time, I'm just not in a position to
25 discuss. I would expect that I would be in a position at the conclusion of our

1 investigation where I can address it in the submission of the report.

2 Q Okay. I'm going to turn to the letter that we marked as exhibit 1, the June
3 7th letter. And this is your first letter to Mr. Jordan.

4 Initially, Mr. Jordan had written the Department, and we were a little surprised
5 that you replied to Mr. Jordan's initial letter. Could you help us understand how that
6 came to be?

7 A Mr. Jordan's letter -- I can't really get into the particulars -- the who, what,
8 when, and where -- because, again, that gets into deliberative process in responding to
9 the chairman's letter.

10 But I'd say that these were matters that clearly addressed circumstances, given
11 the case I thought was being referenced, and the questions posed matters within my
12 purview. So it seemed appropriate for me to respond.

13 Q Okay. So did the Department ask you to respond, or did you ask the
14 Department if you could respond?

15 A There were discussions. Again, I don't want to get into the particulars, but
16 there were discussions with members of the Department about the response.

17 Chairman Jordan. We actually sent two letters. We sent a letter in February to
18 the Attorney General, who didn't respond. He didn't respond. You didn't respond.
19 No one responded. And then we sent the letter on May 25th to the Attorney General
20 that you responded to.

21 And I guess what Steve is asking is, did the Attorney General call you up and say,
22 "Hey, David, I want you to respond to this letter"? How did that work?

23 Mr. Weiss. He did not.

24 Chairman Jordan. Who told you to respond?

25 Mr. Weiss. No one told me to respond. As I said --

1 Chairman Jordan. Well, how did you know -- if the letter didn't go to you, how
2 did you find out?

3 Mr. Weiss. The letter was shared with me because -- well, I shouldn't say. I
4 don't know. The letter was shared with me because it seemed to concern a matter with
5 the Hunter Biden investigation. So it was shared with me.

6 And there were discussions with members from ODAG and others. And I agreed
7 to send the letter -- I agreed to sign the letter. And --

8 BY MR. CASTOR:

9 Q So you didn't write the letter?

10 A Look, I --

11 Q Your office didn't write it, though?

12 A No, that's not true. I'm not going to get into the particulars because it's a
13 deliberative process.

14 But, as you guys have noted, I had never previously responded to a letter from the
15 chairman. I wasn't going to sign off on any communication with Congress that I didn't
16 fully endorse. So these are matters that I addressed that I was comfortable saying in
17 response to the chairman's letter.

18 Q Okay. Are you familiar with the Linder Letter?

19 A Am I familiar with it?

20 Q Yeah.

21 A I mean, I know it's referenced here.

22 Q But, before this, did you know anything about the Linder Letter? I mean,
23 this is pretty arcane.

24 A I wasn't intimately familiar with the Linder Letter.

25 Q Of course not. Of course not. Unless you're involved with congressional

1 investigations, the Linder Letter is not something that really anybody knows about, right?

2 You know, it's --

3 A I don't know that. But I'm telling you, I wasn't intimately familiar with the
4 Linder Letter.

5 Q Okay. And there's all sorts of, you know, text in here about the Linder
6 Letter stuff.

7 Is that the first time you became familiar with the Linder Letter?

8 A I'm not going to get into the deliberative process.

9 But my understanding was, whether it was the Linder Letter or any other aspect
10 referenced here, these are matters that speak to investigative oversight, congressional
11 responsibilities. It was certainly part of the education and something that is
12 appropriately addressed when responding to --

13 Q I mean, the Linder Letter is a list of, like, every reason the Department can
14 think of not to reply to Congress. Is that a fair assessment?

15 A I'm not going to characterize it. My intention wasn't -- look, I was
16 responding for the first time.

17 Q Right.

18 A I wasn't intending to offer a response that was nonresponsive.

19 Q Right. I mean, anytime Congress asks the Department something, they've
20 got, like, a menu of, like, a million reasons they can't give us the answers we want. Are
21 you aware of that?

22 A I am not -- I am not fully conversed in the exchange of the letters Congress
23 writes and the back-and-forth between the Department and Congress, and I shouldn't
24 say.

25 Chairman Jordan. Our letter goes to the Main Justice. It goes to the Attorney

1 General, and then someone shares it with you. Who shared it with you? How did you
2 find out?

3 Mr. Weiss. I can say that I had -- I spoke to others, but, again, I don't want to get
4 into the particulars because it will get in -- necessarily get into the deliberative process.

5 Chairman Jordan. Well, someone had to -- like, it just didn't, like, appear.
6 Someone had to say, like, "Hey, Mr. Weiss, we have this letter regarding a case that we
7 think you're dealing with," and then there's a response put together that you sign off on.

8 Mr. Weiss. There's a response that was prepared that I signed --

9 Chairman Jordan. Was it prepared by Main Justice, or was it prepared by the
10 U.S. Attorney's Office in Delaware?

11 Mr. Weiss. I will say, globally, it was prepared by the U.S. Attorney's Office in
12 Delaware.

13 Chairman Jordan. What does that mean?

14 Mr. Weiss. That means that it was generated by the U.S. Attorney's Office in
15 Delaware.

16 Chairman Jordan. With consultation from the people at Main Justice?

17 Mr. Weiss. People -- again, now we're getting further and further into the
18 deliberative process, and I'm not going to do that.

19 I'm saying that it was, as I said, prepared primarily in my office, and I signed the
20 letter. The first time signing a letter to the chairman or anyone else affiliated with
21 Congress, so I wasn't going to do it until and unless I was fully comfortable.

22 Chairman Jordan. You know, the first sentence sort of says it all: "The May
23 25th letter to Attorney General Garland was forwarded to me."

24 Mr. Weiss. Yes.

25 Chairman Jordan. So someone gave it to you.

1 Mr. Weiss. Yes.

2 Chairman Jordan. "With a request that I respond."

3 So they said you're going to -- so Main Justice said, "Hey, Mr. Weiss, we got this
4 letter. We don't want to respond. We're giving it to you. You write them back."

5 Mr. Weiss. Forwarded to me with the request that I respond. I was asked to
6 respond. Nobody directed me. Nobody ordered me. Nobody -- you know, so I can't
7 endorse that aspect of things.

8 Chairman Jordan. Okay.

9 BY MR. CASTOR:

10 Q And did they give you all the Linder Letter lingo?

11 A Again, as part of the deliberative process, I became more familiar than I
12 historically had been with the Linder Letter.

13 Q Right. I mean, ordinarily, U.S. Attorneys don't engage with us. I mean, we
14 frequently will write U.S. Attorneys and ask them questions about important matters,
15 and --

16 Mr. Ivey. That was the old days.

17 BY MR. CASTOR:

18 Q -- you know, almost uniformly, we get a letter back, or we don't get a letter
19 back. Like, you know, in February, we didn't get a letter back. We get a letter back
20 from the Justice Department thanking us for our interests and so forth.

21 So the fact that you responded to this letter was remarkable, and so we're just
22 curious how that came to be.

23 A Again, I think I've tried to address it as best I can.

24 Q Okay. In the letter, you asserted, "I have been granted ultimate authority
25 over this matter, including responsibility for deciding where, when, and whether to file

1 charges and for making decisions necessary to preserve the integrity of the prosecution
2 consistent with Federal law, the principles of Federal prosecution, and departmental
3 regulations."

4 Was that something that you added in the letter or your staff, or was that
5 something that emanated from Main Justice?

6 A That came from us. The District of Delaware.

7 Q Okay. Can you tell us at least what offices were involved with the
8 preparation of that? We have the Office of Legislative Affairs; you said the Office of
9 Deputy Attorney General, your office in the District of Delaware. Any other components
10 of the Department involved in that?

11 A No, not -- no.

12 Q Okay. So nobody from OLC?

13 A I'm unaware of anyone else being involved in this.

14 Q Okay. And did you have telephone calls about it? Was it email
15 exchanges?

16 A I'm not going to get into particulars.

17 Q Okay. Were there email exchanges?

18 A I don't recall, and I'm not going to get into specifics.

19 Q Okay. So you don't even know the answer if you were allowed to answer?

20 A I'm allowed to answer.

21 Q Okay.

22 A But it doesn't mean that it's appropriate that I answer. But I'm permitted
23 to answer, but it goes to deliberative process. So nobody is precluding me from
24 responding.

25 Q So you can answer my question.

1 Were there emails?

2 A No. I can't answer it because it gets into the deliberative process of
3 responding to the letter.

4 Q Okay. So you're saying that you know the answer to the question, but you
5 just are not going to give me the answer?

6 A I'm saying that it's part of the deliberative process, and I'm not going to dive
7 into the particulars.

8 Q All right. You sent a subsequent letter to us on June 30th. We marked
9 that as exhibit 2.

10 Did the decision to have you send a second letter to Congress on June 30th -- did
11 that follow the same process as the first letter in terms of the Department forwarding you
12 information? Or how did it come to be that you responded on June 30th to the
13 chairman?

14 A I don't have the letter that the chairman issued the second time. I don't
15 know if it was directed to me. I just don't recall off the top of my head. But, certainly,
16 yeah, in the general sense, without getting into particulars --

17 Q I can give it -- it's in response to the June 22nd letter?

18 A All I was interested in was whether it was addressed to me.

19 Q Right.

20 Chairman Jordan. It was.

21 BY MR. CASTOR:

22 Q It was.

23 A Yeah. So it would have sort of short-circuited a bit. But otherwise, yes.

24 Mr. Castor. So we'll mark it as exhibit 4 for you.

25 [Weiss Exhibit No. 4]

1 Was marked for identification.]

2 BY MR. CASTOR:

3 Q Your June 30th letter states -- this is in response to your June 22nd letter,
4 and this is responding to Mr. Jordan.

5 The second paragraph -- I'll call your attention to the second paragraph: "At the
6 outset, I would like to reaffirm the contents of the June 7 letter drafted by my office and
7 reiterate that I'm not at liberty to provide the materials you seek. The whistleblowers'
8 allegations relate to a criminal investigation that is now being prosecuted in the United
9 States District Court for the District of Delaware."

10 And the question I have for you is, as of June 30th, 2023, you had decided to pivot
11 back to Delaware for prosecuting this case?

12 A As of June 30th --

13 Q 2023.

14 A -- 2023, there had been a filing in the District of Delaware.

15 Q Okay. And what was that filing?

16 A A filing of a -- an information and plea agreement with respect to the tax
17 matters and a diversion agreement with respect to the firearm charges.

18 Q Okay. Going down to the last paragraph on the first page, starting with the
19 last sentence on the page, "I stand by what I wrote and wish to expand on what this
20 means."

21 A Yes.

22 Q And flipping over to the second page, "As the United States Attorney for the
23 District of Delaware, my charging authority is geographically limited to my home district.
24 If venue for a case lies elsewhere, common departmental practice is to contact the United
25 States Attorney's Office for the district in question and determine whether it wants to

1 partner on the case. If not, I may request Special Attorney status from the Attorney
2 General pursuant to 28 United States Code 515. Here, I have been assured that, if
3 necessary after the above process, I would be granted 515 authority in the District of
4 Columbia, Central District of California, or any other district where charges could be
5 brought in this matter."

6 Isn't it also true that your lawyers could have been afforded SAUSA status?

7 A SAUSA status solely as -- in a supporting way to the District of Columbia?

8 Q Well, it's our understanding -- and maybe I misunderstood what you said
9 earlier -- that one of the ways you could have prosecuted a case in D.C. was to have
10 Mr. Graves appoint your lawyers Special Assistant United States Attorneys for the District
11 of Columbia to prosecute the case?

12 A I don't know -- I don't recall describing it that way.

13 Q Okay.

14 A You know, I didn't envision a circumstance in which this would proceed
15 without me continuing to be involved in a supervisory way. Regardless of whether D.C.
16 chose to partner or not, my expectation and intention was that I would continue to
17 participate in a supervisory capacity as the case moved forward.

18 Q Okay. Do you agree that the June 7th letter and the June 30th letter are
19 sort of describing two separate situations?

20 A No, I don't.

21 Q Okay. Because, in the June 7th letter, you indicate that you've been
22 granted ultimate authority over this matter, including the responsibility for deciding
23 where, when, and whether to file charges.

24 A Uh-huh.

25 Q But, in the June 30th letter, you walk us through how you have got to confer

1 with, you know, the various U.S. Attorneys in the different districts.

2 A Yeah.

3 Q Could you help us understand the difference there?

4 A Yeah. I don't see it as an inconsistency. It doesn't mean I don't have the
5 authority. And, again, you read it the first time. You didn't this last time.

6 In the June 7th letter, I say -- I talk about my authority, and I say "consistent with
7 Federal law, the principles of Federal prosecution, and departmental regs," which means
8 I'm not operating in a vacuum.

9 There's a basic structure and a framework that, as a U.S. Attorney, I'm operating
10 within. And that means that, if I go outside my jurisdiction, I've got to do certain things.
11 And, in this situation, if I go outside the jurisdiction, I'm describing in the second letter the
12 process that I adhered to.

13 It doesn't mean that anybody blocked my authority or prevented me from
14 pursuing charges. I'm just trying to describe the process that references the consistent
15 language in the June 7 letter.

16 Q But, in the June 7th letter, if you had been granted indeed ultimate
17 authority, you didn't need to ask Matthew Graves whether he wanted to partner with
18 you, correct?

19 A There would have never been a situation where I'm granted ultimate
20 authority and all the processes that are part of DOJ's framework and the Department
21 within which I operate are -- suddenly disappear. I had the authority, but still, I had to
22 proceed consistent with departmental processes. I'm describing one of those processes
23 here.

24 Nobody blocked me. Nobody prevented me. I still had the authority, and I had
25 the ability to make the decision.

1 [11:04 a.m.]

2 BY MR. CASTOR:

3 Q But on June 7th you hadn't been afforded 515 authority. And so you didn't
4 have ultimate authority to bring a case in D.C., correct?

5 A On June 7th, I knew, because I had the conversations that I've previously
6 described with Carlin and Weinsheimer where they said --

7 Q Right.

8 A -- if you want to proceed in D.C., you have the authority to do so, and you
9 can file whatever charges you deem appropriate.

10 Q Right.

11 A To me, it didn't require that I then do it. It had been represented to me
12 that I had the authority. So it was a done deal, as far as I was concerned.

13 Q Right. But the Attorney General would've had to confer that authority to
14 you. I mean, you didn't have it at that time.

15 A The Attorney General --

16 Q You were advised that you'd be getting that authority if you really wanted it.

17 A No. I was advised at that time, if I decided to proceed in D.C., I had the
18 authority to do so. That's the way -- I'm telling you what I understand, what I believed.

19 Q So you didn't need a 515 designation from the Attorney General?

20 A No. In order to put this into place, in order to execute on the
21 representation that I've just described a couple times --

22 Q Right.

23 A -- that would've required an order signed, and that would've ultimately
24 conferred the authority. Yes, there would've been a documentation of the --

25 Chairman Jordan. So you go to D.C., you ask them to partner, and they say no.

1 Then you have the meeting with Carlin and Weinsheimer at Main Justice, and they said,
2 you can have the authority if you want it. But you never asked for it. And yet you
3 conveyed to us you had it all along.

4 Mr. Weiss. Yeah, they con- -- first of all, it wasn't a meeting in D.C.; it was a
5 phone call. And I had -- the conver- --

6 Chairman Jordan. But after you had the conversation with Weinsheimer and
7 Carlin -- you meet with them, phone call, email, whatever -- phone call, you meet with
8 them, or you talked to them --

9 Mr. Weiss. I talk to them. They say, if you want to proceed in D.C., you have
10 the authority to move forward. That's correct.

11 Mr. Armstrong. Is there any written affirmation of that, or just the phone call?

12 Mr. Weiss. At that time?

13 Mr. Armstrong. Yeah.

14 Mr. Weiss. No.

15 BY MR. CASTOR:

16 Q Before our hour's up, I want to refer you to exhibit 3, which is the third
17 letter. This is a letter you sent to Senator Lindsey Graham.

18 A Yes. Yes.

19 Q You state, "To clarify an apparent misperception and avoid future confusion,
20 I wish to make one point clear: in this case, I have not requested Special Counsel
21 designation pursuant to" the CFR -- I'm paraphrasing here. "Rather, I had discussions
22 with Departmental officials regarding...appointment under...515, which would have
23 allowed me to file charges in a district outside my own without the partnership of the
24 local U.S. Attorney."

25 What did you mean when you wrote that you would be granted this authority if it

1 proved necessary? And this is on July 10th.

2 A Again, this is the same back-and-forth we've been having -- I had with you,
3 counsel --

4 Q Right.

5 A -- and with the chairman, where, if I decided to move forward -- it was just a
6 question of whether I decided to move forward --

7 Q Right.

8 A -- and where that would occur.

9 Q Right.

10 A That's all that the focus was, in my mind.

11 Q Uh-huh.

12 A I wasn't -- the authority, to the best of my belief, that had been resolved. I
13 was going to have the authority; just a question of where I was going to move forward
14 with respect to that.

15 Q Right. But you agree that the term "would be" refers to a plan or intention
16 to do something in the future, correct?

17 A I hadn't made a decision as to where the case would proceed or how the
18 case would proceed. The focus --

19 Q And if it --

20 A The focus was on the case.

21 Q Okay. And the words "if it proved necessary" refers to a condition that had
22 not been fulfilled at the time you wrote the letter, correct?

23 A The "if it proves necessary" refers to the fact that, as I've described on
24 multiple occasions now, I had the conversation, I had previously requested the authority,
25 and it was made clear to me, if you decide to move forward, you have the authority to do

1 so and to bring whatever charges you deem appropriate.

2 Q Right.

3 A So, to me, as I said a moment ago, that issue had been resolved.

4 Q By the time we had this letter series, though, you had already asked
5 Matthew Graves to partner, you had asked Martin Estrada to partner, and both had said
6 no.

7 And so, at that point in time, it's hard for us to understand, as we sit here today,
8 how didn't it prove necessary? I mean, this is before you were afforded, you know,
9 Special Counsel status in August of 2023. You write, you know, "if it proved necessary."

10 A Yes, if -- as I said, if the decision was made to proceed, I knew I had the
11 authority to do so. So, you know, why didn't it prove necessary? The question speaks
12 to deliberations --

13 Q Right.

14 A -- charging decisions. Those are things I just can't get into.

15 Q But in, you know, July of 2023 and at the end of this letter series that we're
16 discussing, you know, over a year had elapsed since you'd gone to D.C. and D.C. said no,
17 you'd gone to Los Angeles and Los Angeles said no.

18 And so it's just hard for us, as we sit here today, to understand how, in fact, you
19 did have ultimate authority to bring a case wherever you, you know, deemed fit.

20 A Yeah. I appreciate your question. I can't get into the specifics of the
21 charging decision or the deliberative process. I reaffirm what I've said about my
22 authority --

23 Q Uh-huh.

24 A -- and that's all I can --

25 Q Okay.

1 A I don't want to be too repetitive.

2 Q But you do understand that a potential appointment -- a potential
3 appointment as of July of 2023 indicates that you had not been afforded that authority,
4 correct, under 515?

5 A I'm sorry. Could you -- I didn't understand your question. A potential?

6 Q A potential appointment as a Special Attorney or as a Special Counsel, as you
7 reference in the Lindsey Graham letter, that is -- you know, indicates that you had not
8 been actually appointed at that point in time.

9 A I had not -- the execution of the authority had not taken place, that's correct.
10 But it wasn't a function of the authority or lack thereof; it was the decision as to where or
11 how to proceed.

12 Q Okay.

13 The hour's up.

14 Chairman Jordan. We'll take a 5-minute break, 10-minute break, whatever you
15 guys need.

16 The Reporter. Off the record?

17 Ms. Nabity. Yes.

18 Mr. Castor. Yes.

19 [Recess.]

20 [REDACTED]. It is 11:27. We can go back on the record.

21 Special Counsel Weiss, thank you again for joining us today.

22 Mr. Weiss. Sure.

23 EXAMINATION

24 BY [REDACTED]:

25 Q At the start, I just want to clarify a couple things from the last round.

1 You're appearing here today voluntarily, correct?

2 A I am.

3 Q And nobody from the Department is preventing you from answering any
4 question, correct?

5 A They are not.

6 Q Okay.

7 At the end of the last round, there was some conversation about whether it would
8 prove necessary for you to seek 515 authority. Do you recall that conversation?

9 A I do.

10 Q Okay. I want to explore that a little bit further.

11 Before I do, could you briefly describe in layperson's terms what the term "venue"
12 means?

13 A "Venue" is where -- there has to be a nexus with jurisdiction to file charges.
14 And, in any given case, there are -- depending upon the nature of the case, there are
15 certain facts that tell you where venue lies.

16 And, as counsel for the majority explored, there are a number of factors that will
17 determine appropriate venue in a tax case. It could be the residence of the taxpayer, it
18 could be where the tax returns are filed, things of that sort.

19 Q And if prosecutors do not bring a case or a charge in an appropriate
20 jurisdiction or an appropriate venue, then the court can dismiss the charges, correct?

21 A Certainly, I would expect, as a general matter, a defense counsel to seek
22 dismissal. I don't know that that would terminate the prosecution, but certainly could
23 give rise to motion to dismiss.

24 Q Understood.

25 And all of that said, though, a defendant can waive his or her right to challenge

1 venue as part of a plea agreement, correct?

2 A A defendant can waive venue.

3 Q And if a defendant has agreed to waive venue as part of a plea agreement,
4 then the prosecutor would not need to seek authority to bring charges in any other
5 jurisdiction. Is that correct?

6 A A prosecutor would not seek to, yeah, to receive approval to bring charges in
7 that jurisdiction in which venue had been waived, yes.

8 Q All right.

9 I want to move on. And we talked about your background at the very beginning
10 of the last hour. I want to go through that in a little bit more detail.

11 So can you say again, when did you first join the District of Delaware United States
12 Attorney's Office?

13 A I started -- originally? A long time ago. I started at the U.S. Attorney's
14 Office in Delaware in '86.

15 Q And what was your role? What kind of cases did you prosecute?

16 A I was an Assistant United States Attorney, and I prosecuted drug cases,
17 firearm cases, public corruption cases, economic crime cases, tax cases. Whatever the
18 district had to offer I was more than happy to work on.

19 Q And how long were you a career prosecutor during your first stint with the
20 District of Delaware's office?

21 A About 3-1/2 years.

22 Q Okay. And then you left the U.S. Attorney's Office, correct?

23 A I did.

24 Q And at some point did you return to the U.S. Attorney's Office?

25 A I did.

1 Q When was that?

2 A That was in 2007.

3 Q And what led you to return to the U.S. Attorney's Office in 2007?

4 A I had been in private practice for some time, and then I went with a client of
5 mine and was in private industry -- both positive experiences, experiences that I enjoyed.
6 But public service is different.

7 Q And when you returned in 2007, who was the U.S. Attorney in the District of
8 Delaware?

9 A Colm Connolly.

10 Q And who was Mr. Connolly an appointee of?

11 A Mr. Connolly was -- he was an appointee -- I don't know which President. A
12 Republican -- a Republican President.

13 Q Is it fair to say, if he was the U.S. Attorney in 2007, he was likely an
14 appointee of President George W. Bush?

15 A Yes.

16 Q Okay.

17 A I wasn't tracking.

18 Q When you returned to the District of Delaware in 2007, what was your role?

19 A When I returned, I was FAUSA and I was chief of the Civil Division.

20 Q And, for the record, what is FAUSA?

21 A First Assistant United States Attorney. Sorry for that.

22 Q And what is the role of the FAUSA?

23 A The FAUSA is the number-two -- at least as our office is structured and has
24 historically been structured, the FAUSA is the number-two in the District of Delaware.

25 Q Okay.

1 And then you stayed at the District of Delaware for a period of time, correct?

2 A Until now.

3 Q Okay. So, in fact, you returned to the District of Delaware under President
4 George W. Bush; you stayed throughout President Obama; and now you've stayed
5 through President Trump and, again, President Biden, correct?

6 A That is correct.

7 Q Okay.

8 In the earlier hour, you were asked about the blue-slip process and whether you
9 had been recommended by the Senators from Delaware.

10 As part of the process for being nominated as U.S. Attorney, did you have any
11 conversations with the White House Counsel's Office?

12 A I don't recall whether I did, in all candor.

13 Q Did you have conversations with the Justice Department?

14 A Yes, I did.

15 Q And do you recall who you had conversations with?

16 A I would've been interviewed by -- I was definitely interviewed by Rod
17 Rosenstein. I was interviewed by Scott Schools, I believe, and a group of folks in a
18 conference room.

19 Q And Mr. Rosenstein and Mr. Schools were both Republican appointees,
20 correct?

21 A Mr. Rosenstein was. I just don't know about Scott Schools. I thought
22 Mr. Schools was the senior career official in the Department at that time. I have no idea
23 who he was appointed by.

24 Q Okay.

25 And then you were ultimately nominated to serve as U.S. Attorney by

1 President Trump, correct?

2 A I was.

3 Q Okay.

4 I want to introduce as exhibit 5 -- is that right? -- exhibit 5, the November 17,
5 2017, statement from President Trump announcing your appointment.

6 [Weiss Exhibit No. 5

7 Was marked for identification.]

8 BY [REDACTED]:

9 Q And I'll give you a minute to review. I can tell you, we're going to look at
10 the first paragraph on the first page. And I think your nomination is actually on the
11 second page.

12 A Okay.

13 Q Are you ready to proceed?

14 A I think so. It appears that I got most of my background information correct.

15 Q So this statement from President Trump actually announces the nominations
16 of four U.S. Attorneys and four U.S. Marshals. And, as I said, your name is on the second
17 page of this announcement as printed.

18 I want to read from the first paragraph, which relates to all of the individuals who
19 are nominated on November 17th, you and the others.

20 In relevant part, it says, "The United States Attorney serves as the chief Federal
21 law enforcement officer within his or her Federal judicial district." It then describes the
22 role of the U.S. Marshals. And then it says, "These candidates share the President's
23 vision for 'Making America Safe Again.'"

24 Is this consistent with your recollection of why you were nominated for this role
25 by President Trump?

1 A I can't really speak to that. From -- I can't say why I was nominated. I
2 really don't know, I mean, other than I believe I was a credible candidate in whom the
3 folks that I interacted with had confidence that I could perform the job. That's all I could
4 say, based on my understanding.

5 Q Okay.

6 Is it fair to say that you've served under both Republican and Democratic
7 administrations?

8 A I have.

9 Q And, in fact, for the majority of your time at the U.S. Attorney's Office, you
10 were a career prosecutor, not a political appointee, correct?

11 A That is correct. I consider myself first and foremost a prosecutor.

12 Q Okay. During the course of your career, have you tried cases before a jury?

13 A Yes.

14 Q Approximately how many cases have you tried before a jury?

15 A I think, the best I can recall, as I described in my background work-up,
16 somewhere in the neighborhood of 17 or so cases.

17 Q Okay. And you've supervised many more cases that have been tried before
18 juries; is that fair to say?

19 A I have.

20 Q And so you have a good understanding of the considerations a prosecutor
21 might take into account when considering whether to bring a case before a jury. Is that
22 fair to say?

23 A I hope that I do.

24 Q Okay.

25 I want to move on to your interactions with the U.S. Attorney's Office in D.C.

1 and -- yeah, focus on the U.S. Attorney's Office in D.C.

2 You said that you first approached Mr. Graves in either late February or early
3 March of 2022, correct?

4 A The conversation I had with Mr. Graves, I believe, was in early March, yes.

5 Q Okay. And when you approached Mr. Graves, did you ask him to provide
6 administrative support as you were exploring the possibility of bringing charges in the
7 District of Columbia?

8 A I don't know whether I did or not, to tell you the truth. It was one
9 conversation, 5 or 10 minutes, and I don't recall the particulars with respect to the need
10 for administrative support.

11 Q Was it ever a concern of yours that Mr. Graves might not provide you with
12 administrative support if you chose to move forward in the District of Columbia?

13 A Ultimately, no, it wasn't. I understood, at the conclusion of the process,
14 not necessarily from Mr. Graves, but that we would have a logistical support if we were to
15 proceed.

16 Q And what do you mean by "logistical support"?

17 A I mean that we were -- we were interested in someone who could work with
18 us from an administrative standpoint, somebody who could help us in working with the
19 court and the processes that are required, the practices, local practice, things of that
20 nature -- provide some guidance as to the local logistics.

21 Q And was it your impression that Mr. Graves and his team would, in fact,
22 provide you with that support?

23 A It was my understanding that D.C. would've supported us in that regard
24 generally.

25 Q Okay.

1 There were some questions earlier about Mr. Graves's decision not to join the
2 case, or not to have his office join the case.

3 You said that you provided him with the information -- or your team provided him
4 with the information they needed so he could make an informed decision. Do you recall
5 saying that?

6 A I recall saying something along those lines, yes.

7 Q And can you explain what you mean by "so he could make an informed
8 decision"?

9 A Well, not -- I wasn't directing this to Mr. Graves per se. I don't know
10 who -- I mean, I know that career folks in Mr. Graves's office and my own office
11 interacted and discussed things. I don't know anything about the particular
12 decision-making process itself.

13 Q Understood. But when you're saying "informed decision," that means that
14 you thought that it was up to Mr. Graves to make the choice, right? It wasn't -- you
15 weren't directing him to make any particular decision.

16 A I wasn't directing him to make a decision. My folks were trying to provide
17 them with what we determined -- what information was necessary in order to make a
18 decision. Of course, that couldn't have been anything like the information that we had
19 in our possession that we had developed over the course of 2-plus years or more.

20 Q What do you mean by that?

21 A I mean that we had been conducting an investigation for an extended period
22 of time, so we weren't about to share everything that we had.

23 Q Okay.

24 When you approached Mr. Graves, were you under the impression that you
25 needed Mr. Graves to join the case in order to proceed in the District of Columbia?

1 A I was not under the impression either way that I needed -- no. I wasn't
2 asking for his permission or anything along those lines.

3 Q Okay.

4 Did Mr. Graves tell you why he didn't want to join the case?

5 A I never had a conversation with Mr. Graves about that. I had the one
6 conversation when I reached out, told him what we were interested in doing, and
7 basically inquired as to whether his office would be willing to join us or participate in this
8 case. We never had a subsequent conversation. That was done at the line level.

9 Q Okay.

10 When the decision was relayed to the line officials, did you have any reason or did
11 your team have any reason to believe that Mr. Graves's decision not to join the case was
12 motivated in any way based on partisan, political considerations?

13 A I don't have -- I have -- I don't know what the basis of the decision was in
14 that regard, no. I understand that they chose not to proceed. I don't want to get into
15 particulars, as I said to counsel. That involves deliberative-process types of
16 consideration, so I'm not going to speak to that.

17 Q Did Mr. Graves take any steps to block or prevent you from bringing charges
18 in the District of Columbia?

19 A No. He wasn't in a position to block me.

20 Q Did anyone on Mr. Graves's staff take any steps to block or prevent you from
21 bringing such charges?

22 A No.

23 Q And I think you said you did not believe that you needed permission from
24 Mr. Graves to move forward in the District of Columbia, correct?

25 A That's correct.

1 Q In the earlier hour, you were asked some questions about your interactions
2 with the Tax Division, and I want to return to those questions.

3 In this case, did you welcome the Tax Division's assistance?

4 A I did.

5 Q Why was that?

6 A Because they're the experts in tax matters. They have the experience; they
7 have the expertise. And, from my perspective, the prosecution team would only benefit
8 from their input.

9 Q Is it fair to say that tax cases can be uniquely complicated?

10 A Yeah. I'm not a tax expert, but yes. They're a particular type of
11 white-collar case, and, like other white-collar cases, they can be complicated, involving
12 extensive documentations, tax returns, things of that nature. So, yes, they can be
13 complicated.

14 Q Okay. And the Tax Division handles these kind of cases all the time,
15 correct?

16 A That's my understanding, yes.

17 Q Okay.

18 Are you familiar with the term "sufficiency of the evidence"?

19 A Yes.

20 Q In layman's terms, what does that mean?

21 A That means that you have to have a certain modicum of evidence in order to
22 proceed with charges. There has to be sufficient evidence to move forward.

23 Q Is it fair to say that, in tax cases, in particular, which can, as you've just said,
24 be uniquely complicated, Tax Division prosecutors tend to have more experience in
25 understanding when evidence is likely to be sufficient for purposes of convincing a jury

1 that they've proven charges beyond a reasonable doubt?

2 A I expect that Tax Division prosecutors, because this is the only type of work
3 that they do, would be uniquely qualified to weigh in on all aspects of a tax prosecution,
4 whether it's sufficiency of the evidence or other matters.

5 Q And would that include Tax Division prosecutors having unique expertise in
6 the viability of potential defenses to charges?

7 A Yeah. All aspects of the case. Yes.

8 Q Okay.

9 The comment was made earlier about, I think, Tax Division could approve or deny
10 charges. In fact, the Tax Division has three options, correct? It can approve charges, it
11 can deny charges, or it can grant discretion.

12 A That -- I'm not intimately familiar with all the intricacies of the Tax Division
13 process, but that's my understanding.

14 Q Okay. And when charges are approved, the U.S. Attorney's Office doesn't
15 have any discretion; it has to bring the charges that have been approved, correct?

16 A My understanding -- and, again, I'm no expert -- is, if charges are approved
17 by the Tax Division, the charges are going to proceed. If the U.S. Attorney's Office
18 decides not to be part of the case, Tax Division, on its own, will proceed with charges.

19 Q Okay. And when charges are denied, that means the U.S. Attorney's Office
20 absolutely cannot proceed with charges, correct?

21 A That would be my understanding.

22 Q Unless, obviously, the -- the U.S. Attorney's Office could appeal that decision.

23 A Yeah, I mean -- yes. Again, as I discussed with majority counsel, that's not
24 something that I experienced in this case, but, yes, I was always aware of the fact that if
25 there was a difference of opinion with respect to the appropriateness of charges, that

1 ultimately it's either the ODAG or the AG that makes the call as to whether a case would
2 proceed if there's an impasse between a U.S. Attorney's Office and a component.

3 Q Okay.

4 And, finally, what does it mean when the Tax Division grants "discretion" to a
5 U.S. Attorney's Office over whether to bring charges?

6 A My understanding would be, it's telling the U.S. Attorney's Office that it can
7 decide whether to proceed or not. And then Tax Division, on its own, will decide
8 whether to be part of that case or not.

9 Q Okay. So, in effect, granting discretion gives a U.S. Attorney full
10 decision-making authority over whether to bring those charges. Is that right?

11 A That's my understanding, that, yes, then the U.S. Attorney's Office can
12 decide whether to move forward.

13 Q Okay. In this case, the Tax Division granted your office discretion, correct?

14 A I'm not going to talk about what Tax Division did or did not do in this case.

15 Q Okay.

16 You alluded to this just a minute ago, but if there had been a dispute over whether
17 to bring charges, for example, between line prosecutors at the District of Delaware and
18 line prosecutors from the Tax Division, how do you expect that might've been resolved?

19 A Again, that calls for speculation, and, the way I understood the question, it
20 gets into the particulars of this case, which, for reasons I've discussed previously, I'm just
21 not at liberty to discuss at this point in time. Perhaps at the time of the submission of a
22 report I could address some things like that.

23 Q Okay. But you've said that, ultimately, nothing rose to the level that you
24 felt you needed to intervene. Is that fair to say?

25 A Nothing rose to the level that I felt I needed to intervene in what respect?

1 Q Or that you needed to seek approval from the Deputy Attorney General or
2 the Attorney General to move forward, correct?

3 A I've mentioned -- I have stated that I don't recall a situation in this case
4 where I was at an impasse with Tax Division and we required the participation of the
5 Office of the Deputy Attorney General in order to resolve a difference of opinion as to
6 how to proceed.

7 Q Okay.

8 I want to move on and talk about the letters that you sent to Congress. I know
9 we went through them in some detail in the last hour, but I think we're going to take
10 another spin through them.

11 Before I get into them, though, I do want to introduce the Linder letter. We'll
12 introduce that as exhibit 6.

13 Voice. It's already introduced.

14 [REDACTED]: Is it introduced?

15 Mr. Castor. No, I --

16 [REDACTED]: I don't think it was introduced.

17 Mr. Weiss. No.

18 [Weiss Exhibit No. 6

19 Was marked for identification.]

20 BY [REDACTED]:

21 Q You've seen this letter before, correct?

22 A Which letter?

23 Q The Linder letter.

24 A I have -- I have seen it before.

25 Q Okay.

1 And I just want to make the record clear, this is a letter from Robert Raben, who
2 was the Assistant Attorney General for the Office of Legislative Affairs at the Department
3 of Justice, to the Honorable John Linder, who at that time was the chairman of the
4 Subcommittee on Rules and Organization of the House for the House Committee on
5 Rules.

6 That's what it says on the face of the letter, correct?

7 A That is what it says on the face of the letter.

8 Q What is the date on the Linder letter?

9 A January 27, 2000.

10 Q Okay. So this letter has actually been in effect for 23 years at this point.
11 Is that fair to say?

12 A This letter was written on January 27, 2000. The effectiveness I can't really
13 speak to.

14 Q So my point is, it's not something that was given to you as a new product
15 when you were looking at responding to these letters, correct?

16 A It does not appear to be a new product. As I suggested to counsel, I don't
17 know that I had previously reviewed the Linder letter.

18 Q Okay.

19 Looking at your June 7th letter, which is marked as exhibit 1, you said earlier you
20 wrote -- you signed this letter.

21 A I signed this letter, yes.

22 Q And, in doing so, these are your words, correct?

23 A These -- I am -- yes, these are my words.

24 Q Okay.

25 The first paragraph reads -- I'm sorry, the first full paragraph; I guess it's actually

1 the second paragraph -- reads, "I want to make clear that, as the Attorney General has
2 stated, I have been granted ultimate authority over this matter, including responsibility
3 for deciding where, when, and whether to file charges and for making decisions necessary
4 to preserve the integrity of the prosecution, consistent with federal law, the Principles of
5 Federal Prosecution, and Departmental regulations."

6 Correct?

7 A Correct.

8 Q Your letter specifically notes that your decision and authority are, quote,
9 "consistent with federal law, the Principles of Federal Prosecution, and Departmental
10 regulations." Why was it important for you to include this language in this letter?

11 A As I said previously, it was important because I wanted to make it clear that I
12 have the authority but, like other U.S. Attorneys, I am subject to certain processes.
13 There's a framework within the Department of Justice. I'm not operating in a vacuum,
14 and there are certain requirements that exist with respect to particular actions.

15 Q The reference here to the Principles of Federal Prosecution is a reference to
16 the Principles of Federal Prosecution in the Justice Manual, correct?

17 A Yes.

18 Q And, briefly, for the record, could you explain what the Justice Manual is?

19 A The Justice Manual is a set of rules, regulations, procedures that basically
20 provides guidance to Department of Justice personnel.

1 [11:49 a.m.]

2 BY [REDACTED]:

3 Q Okay. And what are the Principles of Federal Prosecution themselves?

4 A The Principles of Federal Prosecution provide guidance with respect to, in
5 particular, charging decisions. They speak to the proof, that if you're going to proceed
6 with charges, there are certain guidelines that you should look to. And the first section
7 of that deals with sufficiency. The second part of it deals with whether the matter
8 you're pursuing is an appropriate Federal case. And there are factors that attend
9 Federal case analysis.

10 Q Okay.

11 I'm going to introduce as exhibit 7 an excerpt from the Justice Manual, section
12 9-27.000. This is the Principles of Federal Prosecution.

13 [Weiss Exhibit No. 7

14 Was marked for identification.]

15 BY [REDACTED]:

16 Q And we're going to look at the preface, which is section 9-27.001.
17 You've seen this before?

18 A I suspect that I have.

19 Q Under the preface, the fourth paragraph down, it states that the purpose of
20 the Principles of Federal Prosecution -- sorry -- that there are two important purposes for
21 the Principles of Federal Prosecution: quote, "ensuring the fair and effective exercise of
22 prosecutorial discretion...by attorneys for the government, and promoting confidence on
23 the part of the public and individual defendants that important prosecutorial decisions
24 will be made rationally and objectively based on an individualized assessment of the facts
25 and circumstances of each case."

1 Did I read that correctly?

2 A Yes.

3 Q Okay. Taking this clause by clause, what is your understanding of what
4 "ensuring the fair and effective exercise of prosecutorial discretion...by attorneys for the
5 government" means?

6 A It means that we're charged with making decisions based on the applicable
7 facts and the law.

8 Q Okay. In layman's terms, what does "prosecutorial discretion" mean?

9 A All prosecutors have discretion, so they are required to exercise their best
10 judgment based on their experience and expertise in trying to seek a just conclusion of
11 the matter that's before them.

12 Q Why is it important for prosecutorial discretion to be exercised fairly and
13 effectively?

14 A Because prosecutors have tremendous authority whether to pursue a matter
15 that curtails someone's liberty. I mean, we send people to jail. That's a huge
16 responsibility. And prosecutors are required to exercise that discretion in a judicious
17 fashion.

18 Q And so is it fair to say that the Principles of Federal Prosecution, which you
19 cite in your June 7th letter, part of the purpose is to ensure that defendants are treated
20 fairly under the law by prosecutors?

21 A Absolutely. We're trying to defeat -- "defeat" -- to treat everyone, the
22 person in this case or people that we're dealing with in this case and all other matters
23 that we prosecute in my district -- you're trying to treat everyone equally and fairly under
24 the law, yes.

25 Q Okay.

1 And the second clause in the sentence I read earlier says "promoting confidence
2 on the part of the public and individual defendants that important prosecutorial decisions
3 will be made rationally and objectively based on an individualized assessment of the facts
4 and circumstances of each case."

5 What's your understanding of why it's important to promote confidence in the
6 public and in individual defendants in this way?

7 A Well, the rule of law is key. And the rule of law only survives and flourishes
8 if the public believes that folks responsible for enforcing the law are doing that in a fair
9 fashion.

10 Q So is it fair to say that, by noting in your June 7th letter that your authority
11 would be exercised consistent with all relevant laws and regulations and the Principles of
12 Federal Prosecution, you were actually noting that you would be treating this matter in
13 accordance with the guidelines applicable to all Federal cases in order to ensure that
14 prosecutorial discretion would be fairly exercised and the public could have confidence in
15 your decision-making?

16 A That's what we're trying to accomplish, yes.

17 Q Okay. And, in fact, if you were not adhering to the Principles of Federal
18 Prosecution and Federal law and Departmental regulations, you would've actually been
19 treating this matter different than other Federal prosecutions, correct?

20 A Yes. We would only -- we would adhere to the Principles of Federal
21 Prosecution. We're required to. It would be inappropriate to diverge from those basic
22 principles.

23 Q Okay.

24 I want to move on to your June 30th letter, which is exhibit 2.

25 In the prior hour, it was suggested that the June 30th letter and the June 7th letter

1 were somehow inconsistent, and you said you did not agree with that assessment,
2 correct?

3 A I did say that.

4 Q Okay. And, in fact, your June 7th letter states that your authority is to be
5 exercised consistent with Federal law, Principles of Federal Prosecution, and
6 Departmental regulations, and then you reiterate that on your June 30th letter at the
7 bottom of the first page, correct?

8 A I did.

9 Q Okay.

10 And, then, at the top of page 2 of your June 30th letter, you state that your
11 "charging authority is geographically limited to my home district."

12 Can you briefly explain what you meant by that?

13 A Yes. There are 94 U.S. Attorneys around the country. We can't just go
14 gallivanting around and prosecute cases wherever we decide we'd like to do so. We're
15 responsible for our home districts. You know, I am U.S. Attorney for the District of
16 Delaware only, and if I have an interest in pursuing a matter elsewhere, there are certain
17 procedures that have to be followed.

18 Q Okay. And that's true for all U.S. Attorneys, correct?

19 A Yes.

20 Q And that is set by statute and also by Departmental regulations, correct?

21 A Yes.

22 Q Okay.

23 I want to introduce -- actually -- so I want to introduce as exhibit 8 section
24 515 -- sorry. We're going to introduce 28 U.S.C. 515.

25 [Weiss Exhibit No. 8

1 Was marked for identification.]

2 BY [REDACTED]:

3 Q Have you seen this before?

4 A I have.

5 Q Paragraph (a) -- section 515(a) reads, "The Attorney General or any other
6 officer of the Department of Justice, or any attorney specifically appointed by the
7 Attorney General under law, may, when specifically directed by the Attorney General,
8 conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings
9 and proceedings before committing magistrate judges, which United States attorneys are
10 authorized by law to conduct, whether or not he is a resident of the district in which the
11 proceeding is brought."

12 Did I read that correctly?

13 A Yes, I believe you did.

14 Q Okay. 28 U.S.C. section 515 is a Federal statute, correct?

15 A Yes.

16 Q And it describes the process by which a U.S. Attorney, or any other attorney
17 for that matter, can be granted authority to bring charges outside of their district,
18 correct?

19 A Yes.

20 Q Okay.

21 So, in your June 7th letter, you referred to "subject to applicable statutes." You
22 said that it's statute and regulation that limited your geographical charging authority, but
23 also it's section 515, which is a Federal statute, which is the process by which you can
24 obtain authority to charge outside your district, correct?

25 A Yes.

1 Q So that is, in fact -- so the reference in your June 30th letter to section 515
2 authority is fully consistent with the reference to Federal statute and regulation in your
3 June 7th letter, correct?

4 A I thought it was consistent. And that's what I intended to do -- refer back
5 to the language in my prior letter.

6 Q Okay.

7 And before we move on from your June 30th letter, the third paragraph on the
8 first page reads, "First, the Department of Justice did not retaliate against 'an Internal
9 Revenue Service ("IRS") Criminal Supervisory Special Agent and whistleblower, as well as
10 his entire investigative team...for making protected disclosures to Congress.'"

11 Was that a true and accurate statement at the time that you signed this letter?

12 A Yes.

13 Q And is it true and accurate to this day?

14 A Yes.

15 Q Okay.

16 And I want to turn, to complete the record, to the July 10th letter to Senate
17 Judiciary Committee Ranking Member Lindsey Graham. This is exhibit 3.

18 You said that, as of July 10, 2023, you had not asked to be designated Special
19 Counsel. Was that an accurate statement?

20 A Yes.

21 Q Do you recall when you first requested to be made Special Counsel?

22 A The only time was in August of 2023.

23 Q Do you recall the date?

24 A I think it's August 11th, as best I can recall, but that's my best recollection.

25 Q Okay. And when you made the request, you were made Special Counsel

1 within days, correct?

2 A In fact, I'm not sure whether I'm confusing the date on which I made the
3 request with the date on which the request was granted. So it was in proximity to
4 August 11th.

5 Q Is it fair --

6 A So, yes, once I made the request, in response to your question, it was, I
7 believe, 2 days later that the request was granted.

8 Q Okay.

9 On September 20th of this year, Attorney General Garland testified before the
10 House Judiciary Committee. He told the committee that, quote, "Mr. Weiss has
11 authority to conduct his investigation however he wishes."

12 Is it true that you have full authority to conduct your investigation however you
13 wish?

14 A I believe I have the authority to conduct the investigation as I determine is
15 appropriate, yes.

16 Q And the Attorney General said that you have authority over all matters that
17 pertain to Hunter Biden. Is it accurate that you have authority over all matters
18 pertaining to Hunter Biden?

19 A I believe that I have the authority to proceed with respect to my
20 investigation or any charging decisions with respect to the Hunter Biden matter as I deem
21 appropriate, yes.

22 Q Okay. Has the Attorney General ever blocked you from taking any step that
23 you wish to take in this investigation?

24 A No one has ever blocked me with respect to taking any step that I perceived
25 was appropriate.

1 Q Has the Deputy Attorney General ever blocked you from taking any step you
2 wish to take in this investigation?

3 A No one has blocked me from taking appropriate steps.

4 Q Okay.

5 Are you familiar with an individual named Lesley Wolf?

6 A I am.

7 Q Who is Ms. Wolf?

8 A Ms. Wolf is an AUSA who works in my office.

9 Q There have been allegations that Lesley Wolf acted out of bias or was
10 motivated by political considerations. What's your response to that allegation?

11 A Yeah, I'm not going to discuss any particular allegations. Lesley Wolf has
12 been a dedicated public servant for more than 16 years. I believe she is an excellent
13 lawyer and is a person of integrity.

14 Q There have been arguments made in other transcribed interviews we've held
15 that the Biden family is, quote/unquote, "royalty in Delaware" and that it would,
16 therefore, be impossible for your office to be impartial in matters related to the Biden
17 family.

18 What is your response to those allegations?

19 A Look, our responsibility as prosecutors is to follow the evidence and the law,
20 regardless of the circumstances, regardless of the defendant. And that's what
21 we're responsible for doing, and that's the only way the public is going to have confidence
22 in the process, if we proceed in accordance with that principle.

23 Q In the earlier hour, you were asked about a special agent report supposedly
24 prepared by Special Agent Ziegler.

25 Without getting into the specifics of that report itself, are you familiar generally

1 with what special agent reports are?

2 A I'm familiar with -- I mean -- with reports that are prepared by agents who
3 work on Federal cases, yes. I am generally familiar with those, yes, reports.

4 Q And are you familiar with prosecution memos?

5 A I am familiar with prosecution memos.

6 Q Can you describe what a prosecution memo is?

7 A At least in the District of Delaware, as a general matter, a prosecution memo
8 sets out the basis to proceed in a prosecution and will address key components that are
9 required in the decision-making process.

10 Q Are special agent reports or memos prepared by investigators different than
11 prosecution memos?

12 A Well, I want to make sure we're clear on, I don't know if you're talking about
13 the report in this case that was prepared in early 2022 versus reports or memoranda of
14 interview or in the FBI 302s that are prepared in the course of an investigation.

15 Q Fair. So what I'm looking at -- and I don't want to get into the specifics of
16 this case necessarily, but I wanted --

17 A I would be unable to do so.

18 Q I understand that. I want to explore the differences between what might
19 be contained in an investigative memo and a prosecution memo, because they're
20 different, right?

21 A Well, if we're talking about the typical report, the typical report prepared by
22 an agent describes the facts that he or she has developed on a particular matter. It
23 might be based on an interview, a surveillance that the agent conducted, or something of
24 that nature, and that's always reduced to a report in the course of an investigation.

25 Q And that's different than a prosecution memo, correct?

1 A Yeah. A prosecution memo serves a different function; that's correct.

2 Q And what's the function of a prosecution memo?

3 A To evaluate the evidence and to explain to the reader why there's a basis to
4 proceed with a prosecution.

5 Q Okay. And a prosecution memo actually analyzes the facts against the law,
6 correct?

7 A Absolutely, yes.

8 Q And it also looks at potential defenses?

9 A Yes. If it's done appropriately, it takes into account potential defenses and
10 the risks/reward and the -- and handicapping the case.

11 Q Okay. And those are the type of things that wouldn't be in a special agent
12 report, which just describes the pure facts that have been developed, correct?

13 A From my perspective, no, they wouldn't be in an investigative report; that's
14 correct.

15 Q Okay.

16 And I want to look at some of the considerations that prosecutors take into
17 account that might be included in a prosecution memo or might just be things they take
18 into account when they're considering whether to charge a case.

19 I want to turn back to the Principles of Federal Prosecution and look at section
20 9-27.220, which is the section entitled "Grounds for Commencing or Declining
21 Prosecution."

22 The section reads, "The attorney for the government should commence or
23 recommend federal prosecution if he/she believes that the person's conduct constitutes a
24 federal offense, and that the admissible evidence will probably be sufficient to obtain and
25 sustain a conviction, unless (1) the prosecution would serve no substantial federal

1 interest; (2) the person is subject to effective prosecution in another jurisdiction; or (3)
2 there exists an adequate non-criminal alternative to prosecution."

3 Did I read that correctly?

4 A You did.

5 Q Okay. So, under these principles, prosecutors should only bring charges
6 when, among other considerations, they believe that the admissible evidence will
7 probably be sufficient to obtain and sustain a conviction, correct?

8 A That's correct.

9 Q And in layperson's terms, what does "admissible evidence" mean?

10 A It means evidence that you're going to get to the jury.

11 Q Okay.

12 The burden of proof for a criminal prosecutor to obtain a conviction at trial is
13 "beyond a reasonable doubt," correct?

14 A Correct.

15 Q "Beyond a reasonable doubt" is the highest evidentiary standard in law,
16 correct?

17 A Correct.

18 Q It's higher than the "probable cause" standard that is needed to obtain an
19 indictment, correct?

20 A Yes.

21 Q And it's higher than the "preponderance of the evidence" standard that's
22 often needed to obtain a judgment in a civil case, correct?

23 A It is.

24 Q In your experience as a Federal criminal prosecutor, is it fair to say that it can
25 be very difficult to convince a jury beyond a reasonable doubt to convict even when you

1 have a significant amount of evidence that a defendant has violated a law?

2 A At times it can be, yes.

3 Q In fact, in order to obtain a criminal conviction, you need not only to
4 establish the defendant's guilt beyond a reasonable doubt but you actually have to
5 convince 12 jurors that you've met that very high standard of proof, correct?

6 A You do. Jurors have to make these decisions unanimously.

7 Q And when you say they have to make the decision unanimously, that means
8 that if even one single jury has what he or she considers to be a reasonable doubt, that
9 juror will be instructed to find your defendant not guilty, correct?

10 A If that juror cannot reconcile his or her differences with the majority of the
11 jury, yes.

12 Q Okay.

13 I want to talk through some of the considerations that a prosecutor might take
14 into account when weighing whether the admissible evidence will probably be sufficient
15 to obtain and sustain a conviction beyond a reasonable doubt.

16 We talked through sufficiency of the evidence earlier. Is sufficiency of the
17 evidence something that a prosecutor might take into account?

18 A In deciding?

19 Q In deciding whether to bring charges?

20 A Yeah, absolutely.

21 Q Okay.

22 Does the ability to explain the charges effectively to a jury matter?

23 A Yeah, even if you have the evidence, you have to be able to convey the
24 significance of that evidence to the jury. And most good lawyers, good prosecutors, if
25 you've got sufficient evidence, they'll figure out a way to articulate the basis for a

1 conviction.

2 Q But it can be challenging, because facts can be complicated, correct?

3 A Can be challenging, particularly in more complicated cases, yes.

4 Q Are defenses to a charge something that a prosecutor would take into
5 account when deciding whether or not to charge?

6 A Defenses are something that good prosecutors should be very mindful of
7 when deciding whether to proceed, yes.

8 Q And taking all of these things into account, a prosecutor can only bring
9 charges if, based on those considerations, the prosecutor is confident that they can
10 obtain and sustain a conviction, correct?

11 A You're going to recommend a charge when you think you can prevail and
12 persuade a jury, yes.

13 Q Okay.

14 How do you prosecutors learn how to assess and evaluate the type of concerns we
15 just talked through?

16 A They read. They listen to others. They watch cases. They develop by
17 their own experiences. And they -- look, most folks that come to a U.S. Attorney's Office
18 have some level of experience, but the more you work as a prosecutor, the more you
19 appreciate making these judgment calls.

20 Q And is it fair to say that prosecutors, therefore, have kind of unique
21 experience in making those judgment calls?

22 A Yes. Especially, you know, the experienced prosecutors have unique
23 experience in making these decisions, yes.

24 Q And is it fair to say that investigators who are working on the case probably
25 don't have that same experience making the judgment calls about whether to bring

1 charges?

2 A I mean, it's fair to say that investigators, by virtue of their responsibilities,
3 aren't called upon to make these decisions. Some investigators who have experience
4 and have been around a while and are really good understand and appreciate
5 prosecutorial determination, some more than others.

6 Q In general, is it fair to say that one unique difference between investigators
7 and prosecutors is that investigators generally do their work before trial and before the
8 stage where the evidence is actually contested and prosecutors have to think about
9 presenting the evidence to a jury in a contested setting?

10 A Yeah, now, that's generally the case, but the fact is, agents continue to work
11 not only before trial -- or, the bulk of their work is done before trial, but they continue to
12 do all kinds of things during the course of a trial.

13 And prosecutors -- the best prosecutors do the bulk of their work before trial.
14 The presentation then takes over. So it's the actual responsibility, then, to present your
15 case to the jury. But the presentation doesn't go well if you haven't done your
16 homework well in advance.

17 Q Understood. My point is just that prosecutors, as opposed to investigators,
18 have to consider how the facts and the evidence will play out in an adversarial setting.
19 Is that fair to say?

20 A They have to consider that if they're going to be successful and persuade a
21 jury, yes.

22 Q Okay.

23 Given the difference in roles between investigators and prosecutors, is it
24 surprising that there are sometimes differences in opinion between investigators and
25 prosecutors about, for example, the strength of the evidence and the likelihood of

1 success at trial?

2 A Yeah, I can say that it is not unusual for prosecutors and agents to, at times,
3 disagree as to strength of the case, investigative decisions, things of that nature. It does
4 happen from time to time.

5 Q And in the course of your career as a prosecutor and as a supervisor of
6 prosecutors, have you experienced these disagreements?

7 A Sure. Part of my responsibilities entail running into those and trying to
8 resolve those.

9 Q And how do you work to resolve those differences?

10 A You make sure that everyone has an opportunity to be heard. You hash it
11 out; you talk it through. And, you know, if the parties are unable to -- that is, the agents
12 and the prosecutors -- to persuade or come to a consensus, you make a decision as to
13 how you're going to proceed. And hopefully everybody gets on board, and then you
14 proceed.

15 Q And if everybody doesn't get on board, though, it's prosecutors that have
16 the final say, correct?

17 A Typically, the prosecutors -- especially when it comes to charging decisions
18 and how the case is going to move forward, prosecutors are ultimately making that
19 decision.

20 Q And that's because prosecutors are responsible for actually bringing the case
21 to trial, correct?

22 A The prosecutor is responsible for -- yes, for putting together the evidence
23 and presenting the case at trial, yes.

24 Q And it's ultimately the prosecutor's decision as to whether the strength of
25 the evidence will be sufficient to convince 12 jurors beyond a reasonable doubt, correct?

1 A It is.

2 Mr. Goldman. Could I just add something on this line of questioning?

3 Is it common for prosecutors to meet with defense counsel to get a presentation
4 from them prior to making a charging decision?

5 Mr. Weiss. In the run-of-the-mill case, it certainly will happen that prosecutors
6 will hear from defense counsel. In tax cases, my understanding is, it's sort of part of the
7 process. Taxpayer conferences are generally built into the tax process, as I understand
8 it. I'm not an expert. That's my understanding.

9 Mr. Goldman. Well, you can confirm that Hunter Biden's lawyers made
10 presentations to your office as part of this investigation, correct?

11 Mr. Weiss. I'm not going to confirm those kinds of discussions, because it
12 wouldn't be appropriate for me to comment on those kinds of discussions. But I've
13 certainly participated in cases generally where defense counsel has made a pitch to the
14 prosecutors.

15 Mr. Goldman. I'm not asking for the discussions. I'm just asking about the fact
16 of the matter, that defense counsel for Hunter Biden made a presentation or multiple
17 presentations to your office. I don't want you to get into the details; just whether it
18 happened or not.

19 Mr. Weiss. I can say that Hunter Biden's counsel made a -- made a pitch.

20 Mr. Goldman. Right. And that pitch was to the prosecutors, correct?

21 Mr. Weiss. That pitch was -- again, I'm not going to get into the particulars. I
22 will acknowledge that it happened.

23 Mr. Goldman. But it wasn't to -- it wasn't with IRS agents.

24 Mr. Weiss. No. No.

25 Mr. Goldman. It would just be to the prosecutors?

1 Mr. Weiss. Again, I'm not going to get into the particulars. The pitch was
2 made.

3 Mr. Goldman. All I'm just trying to figure --

4 Mr. Weiss. Any prosecutor would want to hear -- I mean, if defense counsel
5 wants to talk to me about his case and tell me why we shouldn't move forward, I'm just
6 hearing additional input with respect --

7 Mr. Goldman. Very common. I agree. I'm just trying to make sure we
8 understand who that pitch is made to.

9 Mr. Weiss. I don't want to --

10 Mr. Goldman. It was made to the prosecutors, not to the investigators, because
11 the prosecutors are ultimately responsible for making the charging decision, correct?

12 Mr. Weiss. I don't want to get into the particulars in this case, but it would -- as a
13 general matter, it would be -- it would typically be the case, as I understand it, that
14 prosecutors and defense counsel would be the ones participating in such a scenario.

15 Mr. Goldman. Thank you.

16 Mr. Weiss. Sure.

17 [REDACTED]. Mr. Ivey, do you have --

18 Mr. Ivey. No.

19 Mr. Goldman. I have more, if we have time. I just thought you were -- if you
20 want to continue, go.

21 [REDACTED]. We have about 5 minutes.

22 Mr. Goldman. Do you have any more? You can go.

23 [REDACTED]. I'm at a stopping point.

24 Mr. Goldman. Okay.

25 I just wanted to follow up on a couple of things from the Republican side, their

1 questions.

2 When you say you had ultimate authority if it proved necessary, that meant, am I
3 correct, that you were assured that if there was any point when you needed additional
4 authority to charge what you thought you had sufficient evidence to charge, that you
5 would be able to do that, correct?

6 Mr. Weiss. I was assured that if I needed to proceed in another jurisdiction and I
7 chose to do so, I had the authority to do those things.

8 Mr. Goldman. Okay. And so the fact that you may not have sought particular
9 authority has no bearing on whether you had that authority.

10 Mr. Weiss. No, I had -- that's correct. I had the authority; I just hadn't
11 exercised the authority, is what you're speaking to.

12 Mr. Goldman. Yes. So the fact of not exercising doesn't mean you do not have
13 it.

14 Mr. Weiss. That's the way I see it, yes.

15 Mr. Goldman. Okay.

16 And is it also fair to say that the decision for a different U.S. Attorney's Office to
17 agree to join or partner with an investigation from another U.S. Attorney's Office
18 considers many, many factors, not just the substance of the investigation?

19 Mr. Weiss. Again, not discussing this case, but generally they could consider any
20 number of factors --

1 [12:18 p.m.]

2 Mr. Goldman. Right. And in part because the local U.S. Attorney's Office, if
3 partnering with an outside Attorney's Office would necessarily want to put their own staff
4 and their own resources in that case if it's in their own district?

5 Mr. Weiss. Sure. They're considering their resource constraints, their
6 priorities, all kinds of factors in deciding whether they want to throw additional resources
7 at the matter you're presenting.

8 Mr. Goldman. Right. And in a case of a 4-year investigation with more than 60
9 witnesses and hundreds of thousands of documents, it would require a lot of effort from
10 a local U.S. Attorney's Office to get up to speed on such an investigation. Is that fair to
11 say?

12 Mr. Weiss. And again, that sounds like you're getting into the case at hand, so I
13 can't get into that decision-making process. But I can say that I would expect, generally
14 speaking, that the more complicated the case, the more resource-intensive the case,
15 perhaps the more difficult the decision is for the district who was receiving this
16 information.

17 Mr. Goldman. And I may have missed this at the beginning. Did you ever ask
18 for 515 Special Attorney authority?

19 Mr. Weiss. I did ask for 515 Special Attorney authority.

20 Mr. Goldman. When did you do that?

21 Mr. Weiss. In the spring of 2022.

22 Mr. Goldman. Were you granted that?

23 Mr. Weiss. And at the -- I asked for it, and then in -- I think I've described it in or
24 around February, March of 2022, and at the conclusion of the process in D.C., as was
25 discussed with majority counsel, I was informed by the Principal Deputy Attorney General

1 that if I decided to proceed in the District of Columbia, I had the authority to proceed and
2 the authority to move forward with whatever charges I deemed appropriate.

3 Mr. Goldman. And that the first step would be to see if you could partner with
4 that U.S. Attorney. Is that right?

5 Mr. Weiss. The first step was just to contact the U.S. Attorney's Office to see if
6 they wanted to join in the prosecution.

7 Mr. Goldman. Okay. And you ultimately requested Special Counsel authority?

8 Mr. Weiss. I requested Special Counsel authority upfront.

9 Mr. Goldman. What do you mean "upfront"?

10 Mr. Weiss. In preliminary -- in my first conversations with the Principal Deputy
11 Attorney General, and in my conversation in February of 2022, I raised the specter of 515
12 authority at that time.

13 Mr. Goldman. Not Special Attorney. I'm asking about Special Counsel
14 authority.

15 Mr. Weiss. Oh, I'm sorry. I'm sorry.

16 Mr. Goldman. Yeah.

17 Mr. Weiss. I misunderstood. Hopefully the record reflects I misunderstood. I
18 was speaking to Special Attorney.

19 I never requested Special Counsel authority -- I'm sorry -- until August of 2023.

20 Mr. Goldman. And why did you request Special Counsel authority in August?

21 Mr. Weiss. I'm not going to discuss that. That's a matter -- those are privileged
22 communications between myself and the executives at the Department.

23 Mr. Goldman. But you were granted Special Counsel authority?

24 Mr. Weiss. I was granted Special Counsel authority.

25 Mr. Goldman. And that means that you can charge whatever you believe you

1 have sufficient evidence to charge wherever you need to charge it?

2 Mr. Weiss. That means, consistent with the AG's order, I can charge -- I can
3 discharge my responsibilities and charge the -- bring forth the charges in whatever
4 jurisdiction is appropriate.

5 Mr. Goldman. And I believe this is a matter of public record, but isn't it true that
6 Hunter Biden's attorneys waived venue as part of that proposed plea agreement in
7 Delaware?

8 Mr. Weiss. The plea documents are there. And as part of that resolution, my
9 recollection is, yes, there was a waiver -- there was a venue waiver as part of those
10 materials.

11 Mr. Goldman. Thank you.

12 [REDACTED]: Did you ever have any doubt that you would be granted 515 authority
13 if you sought it from the Deputy Attorney General's Office?

14 Mr. Weiss. From the time I received the assurance from PADAG John Carlin I
15 didn't really concern myself with authority moving forward. I understood that I had the
16 authority to proceed, you know, and to prosecute the charges I thought appropriate.

17 [REDACTED]: Okay.

18 Mr. Lieu. So I'm just a little confused. I just want to understand. You can't
19 talk about the particular aspects of the case today, right?

20 Mr. Weiss. Right.

21 Mr. Lieu. All right. So you testified that you have had whatever authority you
22 believe you needed to take the appropriate steps, right?

23 Mr. Weiss. I have.

24 Mr. Lieu. And you said that no one at Department of Justice has stopped you
25 from taking steps you deemed appropriate, right?

1 Mr. Weiss. Yes.

2 Mr. Lieu. I don't know what we're doing here today. We should just end this.
3 This is totally stupid. He can't talk about the facts of the case. He said he had all the
4 authority he needs. So I'm asking the Republicans why don't we just shut this down?
5 We're just wasting everybody's time. I don't understand why we're all here. What's
6 the point of this?

7 I yield back.

8 [REDACTED]. On that note, we can go off the record.

9 Thank you.

10 [Recess.]

11 Chairman Jordan. Let's go back on the record.

12 Thanks, Mr. Weiss.

13 In your last hour, Mr. Goldman asked you, Did you ever ask for 515 authority?
14 And you said, Yes, in the spring of 2022.

15 Did you ask for that authority before meeting with Mr. Graves -- or talking with
16 Mr. Graves about partnering with him or after?

17 Mr. Weiss. Before.

18 Chairman Jordan. You asked for it before.

19 And you asked -- this was the PADAG, right?

20 Mr. Weiss. This was the PADAG and Brad Weinsheimer.

21 Chairman Jordan. So Mr. Carlin and Mr. Weinsheimer?

22 Mr. Weiss. Yes.

23 Chairman Jordan. And they told you no at the time, that you should go talk to
24 Mr. Graves in D.C.?

25 Mr. Weiss. No. They never said no. They never said no. I asked for it.

1 They said, Let's follow the process. Go talk -- let's talk to Mr. Graves, see if they're going
2 to join. We're going to take it step by step. No one ever said no.

3 Chairman Jordan. Okay. And in the course of your investigation, from when
4 you started all the way until August 8th when you asked for Special Counsel status and
5 then were granted Special Counsel status on August 11th, did you ever have 515
6 authority throughout that time?

7 Mr. Weiss. I never -- as we've discussed, I never executed on that assurance that
8 I would have the authority.

9 Chairman Jordan. So you asked for it before you talked to Mr. Graves. Mr.
10 Graves -- you asked for it, and PADAG said, No. Go talk to Mr. Graves first. You go talk
11 to him. He says that he doesn't want to partner with you, and you never subsequently
12 asked for it. And the only time that you've been given any special counsel/515 authority
13 is when you asked for it in August of this year?

14 Mr. Weiss. No. The premise of your question I can't endorse. You said, I
15 asked for it, the PADAG said, No. As I said a moment ago, no one ever said no. He
16 didn't say no.

17 Chairman Jordan. Okay.

18 Mr. Weiss. They said to follow the process, talk to Graves, give him the
19 opportunity to join. When I completed that process, I returned to 515, and I was
20 assured you had the authority to proceed in D.C. and to file any charges you deem
21 appropriate.

22 Chairman Jordan. Again, I just want to be clear, though. Mr. Goldman asked
23 last hour, Did you ever ask for 515 authority? You said, Yes, in the spring of 2022.

24 And what I'm asking is did you ever have 515 authority throughout this
25 investigation?

1 Mr. Weiss. I was assured I had the authority necessary to move forward, yes.

2 Chairman Jordan. Let me ask it this way --

3 Mr. Weiss. I didn't request an order that ultimately gave me the authority that
4 would have been required if I had, in fact, filed the charges.

5 Chairman Jordan. Okay. Did you ask for it? You said, Yes, in the spring of
6 2022. What I want to know is, were you ever granted 515 authority?

7 Mr. Weiss. As I said a couple of times, I was assured at the conclusion of the
8 process in D.C. that I had 515 authority to proceed if I determined it was appropriate.

9 Chairman Jordan. Okay. And what you wrote to Senator Graham is -- on
10 July 10th of this year, you said, You would be granted this authority if it proved necessary.
11 Is that right?

12 Mr. Weiss. I'm looking at the letter.

13 Chairman Jordan. This is the July 10th letter to Ranking Member Graham.

14 Mr. Weiss. I'm sure you're reading it accurately.

15 Yes, that's what it says.

16 Chairman Jordan. Now, in this letter you say: I have not requested Special
17 Counsel designation.

18 Was that something different than 28 U.S.C. 515?

19 Mr. Weiss. Yes. That was --

20 Chairman Jordan. Okay.

21 Mr. Weiss. Yes.

22 Chairman Jordan. And you didn't request that again until August 8th and were
23 granted that on August 11th of this year. Is that right?

24 Mr. Weiss. I think your question was you didn't request it again. I only
25 requested it in --

1 Chairman Jordan. No. I meant again -- I wasn't referring to that.

2 Okay. And then the next sentence: When I had the discussion with
3 Department officials regarding judicial appointment under 28 U.S.C. 515, which we've
4 been talking about, which would allow me to file charges in a district outside my own
5 without the partnership of the U.S. local attorney, I was assured I would be granted
6 authority if it proved necessary.

7 When Mr. Graves turned you down, wasn't it necessary?

8 Mr. Weiss. If I chose to proceed. If I chose to move forward in D.C., it would
9 have been necessary, yes.

10 Chairman Jordan. But you went to Mr. Graves and asked him to partner. I
11 assume that meant you wanted to proceed in D.C. He says: No, we're not going to
12 partner. And I'm asking, that wasn't proof enough to be necessary to ask for 515?

13 Mr. Weiss. Again, I don't want to get into deliberative process or case merits.
14 But as I think I mentioned previously, we were thinking about D.C. and L.A., and at this
15 time, I was assured that if I wanted to proceed in D.C., I had the authority, and I was not
16 prepared at that time to make a decision as to where we would proceed.

17 Chairman Jordan. Okay.

18 Mr. Biggs. Can I ask a question?

19 You keep saying you were assured that you had the authority.

20 Mr. Weiss. Uh-huh.

21 Mr. Biggs. Who assured you?

22 Mr. Weiss. The Principal Deputy Attorney General told me that I would have the
23 authority to proceed in the District of Columbia and file whatever charges I deemed
24 appropriate.

25 Mr. Biggs. Was it conditional in any way?

1 Mr. Weiss. No.

2 Mr. Biggs. You just flat out had the authority. He assured you -- I don't know
3 who it was that assured you that you would have that authority. In fact, did you take
4 that as a granting of authority?

5 Mr. Weiss. From -- I understood that -- based on that assurance, I understood
6 that I could charge in that jurisdiction and proceed and that, yes, I could determine what
7 charges were appropriate.

8 Mr. Biggs. Regardless of Mr. Graves?

9 Mr. Weiss. Yes.

10 Mr. Biggs. Okay.

11 Mr. Weiss. Yes.

12 Mr. Biggs. Thank you.

13 Mr. Weiss. Sure. You're welcome.

14 EXAMINATION

15 BY MR. CASTOR:

16 Q I want to go back to, in 2020, were you aware that the U.S. Attorney out in
17 the Western District of Pennsylvania, Scott Brady, was asked by the Department to vet all
18 incoming Ukraine-related information?

19 A I was aware that the U.S. Attorney in the Western District of Pennsylvania
20 had been assigned that vetting responsibility.

21 Q And how frequently did you interact with Mr. Brady regarding information
22 his office received during his tenure?

23 A I'm not going to discuss that process at all. That's still ongoing. It's still
24 the subject of ongoing investigative matters.

25 Q Mr. Brady testified to the committee that it was a challenge for his office to

1 obtain information from you and your investigative team, so much so that at one point,
2 he had to submit written interrogatories to your office.

3 Can you help us understand what happened there?

4 A No. I'm sorry. At this time I can't help you understand what happened
5 there. I'm not going to discuss matters that concern ongoing investigations. At the
6 appropriate time, I'll prepare a report, and I expect that this will be something that will be
7 addressed in the report.

8 Q Okay. So you're not denying that Mr. Brady had to send you
9 interrogatory-style questions to get information out of you?

10 A I'm not commenting either way on the process at all. I want to make that
11 clear. It would be inappropriate for me to do so.

12 [Weiss Exhibit No. 9

13 Was marked for identification.]

14 BY MR. CASTOR:

15 Q Are you familiar -- let's mark this as the next exhibit -- with an FD-1023 dated
16 June 30, 2020, summarizing a confidential human sources meeting with Burisma
17 executives during which they discussed bribes allegedly paid to Joe Biden and Hunter
18 Biden?

19 A I'm sorry. What was your question about this document?

20 Q Are you familiar with this?

21 A I'm not going to comment on that. I appreciate your question, but it
22 concerns a matter that is subject to an outstanding investigation. It's something that I
23 absolutely cannot comment on either way.

24 Q The FBI has consistently reviewed the confidential human source in question
25 and found them to be highly credible.

1 Is that your understanding?

2 A As I said a moment ago, this is a matter about which I absolutely cannot
3 comment. It would be inappropriate for me to do so, although at the appropriate time,
4 I hope to address this matter and all aspects of this process.

5 Q Brady told us that he had such trouble getting ahold of you and your office,
6 that he had to go through the PADAG, and basically the PADAG had to intervene and
7 instruct your office to take a meeting with him.

8 A Is that a question?

9 Q Yes. Why wouldn't you meet with Mr. Brady?

10 A I'm not at liberty to discuss that at this time. I look forward to the
11 opportunity to addressing this in the special counsel's report at the appropriate time.

12 Q Yeah. Whether you had a meeting with Mr. Brady or not, I mean, you
13 certainly can tell us at a privilege log level the number of communications you had with
14 Mr. Brady.

15 A No, I'm not going to get into this topic at all. It would be inappropriate,
16 absolutely inappropriate to do so while this matter is outstanding.

17 Q Did your office conduct any further investigation after you became aware of
18 the 1023? Did you interview the confidential human source in question?

19 A Counsel, you know I can't discuss outstanding investigative matters. It's
20 inappropriate for me to do so.

21 Q Okay. I want to mark the two Delaware cases as the next exhibits.

22 Last hour I referenced some comments you made in some different tax cases.
23 Just for your benefit, I wanted to mark them just so we could close that loop.

24 A I recall that.

25 Mr. Castor. Number 10 and 11.

1 [Weiss Exhibits Nos. 10 and 11
2 Were marked for identification.]

3 BY MR. CASTOR:

4 Q Number 10 is the "Sussex County Photographer Bruce Kevin Fleming
5 Sentenced for Federal Tax Evasion." The fifth paragraph is your comment that "The
6 financial loss in tax cases is shared by every member of the tax-paying public. Our
7 Nation's ability to operate and serve its citizenry depends on voluntary compliance with
8 tax obligations. The defendant not only willfully evaded his personal income tax
9 obligations, but he failed to pay over taxes withheld from his employees' paychecks,
10 demonstrating a complete disregard for their individual tax liabilities."

11 Do you remember making that statement?

12 A I don't recall making the statements, but I don't doubt that I did.

13 Q Okay. And you still stand by that, correct?

14 A Sure.

15 Q The same with the next exhibit, the last paragraph is: "Tax dodging
16 represents an affront to every member of the tax-paying public, and we will continue to
17 prosecute tax cheats aggressively."

18 Do you remember making that?

19 A I don't recall the specific statement, but I'm satisfied that those are the
20 words that were used, and I stand by that statement.

21 Q If over -- in 2014 and 2015, it's been well-established by the whistleblowers,
22 Hunter Biden had in excess of over \$1 million in revenue coming in from Burisma that has
23 avoided tax entirely.

24 Do you think it's fair that he is able to avoid paying tax on that gigantic sum of
25 money?

1 A Again, that's something I can't comment on. That pertains to the ongoing
2 litigation and our outstanding investigation. I'm just not at liberty to comment at this
3 time, but there will come a time.

4 Q Even though the statute of limitations has lapsed?

5 A Yes, yes.

6 Q When is the appropriate time to address why the statute of limitations was
7 allowed to lapse?

8 A I'll address it in the report, but even though the statute of limitations has
9 lapsed and even though charges won't be filed, if there were to be an outstanding tax
10 prosecution, there is no reason to believe that evidence pertaining to prior years, or
11 witnesses involved in prior years, wouldn't be part of that litigation.

12 Q Okay. But you can still I think -- without compromising a potential
13 prosecution that cannot be had for 2014 and 2015, you ought to be able to tell us about
14 the decision to let the statute lapse.

15 A I understand and appreciate the question and what you're suggesting. I'm
16 just not at liberty to do so. What I can say is, because it's akin to a charging
17 decision -- and making charging decisions in any matter, you're considering the proof.
18 You're considering your witnesses. You're considering legal challenges. If it's a
19 multi-charge situation, you're considering the effect of certain charges on other charges,
20 and whether those charges enhance or detract from your prosecution.

21 So, as a general matter, I'm just offering that there are any number of
22 considerations that would go into account --

23 Q Okay.

24 A -- in deciding whether to pursue them or not.

25 Q Did you make a decision to affirmatively let the statute lapse, or did it

1 happen by accident?

2 A I'm not going to address that at this time, but I will address it in the report.

3 Q Okay.

4 Mr. Biggs. Can I weigh in just for a second on that?

5 Because I appreciate what you're saying about it might have bearing on future
6 cases or any potential for future prosecution, but the question here is distinctly different
7 from that. This is, was this an accidental lapsing? Was this an intentional lapsing? It
8 really has no connection or bearing on any potential outcome of prosecution going
9 forward. So I'm struggling to understand your position on that.

10 Mr. Weiss. Yeah, I respect the question, Congressman. I understand it, but it
11 gets into deliberative process in this case, decision making processes, and those are
12 things that I'm not at liberty to discuss at this time. But as I said, I will address it. I will
13 address it in the report.

14 Mr. Castor. I want to mark the next exhibit, exhibit 12.

15 [Weiss Exhibit No. 12]

16 Was marked for identification.]

17 BY MR. CASTOR:

18 Q This is the special agent report we've had some discussion about. It was
19 produced in limited form. But this is the special agent report prepared by the IRS
20 criminal investigative agent at the end -- he began writing it at the end of 2021 and
21 wrapped it up in the beginning of 2022.

22 A You're telling me that this is the report or a portion of the report?

23 Q This is a portion of the report.

24 A Got it.

25 Q Fair enough. It contains the cover page and then the last two pages. It's

1 an 85-page document. Is this the first time -- you've seen this report before, correct? I
2 think you told us that this morning.

3 A I believe I have, yes. I believe I --

4 Q You saw the whole 85 pages?

5 A I believe I have.

6 Q Okay. Was there anything in the 85-page report that you or your Assistant
7 U.S. Attorneys disagreed with?

8 A I wouldn't comment on that now because it pertains to the case and the
9 investigation, and I don't recall.

10 Q Okay. If you would go to the second page, which is page 84 of the special
11 agent report. It states: "The recommendation for prosecution is based on the facts
12 above" -- that's the prior 83 pages -- "and recommends that RHB," Hunter Biden, "be
13 prosecuted under the provisions of Title 26, United States Code, Sections 7201 and 7206
14 for the tax years 2014, 2018, and 2019, and under the provisions of Title 26, United States
15 Code, Section 7203 for the tax years 2015, 2016, 2017, 2018, and 2019.

16 "A draft of this special agent report has been given to DOJ tax senior attorney
17 Mark Daly, as well as AUSA Lesley Wolf. AUSA Wolf has reviewed the appendices and
18 the charges cited in this report and agrees with the prosecution recommendation of the
19 above cited charges against RHB." That is Hunter Biden.

20 Is that consistent with your understanding of what was in this special agent report
21 when you reviewed it?

22 A Yeah. I'm not going to comment on any aspect or substance of the
23 investigative report, but I will acknowledge that you read the paragraph accurately.

24 Q Okay. But I guess what my question is, this isn't a doctored document.
25 This is what --

1 A I have no reason to believe that this is a doctored document.

2 Q Okay. And if Lesley Wolf and Mark Daly didn't agree with this stuff,
3 presumably the criminal investigator who prepared the report wouldn't put that on the
4 conclusions and recommendations page, correct? In fact, it was ultimately signed and
5 executed.

6 A Again, I can't speak to that. But, like I said, I agree that what you have
7 represented is stated in the report, and I believe this is --

8 Q Okay.

9 A -- an authentic version, subject to the redactions, of what I would have seen.

10 Q Okay. But a criminal investigative agent wouldn't make false
11 representations, correct, in the ordinary course of business?

12 A I'm not going to get into the substance of this particular report. But, as a
13 general matter, I wouldn't expect any agent to make false representations in a report of
14 any kind.

15 Q Okay. Shortly after the special agent report was prepared we have been
16 told through -- in sworn testimony that the DOJ Tax Division drafted a 99-page report
17 regarding the charging decisions in the matter.

18 Are you familiar with that document?

19 A I'm not going to get into the preparation of that document or any other
20 attorney-driven document in this case.

21 Q Okay. But you read the 99-page report that the Tax Division prepared,
22 right?

23 A I'm not going to get into the particulars of the documents that were
24 prepared, other than to say if something was presented to me in this case, I read it.

25 Q Okay. Certainly something as significant as a 99-page memo?

1 A Well, generally speaking, the fact that something is 99 pages doesn't
2 necessarily mean it's significant, but --

3 Q Well --

4 A -- as I said, I reviewed appropriate materials during the course of this case.

5 Q Okay. But it --

6 A I'm not going to get into the substance of those materials.

7 Q Okay. But if the DOJ Tax Division did draft a 99-page report related to the
8 Hunter Biden matter, you certainly would have reviewed it in the ordinary course,
9 correct?

10 A Again, I'm not going to get into the particulars of this case because it
11 necessarily gets into the deliberative process and case materials. As a supervisor of this
12 case, I would have read the key documents, absolutely.

13 Q Okay. Do you know who authored it?

14 A I'm not going to -- no, I'm not going to get into the particulars of any report
15 in this case or discuss the authors.

16 Q Okay. And do you know if it was -- I'm going to ask you, do you know if it
17 was authored in part by your AUSAs in the Tax Division?

18 A Again, I'm not going to get into the particulars of those matters because it
19 necessarily involves deliberative process and prosecutorial decisionmaking,
20 recommendations, and the like, all those kinds of things.

21 Q Let's take it up a level. Ordinarily, would this type of memo be prepared
22 jointly with the U.S. Attorney's Office in the Tax Division, or would it ordinarily be a Tax
23 Division document?

24 A Based on my experience -- and the fact is, I'm unfamiliar with a case in which
25 I participated where the U.S. Attorney's Office in Delaware has partnered with tax

1 divisions. So I can't draw on that frame of reference that you allude to.

2 Q Actually, this type of memo, in your experience, would be a DOJ Tax Division
3 product?

4 A I'm not saying either way. I'm not going to get into the particulars here.
5 What I'm suggesting is what happened here, that's the basis of the full sum of my
6 experience --

7 Q Okay.

8 A -- in the sort of hypothetical that you're presenting.

9 Q Okay. If the case had concluded and you had issued your report, would you
10 be able to tell me the answer to that question --

11 A Okay.

12 Q -- or are you withholding it because of the ongoing investigation, the
13 deliberative process or --

14 A It's part of the deliberative process, and for that reason, I can't comment.

15 Q But do you know the answer, I guess, of who wrote the memo?

16 A Again, I'm not going to get into whether I know the answer or not. This is
17 at all part of the deliberative process.

18 Mr. Biggs. You're not saying there wasn't a memo like this?

19 Mr. Weiss. Like what?

20 Mr. Biggs. He's referenced this specific memo. I'm asking you, do you agree
21 that that certain memo exists?

22 Mr. Weiss. I'm not going to acknowledge -- I'm not going to talk about memos
23 that were prepared during the course of this case. It's part of the deliberative process.
24 I'm not going to talk about --

25 Mr. Biggs. I'm asking you if the memo was created.

1 Mr. Weiss. Again, I understand that you're going to draw from my answer, which
2 is why I'm going to be very careful in what I respond to and what I don't. And I'm
3 unable, because it delves into the deliberative process, to say anything in this regard.

4 BY MR. CASTOR:

5 Q Okay. Did you attend a meeting on June 15th at Main Justice about this
6 case where the players involved included the entire investigative -- representatives from
7 the investigative team, including Gary Shapley; his supervisor, Darrell Waldon; Mark Daly
8 from the Tax Division; Stuart Goldberg from the Tax Division; Jack Morgan from the Tax
9 Division? Does this jog your memory? I can give you additional participants if that's
10 helpful.

11 A I don't want to discuss particular meetings, but I will say that I participated in
12 several meetings, and that some of those meetings involved virtually all of the folks who
13 were involved in this case at a leadership level.

14 Q Okay. The June 15th meeting happened here in Washington, D.C. So can
15 you tell us, did you travel down here for the meeting?

16 A Again, I'm not going to talk about those kinds of things. I'm not going to
17 get into the particulars of our investigation, particular meetings, who participated. I'm
18 here to talk about my authority, decision-making authority.

19 Q Okay. Did you meet with Gary Shapley the day before?

20 A As I mentioned a moment ago, I met with agents and the investigative and
21 leadership team on several occasions during the course of this process, and I did so out
22 of -- in an effort to make sure -- and I mentioned this in reference to a question
23 previously -- an effort to make sure that the agents were heard, and that their views on
24 this investigation, their view of the case and appropriate charges was part of the
25 decision-making process, but I can't get into the particulars.

1 Q Okay. We've received testimony, not just from the IRS whistleblowers, but
2 also from other witnesses, that at the June 14th -- or sorry -- the June 15th meeting, DOJ
3 Tax had a presentation.

4 Do you remember that presentation?

5 A I'm not going to get into the particulars of any presentation or the
6 circumstances surrounding this meeting. This, again, would be something that I would
7 expect and I'd be more than happy to address in the special counsel's report.

8 Q The testimony shows that at the June 15th meeting the Tax Division lawyers
9 presented complications and all the difficulties they would have with bringing a case, but
10 yet, FBI personnel piped up and disputed that characterization.

11 Do you remember that?

12 A I'm not at liberty to discuss any particulars concerning this meeting or other
13 meetings, other than meetings at which my decision-making authority was discussed.

14 Q When did you decide to contact the Central District of California, the Los
15 Angeles U.S. Attorney's Office about this case?

16 A I contacted the Central District of California in August of '22.

17 Q And did that -- was that preceded by a discussion with the DAG's Office?

18 A I would have had a discussion with the DAG's Office -- I mean, at this point in
19 time, as I think I alluded to previously, I was having monthly conversations, or about each
20 month with the Office of the Deputy Attorney General.

21 Q Okay. And those monthly conversations were with Mr. Weinsheimer?

22 A Primarily, yes.

23 Q Was Mr. Carlin and then, subsequently, Mr. Miller involved with that?

24 A No. As I told you, I never spoke to Miller, and I believe Mr. Carlin had left
25 the Department at -- you know, somewhere during this time, the summer of 2022.

1 Q And were your Weinsheimer telephone calls monthly, was that a regularly
2 scheduled call or did it just happen to turn out to be monthly based on --

3 A It happened to be monthly.

4 Q Okay.

5 A Based on -- you know, I'm estimating the frequency of the meetings.

6 Q Okay. Fair enough.

7 And so before you decided to contact the Los Angeles U.S. Attorney's Office, you
8 had a conversation with Mr. Weinsheimer?

9 A I don't know -- I don't know if it was before or shortly thereafter. I don't
10 know what preceded what, but -- so I don't recall the particulars.

11 Q Did he need to grease the skids for that meeting?

12 A No, he did not.

13 Q Did you ask for 515 authority before or after going to Los Angeles?

14 A I just -- no. I described my conversations with respect to 515 authority in
15 the context of the D.C. discussions.

16 Q Okay.

17 A And so in my mind, from my perspective, I didn't need to raise it, and I didn't
18 raise it any further.

19 Q Okay. So as we understand it, the U.S. Attorney in Los Angeles wasn't
20 installed until September of 2022, but you had made contact with that office during the
21 month of August. Is that correct?

22 A I had contact with --

23 Q His predecessor?

24 A -- his predecessor, the Acting U.S. Attorney at that time.

25 Q Okay. And as we understand it, according to Mr. Estrada, some SAUSAs

1 were established. Is that correct?

2 A Again -- and you asked that about D.C. I just don't recall the particulars of
3 whether SAUSAs were established and exactly what that meant, but I don't necessarily
4 dispute it. I just don't recall the particulars.

5 Q Okay. So if Mr. Estrada told us there are officials from your office in
6 Delaware, AUSAs, that have been granted Special Assistant U.S. Attorney authority under
7 the SAUSA regime, you don't know if that's correct or not?

8 A I just can't -- I can't recall. I can't recall the particulars of that process. I
9 know the conversations in which I participated and, you know, what we were doing
10 vis-à-vis the Central District of California.

11 Q What was the -- do you remember the name of the person you were talking
12 to, the predecessor, the acting, before Mr. Estrada was installed?

13 A Stephanie Christensen.

14 Q And did Ms. Christensen -- did she urge you to wait until Estrada was on
15 board?

16 A No.

17 Q What was the nature of your conversation with her in August of 2022?

18 A Similar to my conversation with U.S. Attorney Graves.

19 Q Okay.

20 A Basically that this is the case. These are the circumstances. I'm reaching
21 out to see if you wanted to join or participate in this case. I have requested 515
22 authority. And it went from there with line personnel having communications.

23 Q Okay. Did Ms. Christensen ever present you with a decision from their
24 office about whether they wanted to partner, co-counsel, or whatever?

25 A She did not.

1 Q Okay. And so then when was your next interaction with the office? Was
2 that after Mr. Estrada was installed?

3 A I believe it was.

4 Q And what do you remember from that?

5 A I had a brief conversation with U.S. Attorney Estrada. It was in October
6 of '22, and Mr. Estrada informed me that his office was -- declined to participate with us
7 or to join us in that case.

8 Q Okay. So he shot you down, too, just like Mr. Graves?

9 A I'm not going to use the words "shot me down" --

10 Q Okay.

11 A -- but he declined to participate in the case.

12 Q Okay. And so what was your move from there?

13 A Same as it had been before, to proceed to moving forward.

14 Q Okay.

15 A To focus on the decision-making process.

16 Q Okay. But you said that you felt confident that had you asked for it, you
17 would have had 515 authority to take a case and bring it in Los Angeles?

18 A Yes. It wasn't a question of my authority. It was just a question of
19 deciding to move forward.

20 Chairman Jordan. Just tell me the timeline again. So in August of '22 you
21 talked to Ms. Christensen, I think you said, and said, Do you want to partner with the
22 Central District of California? And was there any conversations between that August
23 contact and October when Mr. Estrada who became the U.S. Attorney told you no?

24 Mr. Weiss. Not by me.

25 Chairman Jordan. But your office had subsequent contacts in that time frame

1 between August and October?

2 Mr. Weiss. My office and Tax Division were working with folks in L.A.

3 Chairman Jordan. And the first contact you had with Mr. Estrada is when you got
4 on the phone and he told you no?

5 Mr. Weiss. That's the first and only contact with respect to this matter that I had
6 with Mr. Estrada.

7 Chairman Jordan. Okay.

8 BY MR. CASTOR:

9 Q Just one call that you remember with him?

10 A One call about this, yes.

11 Q Okay. If he remembers more than one call, is it possible that there was
12 more than one call?

13 A If he remembers more than one call, it wasn't at this time about this issue.
14 That's my recollection.

15 Q Okay. So D.C. didn't want to partner, correct?

16 A D.C. chose not to participate in this case as a partner, that's correct.

17 Q Okay. And Los Angeles, the Central District of California, they didn't want
18 to partner either, correct?

19 A L.A. chose not to join us in this case, that's correct.

20 Q Okay. DOJ Tax, while at first they wanted to -- they were enthusiastic
21 about moving forward, then they moved -- at the June 15th meeting, we learned that DOJ
22 Tax was reluctant to proceed?

23 A I'm not going to embrace that characterization, nor can I comment on any
24 discussions that were had with the Tax Division in June of 2022, or at any other time.

25 Q Okay.

1 A I'm just not going to get into that.

2 Q We've been told -- Scott Brady testified that every time he tried to talk to
3 your office he was basically turned down and had to go to the PADAG to set up some
4 meetings with you in your office.

5 A Counsel, in all candor, I don't know that I would accept that representation
6 under any circumstances. But in any event, I'm not going to get into particulars of
7 communications with Mr. Brady on the matter that you're referring to.

8 Q At this point did you feel like you were on an island?

9 A No, no.

10 Q I mean, D.C. didn't want to prosecute and partner with you; L.A. didn't want
11 to partner with you; DOJ Tax was expressing reservations. I mean, did you feel like you
12 had -- you know, you were getting isolated?

13 A No. I thought that -- as I said repeatedly, I thought I had the authority and
14 then it was a question of making the decisions.

15 Chairman Jordan. What was it going to take to prove necessary to ask for and
16 get 515 status? You're 0 for 2. You had asked before you ever went to the initial
17 contact with the D.C. Attorney, Mr. Graves, and you say in your letter, if it proved
18 necessary, you would request and get that authority. What was it going to take if you
19 were already 0 for 2?

20 Mr. Weiss. Chairman, I mean, your question presumes that I'm asking the U.S.
21 Attorneys in L.A. and in D.C. for their approval with respect to 515 status. That wasn't
22 happening at all. I wasn't asking them for anything in that regard.

23 Chairman Jordan. I'm not saying you were.

24 Mr. Weiss. I had it if I wanted.

25 Chairman Jordan. You asked them to partner with the case.

1 Mr. Weiss. I asked them --

2 Chairman Jordan. Both of them told you no. You were told by Main Justice,
3 prior to your initial ask of the U.S. Attorney in the District of Columbia, that if you needed
4 515 authority -- you asked for 515 authority. He said, No. Go talk to them. You're 0
5 for 2, and you still don't ask for it. You still don't get it.

6 Mr. Weiss. The only -- I still don't get it. The only question is did I ask for it.
7 So I knew that when or if I asked for it, I was going to get it. That wasn't at the forefront
8 of my mind. What I was concentrating on now was the case, the strength of the case
9 and whether we bring the case. That's all that was -- that was the focus of my attention,
10 not the authority issue.

11 Mr. Castor. Do we have in the exhibits the August 7, 2020 email?

12 Ms. Nabity. Yes.

13 Mr. Castor. I'm going to mark as the next exhibit -- we're up to number 13.

14 [Weiss Exhibit No. 13

15 Was marked for identification.]

16 BY MR. CASTOR:

17 Q On August 2nd, AUSA Lesley Wolf sent FBI Special Agent Joshua Wilson an
18 email in which she wrote: There should be nothing about Political Figure 1 -- and that
19 refers to Joe Biden -- in the draft search warrant.

20 Are you familiar with that?

21 Are you familiar with that?

22 A Can I look at what you're referring to?

23 Q I referenced an August 2nd email. Now the marked email is August 7th.

24 But there should be nothing about Political Figure 1 in the search warrant. And
25 the question is do you know who Political Figure 1 is? And I think by all accounts, it's Joe

1 Biden.

2 A I don't know if -- because there are redactions on the below email, whether I
3 was copied. But, in any event, this clearly pertains to aspects of the investigation, and
4 I'm not going to comment on any aspect of the investigation.

5 Q In your experience, for ordinary cases, is it normal for prosecutors to order
6 investigators to remove references to key figures that could potentially be implicated in a
7 search warrant?

8 A Again, there are so many variables in that hypothetical, and it's not
9 something I -- it wouldn't be appropriate for me to speculate or offer an opinion on a set
10 of circumstances such as those.

11 Q Whistleblowers have testified that during a prosecution team meeting on
12 September 3, 2020, that Lesley Wolf stated that there was enough probable cause for
13 search warrants, but optics were a driving factor in the decision of whether to execute
14 that search warrant.

15 Do you remember that?

16 A No, I don't, and nor would I comment on particulars of the investigation.
17 It's just not appropriate now, and perhaps it will be appropriate at the time I prepare the
18 report.

19 Q But for an investigation that doesn't involve the son of a President, or the
20 future President at that time, would that -- regular case, not involving the son of a future
21 President or the son of a former Vice President, would that type of driving factor be
22 appropriate optics?

23 A Again, I'm not going to comment on a question that necessarily is a
24 hypothetical. Prosecutors will consider any number of factors in deciding whether to
25 proceed with certain investigative techniques. And I just -- there are so many variables

1 that might go into that decision-making process, it just wouldn't be productive or
2 constructive for me to get into those circumstances.

3 Q Are you aware of the day of action that was planned on December 8, 2020?

4 A I am aware as a general matter to that eventuality. But, again, because it's
5 an investigative technique as part of our overall investigation into this matter, I'm not at
6 liberty to get into the particulars.

7 Q Do you know how many interviews were planned for that day?

8 A Just not going to get into the particulars of that matter.

9 Q And do you know how many interviews were actually conducted?

10 A I'm not at liberty to get into the particulars of that matter. I would say that
11 as a general matter in white-collar investigations, when you're dealing with persons who
12 are represented by counsel, you never accept as a fait accompli that folks will be available
13 for you and will be willing participants in interviews.

14 So as a general matter, I don't know that there are expectations in that regard
15 when you're dealing with certain types of cases and investigations.

16 Q But they had success with Rob Walker, didn't they?

17 A Again, I can't get into the particulars of this case, because it involves the
18 investigation.

19 Q And the transcript of the Rob Walker interview, I mean, that was made
20 public as a part of the whistleblower proceedings, correct?

21 A I can't get into the particulars of this investigation. It would be
22 inappropriate for me to comment on any aspect of it or any witness who has or has not
23 spoken.

24 Q Do you know if Mr. Walker was represented by counsel?

25 A I'm just not at liberty to discuss the particulars of the investigation at this

1 time.

2 Q Do you know who made the decision to tip off the presidential transition
3 team about the day of action, and that the investigators wanted to try to speak with
4 Hunter Biden?

5 A That's, again, another -- that's a part of the investigation, and it is something
6 that I would expect to address in the submission of my report, but it wouldn't be
7 appropriate for me to comment on that matter until that time.

8 Q Okay. So you acknowledge that that was an issue that occurred?

9 A Again, I am -- that's something that I will address -- it's something -- if -- I'm
10 not going to comment on the investigation, but investigative techniques and certain other
11 aspects of the investigation would be topics I would expect to address at the time I
12 prepare the report.

13 Q Are you familiar with investigators' plan to search Hunter Biden's storage
14 unit around this time period?

15 A Again, I'm not going to get into the particulars of any particular investigative
16 technique or what was or was not done during the course of the investigation. It will be
17 addressed at a later time.

18 Q How many taxpayer conferences -- Mr. Goldman raised this with you, that
19 there were a series of taxpayer conferences with lawyers for Hunter Biden. The
20 question is how many were there?

21 A I believe we talked about defense counsel, and I mentioned that, as a
22 general rule, there are -- my understanding, not being a tax expert, but part of the
23 process afforded in tax cases is that the putative defendant taxpayer may be afforded a
24 conference with Tax Division counsel or the attorneys assigned to the case.

25 Q And ordinarily that's one, right? There's, like, one?

1 A In all candor, Counsel, I don't know what the normal course is. I'm not an
2 expert in Tax Division processes in this regard and how many conferences are typically
3 afforded.

4 Q Do you remember Mr. Clark suggesting that it would be career suicide to
5 bring a case involving Hunter Biden?

6 A I'm not going to talk about the particulars of any conversations with defense
7 counsel or whatever representations Mr. Clark may have made.

8 Q But you're aware Mr. Clark took a volume of information and he handed it
9 over to the press, correct?

10 A I'm aware of Mr. Clark. I'm just not going to talk about anything he has said
11 or anything he has done. He can address that if he so desires.

12 Q Okay. But there was a big long New York Times article and a Politico story
13 about this, correct?

14 A I try to stay away from press reports so that I can focus on the case and --

15 Q Okay. So you haven't read The New York Times article?

16 A I don't recall either way.

17 Mr. Castor. Okay. Do you want to mark the next exhibit? We'll mark it then.

18 [Weiss Exhibit No. 14

19 Was marked for identification.]

20 BY MR. CASTOR:

21 Q So The New York Times reported that Mr. Clark wrote to your office and
22 basically raised the prospect that President Biden would be called as a witness, and
23 because of that, that would be a reason that you should not bring the case.

24 Do you remember that allegation?

25 A I'm not going to comment on that, what Mr. Clark may have said or

1 represented to us.

2 Q Uh-huh.

3 A But I'd say, as a general matter, decisions in the case are going to be based
4 on the facts and the law, not any representation --

5 Q Okay.

6 A -- by the defense counsel or -- I'm not going to call them threats, but
7 whatever he may have said in that regard.

8 Q So surely you remember this New York Times article coming out, right? I
9 mean, this is a pretty significant article against the backdrop of your case. You can flip
10 through it. It's pretty --

11 Do you remember reading the article when it came out?

12 A I don't know that I recall reading the article. I'm not going to
13 discuss -- whatever Mr. Clark chose to share with the press, that's for him to speak to.
14 I'm not going to comment on it either way. It would be inappropriate -- to the extent
15 this is discussing plea negotiations, absolutely inappropriate for a prosecutor to talk
16 about that process.

17 Q Okay. Stuart Goldberg testified that he went to Delaware for one of these
18 taxpayer conference meetings.

19 Do you remember that?

20 A Do I remember Stuart Goldberg coming to Delaware?

21 Q Yeah.

22 A I'm not going to get into the meetings.

23 Q I mean, he did. I don't know what the difference is.

24 A Well, I understand that he -- I don't know, but I'm not going to discuss
25 meetings with defense counsel. I just don't think it's appropriate for this process, and it

1 doesn't go to my authority.

2 Q Okay. I mean, it's a little confusing for us. I mean, witnesses come in with
3 the same DOJ lawyers and, you know, some witnesses are talking about one thing, and
4 then now you're saying you're not going to talk about it.

5 Do you -- I guess the question is, do you remember the meeting?

6 A Look, I can only make decisions on behalf of myself and the integrity of the
7 investigation and the process moving forward. That's what I'm focused on. I can't
8 speak to why Mr. Goldberg did or did not address something that I'm handling differently.
9 I understand the frustration, but I'm not in a position to address it.

10 Q During this meeting, Mr. Clark said that your legacy was on the line, how you
11 handled this case.

12 Do you remember that?

13 A Again, I'm not going to talk about the meeting or any particulars with respect
14 to the meeting.

15 Q I'm going to turn your attention to the Attorney General statements about
16 your authority. In April of 2022, he stated: The Hunter Biden investigation is being run
17 and supervised by the United States Attorney for the District of Delaware. He's in
18 charge of that investigation. There will not be any interference of any political or
19 improper kind.

20 Do you remember hearing the Attorney General's comments in April of 2022?

21 A I can't -- I can't recall when or if I heard specific comments. What I can say
22 is I believe -- with respect to what you've just represented to me, I believe I'm in charge of
23 the investigation, and I don't believe I was interfered with in the exercise of my
24 responsibilities in this case.

25 Q So the Attorney General has had a couple of silent appearances where this

1 topic has come up, and I guess the question is, did you have direct communications with
2 the Attorney General?

3 A I've never had any direct communications with the Attorney General, save
4 my communication in requesting Special Counsel authority in August of 2023.

5 Q When you did request Special Counsel authority in August of 2023, how did
6 you request it? Was it in writing or on the telephone?

7 A It was in writing, and that's about all I'm going to say about that process.

8 Q Okay. Did you reach out directly to the Attorney General, or did you go
9 through Mr. Weinsheimer?

10 A I'm not going to get into anything further. I requested it, and it was
11 granted.

12 Q Okay. So the Attorney General, Mr. Garland's testimony before the Senate
13 in April of 2022, did Mr. Weinsheimer tip you off that the Attorney General was going to
14 be making those statements, or did he follow up after they were made to alert you to
15 them?

16 A I don't recall ever being tipped off or alerted to anything the Attorney
17 General was or was not going to say.

18 Q Okay.

19 A -- to Congress or anyone else.

20 Q Okay.

21 A I don't recall anything that resembles such a process.

22 Q Okay. So to the extent you are familiar with them, you just heard about
23 them in the news?

24 A I'm not sure where I heard about them. All I can say and all I'd address is
25 what I understand the situation to be with respect to anything that was said that

1 pertained to me, the investigation, my authority, anything in that nature.

2 Q In March of 2023, the Attorney General stated: "The U.S. Attorney in
3 Delaware has been advised that he has the full authority to make those kind of referrals,"
4 referring to other U.S. Attorney's Offices, "or bring cases in other jurisdictions if he feels
5 it's necessary, and I've not heard anything from that office to suggest they're not able to
6 do everything that the U.S. Attorney wants to do."

7 Do you remember the Attorney General making that comment?

8 A I don't know if I have a specific recollection of that comment or the others.

9 Q Okay.

10 A What I'd say is I've testified to you folks is that -- or I've described for you
11 folks is that I had the ability to pursue charges in the jurisdiction I determined was
12 appropriate.

13 Q But as of March of 2023, I mean, you tried to bring a case in D.C. He
14 decided not to partner. You tried to bring a case in the Central District of California, in
15 Los Angeles. He decided not to partner. So how do you reconcile that?

16 A How do I reconcile that with what?

17 Q That, on one hand, the Department is saying, yeah, we're going to give you
18 515 authority. The Attorney General is saying you have the full authority. But, on the
19 other hand, when you actually try to implement any of these things, you're told no.

20 A Again, you're putting one fact together with another that don't go together.
21 I had the authority. I was satisfied I had the authority. I wasn't concerned about my
22 authority. The only issue I was concerned with was the decisionmaking on the case, the
23 strength of the case, and whether to bring the case. That was the focus of my thought
24 process, not the authority.

25 Q And in your letter you talk about requesting Special Attorney status?

1 A In exhibits 1, 2, or 3?

2 Q Correct.

3 A Yes.

4 Q And then ultimately, you requested Special Counsel status. Why the
5 difference? Like, why didn't you just request Special Attorney status as you had
6 indicated?

7 A I'm not going to get into the particulars as to why I requested Special
8 Counsel status --

9 Q Okay.

10 A -- as opposed to Special Attorney status.

11 Q Okay.

12 A That's just --

13 Chairman Jordan. The whole premise here is on your authority. That gets to
14 the heart of the matter. What is the distinction your authority -- you requested Special
15 Attorney status clear back in March of '22 -- actually February of '22 before you went to
16 Mr. Graves. That's the heart of what we're trying to get at, and you won't answer the
17 question.

18 Mr. Weiss. No, I'm not going to get into the particulars of why I requested
19 Special Counsel status. That's beyond the scope of this, in my mind.

20 Mr. Castor. Okay.

21 Mr. Weiss. Those are executive communications and inappropriate for me to
22 disclose. I had the authority that I thought was appropriate as U.S. Attorney to bring the
23 charges under 515 as I've discussed, and I continue to have the authority to move forward
24 in my current status.

25 BY MR. CASTOR:

1 Q What were the differences, though, in Special Attorney status and in Special
2 Counsel status? Like, you were making your decision in August to request Special
3 Counsel status. Surely, you mulled whether Special Attorney status would do it for you.

4 And so the question is, in August of 2023, when you're thinking this over, you're
5 mulling it, what are the differences in your mind between those two?

6 A Yeah. That gets right back to the question that was posed by the chairman
7 and yourself previously, and it necessarily gets into particular executive conversations
8 that I'm not at liberty to discuss, would be inappropriate for me to discuss at this time,
9 certainly would be the subject, and should be the subject, of my Special Counsel report
10 when that's submitted.

11 Q Okay. If you're giving a lecture then -- let's say hypothetically you're giving
12 a lecture to a bunch of law students, and you're trying to help law students understand
13 the difference between the two, what would you tell them?

14 A The difference between --

15 Q Special Counsel authority and Special Attorney.

16 A Well, there are differences, and we discussed some of the processes that
17 one must follow. I mean, as a U.S. Attorney, I've got to go through the 515 process that
18 we've been discussing extensively. As Special Counsel, that process doesn't exist. I
19 have the authority, consistent with my mandate as ordered by the Attorney General, to
20 prosecute and to bring the case wherever circumstances dictate.

21 So I don't have to go through that step-by-step process. But that's one example
22 of the differences between the two.

1 [1:34 p.m.]

2 BY MR. CASTRO:

3 Q And, if you were told that you would have been able to have 515 authority if
4 you asked for it, like, why wouldn't you just go that route?

5 A Again, that necessarily gets into the issue that we've been looking at, and it's
6 just not appropriate for me to get into at this time.

7 Mrs. Spartz. Are there key differences that are significant in the statuses, any
8 other difference except processes for 515?

9 Mr. Weiss. I mean, generally speaking, the idea is you don't report -- you know,
10 the reporting requirements aren't as demanding as Special Counsel, but I'm trying to
11 think of other differences. Resource availability might be different under the two
12 processes. But, again, I would return to the idea that, whether I was Special Counsel or
13 whether I was a U.S. Attorney, you know, I had the authority I needed to proceed as I
14 deemed appropriate.

15 BY MR. CASTRO:

16 Q Since you've been appointed Special Counsel, did you get more staff?

17 A I don't want to get into the particulars of the staff, and I continue to work on
18 building the team, but I'm not going to get into the particulars.

19 Q Do you have separate office space?

20 A I do have separate office space.

21 Q Okay. And you're housed in Delaware?

22 A I am housed in Delaware.

23 Q Okay. So it's totally separate office as Special Counsel from the U.S.
24 Attorney?

25 A It is.

1 Q Okay. And you're performing both functions? You're performing the
2 functions of the United States Attorney for the District of Delaware, and the Special
3 Counsel?

4 A I have help as U.S. Attorney, but I'm doing the best I can in each of the roles,
5 yes.

6 Q Okay. And I'm sorry if I just asked this, but how large is your team on the
7 Special Counsel's Office? I think I asked a slightly different question, but I'm not trying
8 to be repetitive here.

9 A I don't know that you have. I don't want to get into particulars of numbers,
10 individuals, and the team, so -- and determine that we will have the team necessary to
11 pursue the case as we assess it.

12 Chairman Jordan. I just want to read from the Attorney General's statement on
13 August 11th of this year announcing U.S. Special Counsel. Bottom of the first page of
14 what's been marked, it says: "On Tuesday of this week, Mr. Weiss advised me" -- this is
15 a Friday, August 11th, so Tuesday would have been August 8th. "On Tuesday of this
16 week, Mr. Weiss advised me that, in his judgment, his investigation reached a stage in
17 which he should continue his work as Special Counsel, and he asked to be so appointed."

18 And you said that was the only contact you've had with the Attorney General, was
19 when you asked him for this?

20 Mr. Weiss. That's my professional --

21 Chairman Jordan. And just refresh my memory. Was that a phone call, email?
22 How was that? A letter?

23 Mr. Weiss. I didn't get into the particulars, but that is the only communication
24 that I had with the Attorney General that I recall, yes.

25 Chairman Jordan. Did you talk with anyone else at Main Justice prior to the

1 communication directly with the Attorney General?

2 Mr. Weiss. With respect to that request?

3 Chairman Jordan. Yes.

4 Mr. Weiss. No.

5 Chairman Jordan. Okay.

6 BY MR. CASTRO:

7 Q During your discussions with Mr. Weinsheimer about 515 authority, was
8 there any discussion about the conflict-of-interest rules and whether they would be
9 applicable here?

10 A For conflict-of-interest rules for me?

11 Q Correct.

12 A No. Not as it pertained to my -- oh, wait. They would be applicable here
13 with respect to what? Special Counsel, Special Attorney? I just want to make sure I
14 understand.

15 Q The fact that you're handling, you know, the Hunter Biden case, that you're
16 the Delaware U.S. Attorney, you know, Hunter Biden is the son of the President, who is
17 from Delaware, who is certainly a very influential person and comes from a very
18 influential family in Delaware.

19 A No. I had been with the case for a couple of years, and, no, we never
20 discussed whether it was appropriate for me to continue to handle the case, because I
21 was the U.S. Attorney in Delaware.

22 Q Okay. There has been some reporting that, during President Biden's son
23 Beau Biden's tenure as attorney general in Delaware, you had some interactions with
24 him.

25 What can you tell us about those?

1 A I don't know what that has to do with my authority, but I --

2 Q Were you friends with Beau Biden?

3 A No, I wasn't friends with Beau Biden. I barely had a relationship with
4 Beau Biden.

5 Q Okay.

6 A I was the Acting U.S. Attorney. He was the attorney general, so our paths
7 crossed. That was the extent of this relationship.

8 Q Okay. Any relationship with any other Biden family members?

9 A Nope.

10 Ms. Zdeb. Steve, can we go off the record for one quick second?

11 Mr. Castro. Sure.

12 [Discussion off the record.]

13 Mr. Castro. Back on the record.

14 BY MR. CASTRO:

15 Q Did you have anything to add after conferring with counsel?

16 A No, no, no. I -- no.

17 Q Okay. When Graves and Estrada told you that they didn't want to partner
18 on the case, did they give you any specific feedback about why?

19 A I never had a conversation with Graves about not partnering, and I had a
20 conversation with Estrada. I don't want to get into particulars. It goes to the merits,
21 and --

22 Mr. Biggs. It goes to the merits of what?

23 Mr. Weiss. It goes to merits of the case, views of the case, discussions about the
24 case, and I'm not going to discuss those discussions because it does bear on the merits of
25 the case and the investigation.

1 Mr. Biggs. The phrase is interesting. I -- "goes to the merits of the case." All
2 right.

3 BY MR. CASTRO:

4 Q So the Graves people, that was all staff to staff? You learned that
5 Mr. Graves didn't want to partner via staff?

6 A That's correct. I learned via the folks on my side of the aisle, yes.

7 Q And you never had a subsequent follow-up with him?

8 A No. I wasn't -- it wasn't necessary. It wasn't like I was looking to
9 persuade anyone. I wasn't concerned about my ability to go forward, so there was no
10 need to say, "Do you want to reconsider," or anything of that nature. They said it. I
11 accepted it, and I had conversations with the Office of Deputy Attorney General and
12 understood what my options were.

13 Q Okay. Did Graves or Estrada -- did their offices offer you anything? Did
14 they offer you office space or access to their grand juries?

15 A As I said earlier, I specifically recall feedback from Mr. Graves' office that
16 would have afforded us those logistical assists, yes.

17 Q But you didn't take him up on that offer?

18 A Well, I didn't proceed in the jurisdiction, so I didn't take him up on that offer.

19 Q Did Mr. Weinsheimer ever tell you that he met with Chris Clark?

20 A He -- if -- no. If he met with Chris Clark, I would have been at that meeting.

21 Q Okay. So there were no one-on-one meetings or telephone calls between
22 Mr. Clark and Brad Weinsheimer?

23 A I am unaware of any such meeting, and I don't think any such meeting would
24 have occurred.

25 Q Was Mr. Weinsheimer -- did he attend all the meetings, the taxpayer

1 conference meetings?

2 A Well, there are two types of meetings. I didn't attend taxpayer
3 conferences to the -- you know, I didn't participate in any taxpayer conference.

4 Q But you attended some meetings with Mr. Clark, correct?

5 A As I acknowledged earlier, there was a meeting, or
6 there -- meeting -- meetings with defense counsel took place. Just can't get into the
7 particulars of any meeting.

8 Mr. Castro. Okay. Our hour is up, so I'll stop there.

9 [Recess.]

1 [2:19 p.m.]

2 [REDACTED]: All right. It is 2:20. We can go back on the record.

3 BY [REDACTED]:

4 Q Special Counsel Weiss, in the last hour of questioning, the majority counsel
5 asked you a number of questions about supposed investigative steps, and you repeatedly
6 declined to comment.

7 In declining to comment, you did not intend to confirm or deny that any
8 investigative steps were or were not taken, correct?

9 A I do not, that's correct.

10 Q Okay. And so, for example, you were asked about a 1023 form that I think
11 was marked as exhibit 9. In declining to comment, you did not intend to suggest that
12 your office had, had not seen the form, had or had not taken any steps with regard to the
13 form. You were declining to comment entirely as to the question, correct?

14 A Yes. I don't want to communicate anything in that regard so as not to
15 jeopardize anything that we have that is ongoing.

16 Q Okay. And one more question: The comment was made that you agree
17 that the transition team was tipped off before a supposed interview of Hunter Biden.
18 You did not mean to confirm or deny that that actually took place, correct?

19 A That's correct. I did not mean to confirm or deny that fact.

20 Q Okay. I want to look at exhibit 12, which is the Special Counsel Report.
21 Realizing that there are a number of redactions and that this may be redacted,
22 there is no date on this report, correct?

23 A This -- oh, yes. It is 12. I'm sorry. There is a sticker that says 2, but I do
24 not see a date on exhibit 12.

25 Q Okay. And you realize it says pages 84 and 85, but you have not been

1 presented with the pages preceding pages 84 and 85, correct?

2 A That's correct.

3 Q Okay. So, given that there is no date on this, you don't know, for example,
4 what steps might have been taken, what evidence might have been developed after this
5 report was presented, correct?

6 A Whether I do or not, I am not at liberty to comment on any steps or
7 investigative avenues that were pursued after the submission of the report.

8 Q Understood. And this is not the entire report, correct, as it exists?

9 A Exhibit 12 does not represent the entire report.

10 Q Okay. The statement was made in the prior hour that Matt Graves and/or
11 Martin Estrada, quote, "shot you down" or told you no. Is that an accurate
12 representation of your interactions with them?

13 A It is not. As I explained on several occasions, I did not ask them for their
14 permission to proceed. That wasn't the question that was posed.

15 I asked whether they were interested in joining in or participating in the case, and
16 they declined to do so, but I still had the ability to move forward if and when I chose to do
17 so.

18 Q Okay. And that pertains to both the Central District of California and the
19 District of Columbia, correct?

20 A That is correct.

21 Q Okay. Were you denied 515 authority in spring 2022?

22 A I was not denied 515 authority at any time, no.

23 Q Okay. And, in fact, you said earlier that -- I'm sorry. Withdraw that.

24 You don't need section 515 authority to take investigative steps in another
25 jurisdiction, correct?

1 A You do not need 515 authority to pursue investigative steps wherever they
2 may be, yes.

3 Q Okay. You've said in your letters and you reiterated again today that you
4 were assured that you would be granted 515 authority if it proved necessary.

5 At what point would you need to formally go through the process to obtain
6 section 515 authority?

7 A I would execute on that authority at the time we were ready to bring the
8 charges, to file.

9 Q Okay. And, accordingly, if you were not ready to bring charges, you would
10 not formally go through the process to obtain 515 authority. Is that correct?

11 A That's correct.

12 Q Okay. In the prior hour, you were asked about some statement supposedly
13 made by Mr. Clark. I think there was a reference to career suicide and your legacy being
14 on the line. I don't want to get into those statements specifically, and I understand you
15 can't comment on them, but at a high level based on your many years of experience as a
16 prosecutor, it's accurate to say that defense attorneys have an obligation to vigorously
17 defend their clients, correct?

18 A As a general matter, absolutely.

19 Q And, as part of that defense, defense attorneys might sometimes use what
20 some people could consider to be aggressive language in their conversations with
21 prosecutors. Is that fair?

22 A Certainly there are times when defense counsel may choose to use
23 aggressive language.

24 Q And have you been in situations in which defense counsel has used
25 aggressive language with prosecutors?

1 A I believe that I have, although I don't find it -- personally, I don't find it very
2 effective for what that's worth, but I suspect that I have witnessed such tactics.

3 Q Okay. When you say you don't find it very effective, in your experience, are
4 prosecutors easily intimidated by defense tactics like aggressive language?

5 A I mean, I can't -- no. I wouldn't expect that most prosecutors would be
6 intimidated by such tactics.

7 Q And, when you say you don't find it very effective for defense attorneys to
8 use those kind of aggressive tactics, why do you say that?

9 A Because we're bound to make our decisions based on the facts and the law,
10 so, if -- I find, as a general matter, defense counsel is most effective when he focuses -- he
11 or she focuses on the facts and law and demonstrates why my case isn't what I think it is.

12 Q Okay. Thank you.

13 I want to turn to the release of information in cases. Are you familiar with the
14 term "law enforcement sensitive information"?

15 A I am generally, yes.

16 Q What's your understanding of what that term means?

17 A It means that it's information that is part of the investigation, and, therefore,
18 our preference would be that such information not be released, at least -- well, I wouldn't
19 even limit it to the pendency of the investigation, yes.

20 Q Are you familiar with what I mean when I refer to 6(e) material?

21 A I certainly am.

22 Q What is 6(e) material?

23 A It's grand jury material.

24 Q Are there particular safeguards around 6(e) material, or grand jury material?

25 A Sure.

1 Q What are they?

2 A There are statutes that provide that the knowing release of grand jury
3 material could be a criminal offense under certain circumstances depending upon the
4 surrounding circumstances.

5 Q Is it fair to say that the Justice Department works to keep both information
6 about ongoing matters and law enforcement sensitive information and 6(e) material from
7 being released?

8 A Yes.

9 Q Why is that?

10 A Because release of such material could jeopardize any ongoing investigation,
11 and perhaps be used by an adversary to undermine the ongoing investigation or the case
12 if it's ultimately prosecuted.

13 Q Okay. Could it actually impair prosecutors' ability to move forward with a
14 case?

15 A It could impair an ability to move forward. It certainly doesn't do it any
16 good.

17 Q Okay. And it could actually prevent prosecutors from obtaining a
18 conviction, right?

19 A Under certain circumstances. I mean, it's a hypothetical, but, as I said, it's
20 not a good development for prosecution.

21 Q Okay. Is it also a concern that the release of information about ongoing
22 investigations could create a risk of damaging the reputation of individuals who might not
23 ultimately be charged, for example?

24 A Certainly that's -- you know, that's a fair concern, yes. That's why we don't
25 talk about ongoing matters.

1 Q In this case, there have been allegations that, on at least two occasions,
2 information about the ongoing investigation, including potentially 6(e) material, was
3 leaked to the press.

4 Are you familiar with these allegations?

5 A I'm not familiar with the particulars that you're discussing.

6 Q Okay. Would it be concerning if information about this case was leaked to
7 the press?

8 A Absolutely. Any case for any prosecutor, the release of information to the
9 press would be of concern, yes.

10 Q Moving on, we've been keeping a loose tally, and, by our count so far today,
11 the majority has asked you more than 75 times questions about the ongoing
12 investigation, and you've repeatedly declined to answer.

13 It was made clear to the majority in advance of your testimony that you would
14 only be able to discuss the scope of your authority over this case, correct?

15 A My understanding, as I said in my opening statement, was that I was coming
16 in here to discuss the scope of the authority, but I have no comment with respect to the
17 number of times that the question has been raised. I've tried to be consistent in my
18 responses to the best of my ability.

19 Q Okay. Can you talk a little bit about why you are concerned about
20 discussing the underlying case in this format as opposed to putting the information into a
21 report to be released later?

22 A I don't want to say or do anything to jeopardize the ongoing case. We're
23 doing our best to gather the evidence and to make informed decisions. There are
24 people working very hard on that exercise, and the last thing I want to do is to say
25 anything here -- while I am mindful of oversight responsibilities, I'm doing my best to

1 respond to questions. I am really sensitive to the idea that I don't do anything to
2 jeopardize what we're working on otherwise with respect to the investigation or any
3 prosecution.

4 Q And can you explain why discussing that information here might jeopardize a
5 prosecution or might impact the ongoing case?

6 A Certainly, you know, there are any number of ways in which that could
7 manifest itself, but whether a court takes exception to something I say, whether defense
8 counsel uses something I say to attack the prosecution or the merits of the prosecution,
9 these are all things that I'm trying to be mindful of so as to not undermine what we're
10 working hard on the investigative front.

11 Q Okay. And so, to the extent that you have declined to respond to questions
12 about the underlying case, that is a decision that you yourself are making based on
13 protecting that case, correct?

14 A Yes.

15 Q It's not a directive from Mr. Weinsheimer, for example?

16 A No one has directed me. I'm doing my best. I'm responsible for the case
17 and for the investigation, as I've tried to communicate, and I'm trying my best on my own,
18 without direction, to preserve the integrity of the case.

19 Q Compared to other matters that you've worked on during your career at the
20 Department of Justice, has this matter attracted more public attention than others?

21 A I think that's fair.

22 Q Has this outsized attention led to increased attention on your office
23 specifically?

24 A It's led to increased attention for everyone who has touched the case. I
25 think that's correct.

1 Q Has the outsized attention given to this case resulted in threats and
2 harassment against members of your office?

3 A Yes. Members of my office, agents assigned to the case, both from the IRS
4 and from the FBI, doxing family members of members of my office. So, yeah, it's part
5 and parcel of this case.

6 Q Do you have concerns for the safety of individuals working in your office?

7 A Sure. I have safety concerns for everybody who has worked on the case,
8 and we want to make sure that folks -- yeah, folks are encouraged to do what they need
9 to do with respect to the pursuit of justice generally and they not be intimidated in any
10 way from performing their responsibilities.

11 Q Do you have concerns that the threats and harassment employees have
12 received are intended to intimidate them into not doing their jobs?

13 A I really can't speak to the intention of any actor in this realm. I just know
14 that these -- that certain actions have been taken by individuals, doxing, and, you know,
15 threats that have been made, and that gives rise to concern. We've got to be able to do
16 our jobs.

17 And, sure, people shouldn't be intimidated, threatened, or in any way influenced
18 by others who -- again, I don't know what their motives are, but we're just trying to do a
19 public service here, so --

20 Q Have you yourself been the subject of any threats or harassment?

21 A I've certainly received messages, calls, emails from folks who have not been
22 completely enamored of my -- with my role in this case.

23 Q Do you have concerns for your safety or that of your family because of these
24 threats?

25 A You know, I'm not -- for myself, I'm not particularly concerned. Certainly I

1 am concerned, as any parent or spouse would be for -- yeah, for family, yep.

2 Q Are you familiar with threats that have been targeting Lesley Wolf?

3 A I am aware that Lesley Wolf has received threats, yes.

4 Q Is it fair to say that she's been the particular target for threats?

5 A I think that Lesley has received more than others for the most part in this
6 case, yes.

7 Q Do you have confidence in Ms. Wolf as a prosecutor?

8 A Yeah. I have confidence in Ms. Wolf as a prosecutor.

9 Q Okay. Are you confident that she did her work on the Hunter Biden matter
10 in a professional and unbiased manner without partisan or political considerations?

11 A I believe she did. As I said, she served the Department for more than
12 16 years, and I believe her to be a prosecutor with integrity.

13 [REDACTED]. Okay. All right. Thank you. We can go off the record.

14 [Recess.]

15 Mr. Castro. We can go back on the record. It's 2:36.

16 BY MR. CASTRO:

17 Q Did you have any interactions with FBI official Timothy Tebow?

18 A I don't know a Timothy Tebow, so I'd say no.

19 Q Okay.

20 A Not that I know of.

21 Q Are you aware that FBI agents from the Washington Field Office interviewed
22 a gentleman by the name of Tony Bobulinski?

23 A I am aware of investigative steps in this case generally, but I'm not going to
24 discuss any particular investigative step that was taken.

25 Q Mr. Bobulinski has -- I don't know what the right word is -- maybe

1 complained that he tried to give the FBI information, but they didn't seem willing to take
2 it, and the U.S. Attorney's Office in Delaware didn't follow up with him.

3 What can you say with regard to that?

4 A Counsel, as you might surmise, I can't say anything in that regard, because it
5 pertains to the investigation. And, at this time, I'm just not at liberty to comment on
6 any aspect of the investigation, although I suspect I could comment on that and probably
7 would at the conclusion of our investigation and submission of the report.

8 Q Okay. Have you had any issues getting the information you needed from
9 Mr. Bobulinski?

10 A Again, I'm not going to comment on the investigation.

11 Q Have you interacted with an FBI agent named Eric Miller?

12 A Can you tell me the agency?

13 Q With the FBI. The Washington Field Office of the FBI.

14 A No. Not that I recall.

15 Q Okay. Are you aware of the role of the Washington Field Office in
16 suppressing information related to the Hunter Biden case?

17 A I have no particular knowledge about such a matter. I mean, not really.

18 Q Okay. Your primary FBI office is the Baltimore Field Office?

19 A Our -- the SAC, the special agent in charge, is located in the Baltimore Field
20 Office. That's correct.

21 Q Okay. And who is the special agent in charge that you interact with in
22 Baltimore?

23 A During -- currently?

24 Q Currently.

25 A As of today, it's Tom Sobocinski.

1 Q Okay. And what other FBI officials in that office do you interact with?

2 A His assistant special agent in charge is Ryeshia Holley, and those are the folks
3 I recall off the top of my head.

4 Q Okay. As far as the IRS personnel, how frequently does your office utilize
5 the supervisory or the special agents from the IRS in your cases?

6 A We utilize special agents from the IRS in any tax case, and, at a minimum, a
7 support capacity in many other cases.

8 Q Okay. So it's not uncommon for your office to work with the IRS agents?

9 A No. Hopefully not. If we're -- you know, no, because they're a
10 tremendous tool. So, no, we work with the IRS on a number of cases.

11 Q Okay. I'm going to mark the plea agreement.

12 Mr. Castro. What number are we up to?

13 Ms. Nabity. Fifteen.

14 Mr. Castro. Fifteen.

15 [Weiss Exhibit No. 15

16 Was marked for identification.]

17 BY MR. CASTRO:

18 Q This is the copy of the plea agreement dated July 26th of this year.

19 What's the current status of this plea agreement?

20 A The plea agreement has been withdrawn, and that's all I'd say about it at this
21 moment. There is ongoing litigation in this matter, as you know, and, therefore, I'm not
22 going to say anything that's going to compromise the prosecution in the district of
23 Delaware.

24 Q Okay. But we certainly can talk about the public plea agreement, can't we?

25 A I'm not going to talk about the public plea agreement because I don't know

1 how or when or if it will be utilized by defense counsel to advance the defense in this
2 case.

3 Q Okay. Do you know who drafted the statement of facts and the plea
4 agreement?

5 A Again, I'm not going to get into this. This is the subject of ongoing
6 litigation, an indicted case, so there is no way I'm going to comment on this matter.

7 Q Okay. Let me just ask you generally, though: If the defense attorney
8 drafted it, would that give you concern?

9 A I review with skepticism anything that is prepared by another party, so you
10 have to critically review documents you received drafted from an adversary, certainly.

11 Q Okay. So it would be uncommon for a defense attorney to draft a
12 statement of facts and plea agreement?

13 A Plea agreements and statement of facts accompanying plea agreements, as
14 a general matter, are part of the prosecution's efforts.

15 Q Could you turn to page 2? And I'll call your attention to 5(a).

16 Pursuant to the United States Sentencing Guidelines, section 2T1.1, the amount of
17 loss as to count 1 and 2, including relevant conduct as defined in the Sentencing
18 Guidelines, is no less than 1.1 million and no greater than 1.5 million.

19 Is this true and correct?

20 A You've rounded the numbers, but otherwise you've accurately read the
21 provision in the plea agreement.

22 Q Okay. And this was a plea agreement that was submitted to the court and
23 was, you know, attempted to be implemented, correct?

24 A This was a plea agreement that was submitted to the court.

25 Q Okay. So the information contained in here is accurate to the best of your

1 knowledge?

2 A Yeah, I'm not going to say anything about the contents of the plea
3 agreement or anything else about the process.

4 Q And your office signed this, correct, on page 6?

5 A There is a signature on the signature line on behalf of the United States, yes.

6 Q So, based on that, we can deduce that everything in here is something that is
7 true and correct to the best of your knowledge?

8 A Again, I'm not going to comment on anything that implicates the contents of
9 this document.

10 Q Okay. I'll refer you to page 7 of exhibit 1. It's exhibit 1. It's page 7 of
11 the --

12 A I got it.

13 Q -- document, the paragraph that states, during calendar year 2017, Biden
14 earned a substantial income, including just under 1 million from a company he formed
15 with the CEO of a Chinese business conglomerate, 666,666 -- that's an unusual
16 number -- "from his domestic business interests; approximately 664,000 from a
17 Chinese -- another Chinese infrastructure investment company, 500,000 in director's fees
18 from a Ukrainian energy company, 70,000 relating to a Romanian business, and 48,000
19 from the multinational law firm.

20 Is this all true and correct to the best of your understanding?

21 A Again, all I'm going to say is that you've accurately read the paragraph.
22 Otherwise, I'm not going to comment on the document or the exhibit attached thereto.

23 Q Okay. Do you know who drafted this part, exhibit 1?

24 A Again, I'm not going to get into the contents or the drafting process with
25 respect to this.

1 Q Who would ordinarily draft these types of documents?

2 A I'm not -- won't comment on it as it applies to this case. Generally, the
3 statement of facts that accompany a plea are the province of the prosecution as a general
4 matter.

5 Q Okay.

6 A However, that's not to say there have been -- I am aware of circumstances in
7 which, you know, the other side has had comment or had input into a document.

8 Q Would it be common for defense counsel to draft something and then send
9 it to the prosecution and have the prosecutors basically use the document --

10 A Again, that --

11 Q -- and edit it?

12 A That sounds like we're suggesting such with respect to this case, and, again,
13 it's -- we're litigating this, so I'm not going to get into anything that could be utilized in a
14 way that's contrary to the government's interests on this topic.

15 Q Yeah. I was just asking from a general matter.

16 A I understand.

17 Q Do you take documents that defense attorneys send you and then just work
18 from there?

19 A Again, I'm just --

20 Q Not in the case. Just generally.

21 A I'm giving you what I can, you know, on this kind of -- on this situation. I
22 mean, this is active litigation. We're involved in motions practice as we speak.

23 Q Flipping the page to page 8, the third paragraph, the paragraph that begins
24 with "despite"?

25 A I see it.

1 Q Direct your attention to the second sentence. On or about March 22nd,
2 2018, Biden received a \$1 million payment into his Owasco, LLC bank account as a
3 payment for legal fees for Patrick Ho and 939,000 remained available as of tax day.

4 Is that true and correct to the best of your knowledge?

5 A As I've stated previously, counsel, I'm just not going to comment on any
6 aspect of the contents of this document or the plea agreement in general.

7 Q But this was a plea agreement accompanied by a statement of facts that
8 your office signed?

9 A This is a plea agreement that was signed by someone in my -- I believe in my
10 office.

11 Q Okay. And this isn't the first time you've seen this, right?

12 A This --

13 Q We're talking about the right plea agreement, right?

14 A This is not the first time I have seen this.

15 Q Okay. Did you have any involvement with this particular document --

16 A Not going to talk about it.

17 Q -- or was it just the AUSAs in your office?

18 A Not going to talk about the process, as I've said before. Just not going to
19 talk about the process that underlies this, that led to the completion of the report, or any
20 of the contents thereof.

21 Q Okay. Ordinarily, are you involved in it?

22 A Again, I'm not -- I'm just not going to get into that.

23 Q Outside of this case, is, like, the U.S. Attorney ordinarily involved in revising
24 plea agreements that your AUSAs are handling?

25 A I have -- we're a small office, so it wouldn't be the craziest thing for me to

1 review and have questions or suggestions with respect to a plea agreement.

2 Q Okay. On July 26th, the date of this plea agreement, Judge Noreika of U.S.
3 District Court for the District of Delaware declined to accept the Department's plea and
4 pretrial diversion agreements, correct?

5 A I'm not going to comment on Judge Noreika's decision at all. I'm just not
6 going to offer any comment in that regard.

7 Q Okay. But she declines to -- I mean, I don't mean to be difficult here, but --

8 A The plea agreement did not go forward.

9 Q Okay. Because of the judge?

10 A I'm not going to comment on why, who said what, the judge's comments.
11 We're in the matter before the judge as we speak, so I'm not going to say anything in that
12 regard.

13 Q Okay.

14 Mr. Castro. Can we get a copy of the pretrial diversion agreement? We'll mark
15 that as the next exhibit.

16 We can go off the record for a second.

17 [Discussion off the record.]

18 Mr. Castro. All right. We're up to exhibit 16. This is the pretrial diversion
19 agreement.

20 [Weiss Exhibit No. 16

21 Was marked for identification.]

22 BY MR. CASTRO:

23 Q Paragraph 15 -- I'm sure you've seen this document before, correct?

24 A I've seen this document before.

25 Q This is the pretrial diversion agreement. On page 9 of the document, it's

1 signed by Mr. Wise of your office under your authority. It's signed by the defendant,
2 Robert Hunter Biden, and his attorney, Chris Clark. And there is also a signature block
3 for the United States probation officer.

4 Is the probation officer needed to make this document effective?

5 A Not going to comment on that. It's the subject of ongoing litigation.

6 Q Is there ordinarily a spot for the probation officer to sign?

7 A Not going to comment on that at all. It's subject of ongoing litigation. I'm
8 not going to say or do anything to jeopardize the litigation or the rights of either the
9 government or defense in pursuing that litigation.

10 Q You've seen pretrial diversion agreements in your district before?

11 A I have seen pretrial diversion agreements in my district before.

12 Q Okay. And is ordinarily the probation office one of the parties that has to
13 sign?

14 A In our district, the probation office is a party to the agreement.

15 Q Okay. And they sign it?

16 A They are party to the agreement. I can't recall specific circumstances. I
17 don't review all the pretrial diversion agreements, but the probation office is absolutely a
18 party to a pretrial diversion agreement.

19 Q Okay. Now, is that not the case in other districts to your knowledge?

20 A I can't speak to other districts.

21 Q Okay. Paragraph 15 of this document, which I believe is on page 7, states,
22 "The United States agrees not to criminally prosecute Biden outside the terms of this
23 agreement for any Federal crimes encompassed by the attached statement of facts and
24 the statement of facts attached as exhibit 1 to the memorandum of plea agreement filed
25 the same day. This agreement does not provide any protection against prosecution for

1 any future conduct by Biden or by any of his affiliated businesses."

2 Did I get that right? Did I read it accurately?

3 A You read it well.

4 Q Okay. Thank you.

5 Other than the Hunter Biden case, how many times has your office included, you
6 know, in a pretrial diversion agreement, an agreement not to prosecute crimes that are
7 unrelated to the crime being diverted?

8 A I'm not going to comment on that. Again, I'm not going to comment on the
9 substance of this document. Subject of ongoing litigation, and I don't want to in any
10 way influence that litigation.

11 Q Okay. Well, what is the status of the litigation? Maybe you could just
12 help us understand that and that would alleviate the need to ask.

13 A The government has filed charges in the district of Delaware, and
14 we're -- motions practice is -- will be underway.

15 Q Okay. And are these agreements -- the plea agreement, are they subject to
16 litigation specifically?

17 A They haven't filed their motions, but --

18 Q Okay.

19 A -- there are documentation -- there is documentation that suggests that it
20 will certainly be the subject of litigation.

21 Q Okay. Did you personally sign off on both of these agreements?

22 A Again, I'm not going to get into the particulars of my sign-off or any other
23 aspect of the preparation of the documents or the content of the documents.

24 Q Okay. Well, then who is Leo Wise and Derek Hines?

25 A They are -- they were persons who were authorized to sign the document on

1 my behalf.

2 Q Okay. Are they AUSAs in the district of Delaware?

3 A They are -- they are AUSAs who are -- they're AUSAs. That's all -- they
4 were, I think, SAUSAs on this matter.

5 Q They were SAUSAs?

6 A Special Assistant United States Attorneys.

7 Q Okay. Are they part of your office now? Are they still part of the --

8 A I'm not going to comment on personnel.

9 Q Okay. Well, why wasn't -- I mean, Lesley Wolf, as far as -- you know, we're
10 aware and the whistleblower testified Lesley Wolf was the lead prosecutor on this. Why
11 isn't she signing these documents?

12 A I'm not going to -- I'm not going to speak to personnel -- anyone's role in our
13 prosecution or who participated and who did not participate and why that may be.

14 Q Was she benched in the wake of the whistleblower testimony?

15 A Not going to discuss personnel matters. It's not -- it's certainly outside the
16 scope of the intended topic that we're here to discuss.

17 Q Well, your intended topic, but, I mean, you know, we're obviously following
18 up on what we believe is credible testimony provided by whistleblowers via protected
19 disclosures?

20 A I understand that you have a role to perform and a job to do, as I do. And,
21 yes, I'm here to discuss my authority and all aspects of that question, but not the case,
22 the personnel on the case, or anything associated with the investigation.

23 Q Okay. Is Ms. Wolf still working the case?

24 A I'm not going to comment on personnel that's part of the case. Just not
25 going to do it for the reasons we've previously discussed. Just not helpful in that regard.

1 Q What's the Delaware way?

2 A I don't really know what the Delaware way is. I've heard the phrase. I'm
3 not from Delaware, but I've heard the phrase, so I don't pretend to be intimately familiar
4 with the connotation.

5 Q Have you ever used the term "the Delaware way"?

6 A No. I don't think -- I don't believe I've ever used the term "the Delaware
7 way."

8 Q Are you aware of a prosecution of a gentleman by the name of Christopher
9 Tigani?

10 A I am, yes.

11 Q And you prosecuted him?

12 A I was -- I don't recall my status at the time, whether I was acting or -- but I
13 am aware of the prosecution for Mr. Tigani.

14 Q Okay. At the time, I believe you were the interim head of the office?

15 A I may have been.

16 Q Okay.

17 A If it was, you know, 2009, 2010, I was acting or interim U.S. Attorney during
18 that timeframe.

19 Q And you had stated at the time that Tigani had become the embodiment of
20 the Delaware way.

21 A Okay.

22 Q Do you know what you meant when you said that?

23 A You know, I can't -- I can't specifically recall. I recall Mr. Tigani's case, and I
24 know that it pertained to -- or my recollection is that it pertained to campaign violations.

25 Q Okay.

1 A Bundling, I believe. Bundling campaign contributions.

2 Q In the presentencing memo for that case, it was written, "The defendant
3 himself, Mr. Tigani, best described the pervasive nature of his conduct to Federal agents.
4 Over a 6-year period, defendant became the embodiment of the Delaware way, a
5 concept described uniformly by defendant and others as a form of soft corruption
6 intersecting business and political interests which has existed in the State for years."

7 Does that refresh your recollection?

8 A The idea of soft corruption? I wouldn't -- I don't -- I don't recall. That was
9 submitted -- I think I was the supervisor at the time. You can tell me if I'm wrong, if the
10 AUSA -- my name is under the AUSAs. I certainly wouldn't retreat from the description
11 in that sentencing memorandum --

12 Q Okay.

13 A -- with respect to Mr. Tigani's role and what it represented.

14 Q Okay. Would you characterize the Delaware legal community as a small,
15 tight-knit legal community?

16 A I would characterize the Delaware community as a small community, yes, for
17 sure.

18 Q And, for the most part, all the key players who litigate in Federal court know
19 one another?

20 A I think that's fair that folks get to know one another pretty quickly, yes.

21 Q Okay. Did you ever have any concerns that you were responsible for
22 bringing a case against the President's son and, yet, you're part of this close-knit
23 community?

24 A No, I didn't. No. Yes, I just -- I just acknowledge that the Delaware,
25 particularly in Federal courts -- you know, there is only a certain number of practitioners

1 locally --

2 Q Right.

3 A -- and there is extensive base that comes in from outside of Delaware.

4 Q Right.

5 A But there is a certain limited number of practitioners that regularly appear in
6 Federal court, but that fact, as far as I'm concerned, and nor did any other fact give pause,
7 as far as I was concerned, with respect to my ability to pursue the facts and the law and
8 go where they led in this investigation or the prosecution.

9 Q Was there any discussion that you ever were a part of that maybe it would
10 be best to have a Special Counsel over this case that was not connected to this small,
11 tight-knit legal community of Delaware?

12 A I don't recall any discussion that was had along those lines. That is,
13 perhaps Special Counsel would be appropriate because this is a small, tight-knit legal
14 community. No, I don't recall any conversation of that length or of that nature.

15 Q Or, like, maybe for this case, the best type of Special Counsel would be
16 somebody from outside the Delaware legal community?

17 A A conversation which -- that I was privy to, or participated in?

18 Q Right. I mean, either/or, yes.

19 A I don't recall that, no. No. I don't recall a conversation that suggested
20 that someone from Delaware having responsibility of this case could not fulfill his or her
21 responsibilities.

22 Q Do you think, from an outsider's perspective, that a reasonable outsider
23 could perceive that potentially there could be a conflict of interest there worthy of
24 addressing?

25 A You know, I can't speak to that. You know, it's speculation, but -- so I really

1 can't address it.

2 Q I mean, one of the principles under the Special Counsel regime is that, if the
3 President needs to be investigated or the President's, you know, close family member of
4 the President, that that be handled -- if a Special Counsel is going to be appointed, that it
5 be detached from the authority of the President, correct?

6 A Yeah. I don't know about being detached from the authority of the
7 President. What I would say is, at least as it pertains to me, that I wouldn't have
8 requested an appointment of Special Counsel if I didn't think I could fulfill the
9 responsibilities that attached thereto, which are significant. I fully appreciate it, and I
10 wouldn't have asked for it if I didn't think I could do it.

11 Q Right. Do you see any conflict of interest that you serve at the pleasure of
12 President Joe Biden, yet, at the same time, you're in the midst of a prosecution of his
13 son?

14 A I understand what you're suggesting. The fact is that Special Counsel
15 ultimately reports to the Attorney General, who reports to the President of the United
16 States, regardless of who it is. That's the way it works. So you could -- one could
17 frame the same question with respect to anybody that might operate in this role.

18 Q Are you familiar with Robert Hur?

19 A I am familiar with Robert Hur, yes.

20 Q And he's another Special Counsel currently?

21 A He is another Special Counsel.

22 Q And, to your understanding, what is he examining?

23 A He's examining the document case.

24 Q Okay.

25 A The classified document situation.

1 Q Is he somebody with experience in Delaware, or is he from the Delaware
2 legal community?

3 A Rob Hur was the U.S. Attorney in the District of Maryland when I was U.S.
4 Attorney in -- and I still am -- in Delaware.

5 Q Okay. Do you know why Mr. Hur was selected?

6 A I don't.

7 Q And he was brought in from outside the Department? That's correct?

8 A Rob was -- my understanding is that Rob Hur was not part of the Department
9 of Justice at the time. That's my understanding.

10 Q In August of 2023, when you requested Special Counsel authority, did you
11 have a recommendation that maybe the Department ought to consider somebody other
12 than yourself, or were you the only person that you thought could do this job?

13 A I'm not going to get into the particulars of my request for the reasons I
14 discussed previously.

15 Q Okay. Was there any discussion with the Department about whether you
16 were the best person for the job, or whether they ought to go outside the Department
17 like they did with Mr. Hur, like they did in other Special Counsel situations?

18 A No. As I mentioned previously, I -- you know, I submitted the request.
19 That was the only request that I am aware of. I don't know -- I have no idea whether the
20 Department considered other options.

21 Q And, when you submitted the request, was that through Mr. Weinsheimer?

22 A No. No, it wasn't.

23 Q Did you have communications with Mr. Weinsheimer before you submitted
24 the request?

25 A I did not have communications with Mr. Weinsheimer about the request

1 before I submitted it.

2 Q Okay. You just went right to the Attorney General?

3 A I submitted the request on my own initiative, and, otherwise, I really can't
4 get into the particulars at all.

5 Q Right. Have you had subsequent conversations with Mr. Weinsheimer? Is
6 he the individual that you reported to, or --

7 A After I was appointed?

8 Q Correct.

9 A Yes. I continue to discuss the matter with Mr. Weinsheimer.

10 Q So he's your primary point of contact still?

11 A He continues to be my primary point of contact, yes.

12 Q Okay. And do you still consider yourself as reporting into the DAG as a
13 Special Counsel like a U.S. Attorney would?

14 A Ultimately, whether I'm Special Counsel or as U.S. Attorney, yes, you
15 have -- it's still the Attorney General that --

16 Q Right.

17 A -- runs the Department, whether -- and that applies whether I am Special
18 Counsel or U.S. Attorney, absolutely.

19 Chairman Jordan. Have you kept up the rhythm? You said earlier today that
20 you had monthly contacts with the key people at the Justice Department. Have you
21 kept up that same protocol? Has it increased or decreased as Special Counsel?

22 Mr. Weiss. I guess it's been, I guess, 3 months. I don't know that there is much
23 of a practice or that I could say, you know, circumstances. You know, I've had several
24 conversations in the last 3 months with Mr. Weinsheimer. I can say that.

25 Chairman Jordan. So it's picked up?

1 Mr. Weiss. It's -- I've had probably -- yes, several conversations. Whether that
2 will continue or it was unique to the initial stages of the project, I really can't speak to.

3 Chairman Jordan. Okay.

4 BY MR. CASTRO:

5 Q If you're going to indict somebody, would you need to alert
6 Mr. Weinsheimer in advance? Would you need to alert the DAG or alert the Attorney
7 General?

8 A I don't -- it's expected and my recollection of the regulations that attend to a
9 Special Counsel would require to apprise the AG, I expect, through the Office of the
10 Deputy Attorney General of significant developments in the case.

11 Q So, if you were going to indict somebody, you would presumably go through
12 Mr. Weinsheimer and then --

13 A The regulations provide for keeping the AG and his designee apprised of
14 significant developments. That's my understanding of the regs.

15 Q Right. But, in practice, Mr. Weinsheimer is your primary contact?

16 A Historically, that's been the case, correct.

17 Q Okay. So, if you were going to indict someone, you'd probably alert
18 Mr. Weinsheimer and determine whether any other communications were needed with
19 the DAG individually or the AG?

20 A If I were to take a significant step in the case, I expect, as you've suggested,
21 that, yes, I would have contact with Mr. Weinsheimer.

22 Q Okay. Has Mr. Weinsheimer given you any guidance or limiting instructions
23 about things you can or can't do?

24 A No.

25 Q You mentioned earlier this morning in a previous round that you had -- we

1 asked you about discussions that you had with Mr. Estrada, and I believe you told us that,
2 with respect to bringing a case in the, you know, Los Angeles U.S. Attorney's Office, the
3 Central District of California, you had one conversation with Mr. Estrada?

4 A Yes. Yes. At that time, I had one -- yes. I had one conversation relevant
5 to our pursuit of the case in 2022, that's correct.

6 Q Okay. And then I take it by that that you potentially have had additional
7 communications with Mr. Estrada?

8 A Yeah, I don't want to get into those communications, but I was trying to
9 address -- I don't know who said what, but the notion that there may have been another
10 conversation.

11 Q Mr. Estrada testified that there was another conversation in September
12 of 2023. Do you remember that one?

13 A Yeah, I don't want to get into the particulars of any further conversations. I
14 mean, the first one -- and I'm not trying to be cute. The first one spoke to my authority.
15 The second one, I just -- it would not be appropriate for me to comment on.

16 Q Okay. If you were going to bring an indictment in the Central District of
17 California as Special Counsel, what would you need to do with respect to Mr. Estrada?
18 Would you need to let him know you're doing it? Would you --

19 A Again, I don't want to get into the particulars here, but, as Special Counsel,
20 just as U.S. Attorney, there should be some communication to another district so that
21 someone -- you can't just appear and be there. There has to be some --

22 Q Of course.

23 A -- coordination.

24 Q So you would expect to alert Mr. Estrada if you were bringing in --

25 A I've said as much as I can say without in any way compromising or giving -- or

1 speaking to what now may be transpiring. I just don't want to get into that at all.

2 Q Okay. Do you have any indictments that are on the horizon?

3 A I'm not going to speak to indictments that may be on the horizon or
4 deliberative process or anything in that regard, as I'm sure you know.

5 Chairman Jordan. Do you have any idea when you will complete your task as
6 Special Counsel?

7 Mr. Weiss. I do not as I sit here today, but we will try to move it as quickly as
8 possible without compromising the investigation or the prosecution of any case that
9 might be brought.

10 BY MR. CASTRO:

11 Q Do you have any goal as to when you'd like to bring it to conclusion?

12 A Two weeks ago. No, I say -- again, I say that in jest, but no. Look, I
13 recognize that it's never good for cases to linger, so I am interested in efficiency to the
14 extent possible.

15 Chairman Jordan. It's been 5 years.

16 Mr. Weiss. I understand that, Chairman. I really do. I absolutely do.

17 Chairman Jordan. So that doesn't -- you just used the term "linger." That
18 doesn't fit the definition of "linger"?

19 Mr. Weiss. I understand your question and appreciate it.

20 BY MR. CASTRO:

21 Q Are you familiar with an individual by the name of Alexander Mackler?

22 A I am familiar with an individual by the name of Alexander Mackler.

23 Q And how do you know him?

24 A Mr. Mackler was an AUSA in U.S. Attorney's Office in the District of
25 Delaware.

1 Q And do you know how long?

2 A I believe for a couple years, but I can't speak with any specificity as to his
3 tenure, but that's my general recollection.

4 Q Okay. Do you remember what timeframe?

5 A I don't know specifically. 2017, 2018 --

6 Q Okay.

7 A -- I think, generally.

1 [3:12 p.m.]

2 BY MR. CASTOR:

3 Q Okay. Did you know that he also had served at one point as Joe Biden's
4 press secretary?

5 A I didn't know, and -- I didn't know Mr. Mackler's role vis-à-vis now-President
6 Biden. I knew that Mr. Mackler had worked for now-President Biden.

7 Q Are you aware that he served as Beau Biden's campaign manager during his
8 reelection campaign?

9 A I was not aware of that, not to the best of my knowledge.

10 Q Were you aware that in 2014 through 2016 he served as deputy counsel to
11 then-Vice President Biden?

12 A I was not aware of that.

13 Q Were you aware that in November of 2021 Mr. Mackler was named to
14 President Biden's transition team?

15 A I do think I learned of that.

16 Q Okay. And when did you learn of that, or under what circumstances?

17 A I don't know. I don't know. I don't know when or what the circumstances
18 were, but I think I heard that.

19 Q When Mr. Mackler was with the U.S. Attorney's Office in Delaware, what
20 was his role?

21 A He was an AUSA.

22 Q And, as I understand it, he was an AUSA from August of 2016 through May of
23 2019? Is that --

24 A Again, you have dates. I was estimating. Apparently, I wasn't that far off.
25 But --

1 Q Okay.

2 A -- I'm not going to challenge that.

3 Q Okay. And during his time as an AUSA, did you have any interactions with
4 him?

5 A Sure. We're a small office. I have interactions --

6 Q Okay.

7 A -- with everybody in my office.

8 Q Okay.

9 A At least if I'm doing my job.

10 Q Do you remember under what circumstances Mr. Mackler left the U.S.
11 Attorney's Office?

12 A I know that he went to be the chief deputy for the Attorney General's Office
13 for the State of Delaware.

14 Q Okay. And that was in 2019, when he left?

15 A Again, I can't recall the particulars, but that sounds within the realm of
16 reason.

17 Q When you subsequently found out that he was part of the transition team,
18 did that give you any concern that it might create an optics issue?

19 A No.

20 Q Did you or anyone in your office have any communications with him when
21 he was working with the transition team?

22 A I don't know when he worked with the transition team. I don't know if I
23 would've had any conversations with him. I certainly wouldn't have had any
24 conversations with him about his work as a member of the transition team.

25 Q Okay.

1 A I don't -- I'm very confident I had no conversations with him about it.

2 Q Would you or any member of your staff have had a conversation with
3 Mr. Mackler about the Hunter Biden case?

4 A I have not spoken to Mr. Mackler ever about the Hunter Biden case.

5 Q Okay.

6 A I have no idea whether anyone else has spoken to Alex Mackler period or
7 about the case.

8 Q Okay. So you don't know if any of your AUSAs had any communications
9 with Mr. Mackler?

10 A I do not know.

11 Q Okay.

12 Earlier, I had asked you about the transition team being tipped off as far as the
13 day of action in December of 2020.

14 A You said the transition team was tipped off?

15 Q Yeah.

16 A Yeah, I'm unaware of the transition team -- I'm unaware of that, and I
17 can't -- I'm just not going to -- as I said before, I can't comment on it, because it pertains
18 to the investigation. But I'm unaware of that.

19 Q Would that concern you, if somebody in your office tipped off the transition
20 team about something related to the day of action?

21 A I think as part of minority counsel's questions, I would be concerned with
22 anything that comes out pertaining to an investigation for which I'm responsible and
23 anyone hears of it. It shouldn't happen --

24 Q Okay.

25 A -- and it does the investigation no good.

1 Q Okay. So, if some investigative actions were planned for the day of action
2 in December of 2020 and, before that occurred, the transition team was tipped off about
3 it, that would give you concern.

4 A I'm not going to talk about the particulars in this case. I will acknowledge
5 that, to the extent, as a general matter, anything of that nature occurred, it's a problem.

6 Q And if you found out that something like that did occur, what would you do
7 to address it?

8 A That's a hypothetical. I'm not going to speculate on that. I'm just saying,
9 as a general matter, it's problematic. I'm not going to talk about anything that might
10 touch on this case or this investigation.

11 Q Do any of the attorneys on your team, whether it's a Special Counsel team or
12 before the Special Counsel team was stood up, have any ties which you would consider
13 close to the Biden family?

14 A I'm not going to get -- I don't know relationships. I don't delve into those
15 kinds of things, as a general matter, and it's just not something I'm particularly
16 comfortable speaking about. But I will say, I'm unaware of any such thing.

17 Q Do you remember, during the Special Counsel Robert Mueller's probe,
18 advocates or allies of President Trump raised a concern that members of the Special
19 Counsel team had a lot of contributions to Democrats? Do you remember that?

20 A I remember allegations about a leaning by --

21 Q Okay.

22 A -- members of Mr. Mueller's team. I do recall that coming up in a repeated
23 fashion.

24 Q Is that something you've considered as you've built your team, to examine
25 the political contributions of the people on the team so it doesn't give the impression that

1 they're aligned with one party or another?

2 A I understand the question, and for the reasons we just mentioned, I
3 understand why you ask it. But the fact is, I looked for people who were the best
4 qualified and were interested in participating in this effort. That's what I asked about.
5 That's what I focused --

6 Q Okay.

7 A -- my recruitment efforts on.

8 Q Okay. And, in any way, have you examined whether you've got folks on
9 your staff that are big-time political contributors to Democrats?

10 A I'm not going to speak to it, because I don't want to discuss personnel,
11 and -- but I understand the question, the sensitivity, but it's not something I'm in a
12 position to address.

13 Chairman Jordan. You may have answered this earlier. The Special Counsel
14 staff, was it selected from your team in Delaware's U.S. Attorney's Office and/or from
15 outside?

16 Mr. Weiss. It wasn't limited.

17 Chairman Jordan. Okay. So you went outside the office to get staff for this
18 task.

19 Mr. Weiss. I don't want to get too far into the process or the particulars, but I
20 was not restricted in any way; I'll say that. I was able --

21 Chairman Jordan. Are there folks --

22 Mr. Weiss. -- to go outside.

23 Chairman Jordan. -- on the team from -- are there folks on the Special Counsel
24 team who were already working in the Delaware U.S. Attorney's Office?

25 Mr. Weiss. Yeah, I'm not -- I don't want to get into the particulars of who's on it,

1 for the reasons we've previously discussed. I just don't want to get into personnel.

2 Chairman Jordan. Is it fair to say that there could be members from the
3 Delaware U.S. Attorney's Office and people from outside the Delaware's U.S. Attorney's
4 Office? Is it fair to say that that could be the makeup of the team?

5 Mr. Weiss. There is nothing in the regulations that would prohibit such a thing.

6 Chairman Jordan. Okay.

7 BY MR. CASTOR:

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

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

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

17 Q Uh-huh.

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

20 Q Uh-huh.

21 A -- I can say that at no time was it coming to a close. I think, as I stated in
22 the one statement I made at the time --

23 Q Uh-huh.

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

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

1 over?

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

3 BY MR. CASTOR:

4 Q I mean, if that's the case, though, why would Chris Clark sign the agreement?

5 I mean, you know, the agreement seems pretty comprehensive. I mean, the statement
6 of facts, like, goes way beyond just the matters at hand.

7 A Counsel, you know, just by virtue of the question, I'm not in a position to
8 address what Mr. Clark may or may not have been thinking. I don't know, and --

9 Q Uh-huh.

10 A -- I'm not going to presume to guess.

11 Q Are you aware of a referral that was made regarding a potential campaign
12 finance violation by the individual that paid Hunter Biden's taxes?

13 A I'm not familiar with the matter you're describing.

14 Q So Mr. Morris, right, paid off Hunter Biden's tax debt, right?

15 A I'm not going to discuss --

16 Q Do you know who he is?

17 A I'm not going to discuss those particulars.

18 Q Do you know who he is?

19 A I'm not going to discuss any particulars that pertain to ongoing investigative
20 matters.

21 Q Right. But my question is, do you know who Kevin Morris is?

22 A I understand your question, but it's not something I'm in a position to discuss
23 at this time, because it --

24 Q Okay.

25 A -- references or it pertains to matters that are outstanding.

1 Q Okay.

2 A It's something I suspect I will very much address in the report.

3 Q Right.

4 Did you find it surprising or unusual that somebody wanted to come in and just,
5 like, pay off a taxpayer's tax bill? I mean, isn't that unusual? Does that happen in
6 ordinary cases?

7 A I don't know, and nor would I comment on that.

8 Q Right. Okay. And, if so, you know, if someone hypothetically did do that,
9 is there a campaign finance violation that might be worthy of investigating?

10 A Again, I'm not going to comment on what may or may not be worthy of
11 investigation.

12 Q Okay.

13 I want to turn our attention to the October 7th meeting.

14 The October 7th meeting, of course, was described by Mr. Shapley as his red line,
15 as his red-line moment, that the experience he had in the October 7th meeting was so
16 shocking to him that he felt the only honorable thing he could do next would be to seek
17 avenues to so-called blow the whistle.

18 What do you remember about the October 7th meeting?

19 A I remember that the meeting occurred in Delaware, in a conference room.
20 I recall the participants, some of whom I believe you have spoken to. And I recall that,
21 in advance of the meeting, The Washington Post and I believe The Wall Street Journal --

22 Q Uh-huh.

23 A -- had published articles that discussed the investigation, the fact that the
24 U.S. Attorney in Delaware was sitting on charges that were available as of that summer,
25 and that the source of that information was someone close to the investigation; I don't

1 recall the particulars.

2 But I remember that happening, I believe, the day before the articles came out, so
3 I know that I addressed that up front with the participants in the meeting. And I
4 discussed other things, including -- I mean, the purpose of the meeting was to discuss the
5 process and to share with IRS and FBI where we were in that process.

6 And I -- given that the leak had occurred, given that I knew I was going into this
7 meeting discussing what was clearly deliberative process, I was purposefully trying to be
8 cautious and limited in my description of that process, and I believe that I was.

9 But I described the fact that I had been in D.C., that I had -- I believe I referenced
10 the 515 authority that we have discussed today, that I sought it, and that I was now
11 proceeding down the same path in the Central District of California.

12 Q Do you believe that any of the participants in the meeting were the source of
13 the leak?

14 A I don't know who is the source of the leak. And if I knew, I wouldn't discuss
15 it here.

16 Q Okay. But the individuals in the meeting -- let's just go over them. Was
17 Ms. Holley there?

18 A I don't want to get into the particulars, but I know Ms. Holley has been here
19 and has testified. So --

20 Q Right.

21 A -- yes, Ryeshia Holley was there and Tom Sobocinski --

22 Q Right.

23 A -- from the FBI were there.

24 Q And Gary Shapley was in attendance?

25 A Gary Shapley was in attendance.

1 Q And was Mr. Ziegler?

2 A I don't recall Mr. Ziegler being there, no.

3 Q Okay.

4 Now, as it comes to the criminal investigators, was there anyone else from IRS
5 present that you know?

6 A The SAC was there.

7 Q Okay. Mr. Waldon?

8 A Mr. Waldon.

9 Q Okay. Anybody else?

10 A Anybody else from IRS?

11 Q IRS or FBI.

12 A No, not that I recall.

13 Q And then -- so those individuals, if they are leaking to the press, I mean, that
14 is a high crime, right, for a criminal investigator?

15 A It's a major problem, for anybody to be --

16 Q Right.

17 A -- leaking to the press --

18 Q So --

19 A -- that's affiliated with the case either directly or indirectly. Absolutely --

20 Q Right.

21 A -- a major problem.

22 Q So, I mean, if the FBI officials or the IRS officials were the source of this leak,
23 they would be in big trouble, wouldn't they?

24 A If it can be proved, they would be in big trouble.

25 Q And as far as we know, the TIGTA has been investigating this, correct? Do

1 you know about TIGTA?

2 A I know what TIGTA is --

3 Q Yeah.

4 A -- but I'm not going to speak to any investigative efforts by TIGTA or
5 otherwise.

6 Q And why is that?

7 A Because it's inappropriate for me to comment on that.

8 Q Okay. Has TIGTA interviewed you?

9 A I'm not going to discuss that.

10 Q Okay.

11 Are you aware -- Mr. Shapley has been blamed for this leak, and he has
12 strenuously objected, that he was not the source of this leak. He has taken affirmative
13 measures to release the reporter from any confidentiality -- you know, source reporter
14 confidentiality agreement. He's told the reporter that, if I'm your source, you are free to
15 disclose that.

16 Are you aware of that?

17 A I'm not -- I don't know -- I don't recall it, but I'm not going to comment on it
18 either way. I'm not going to --

19 Q Okay.

20 A -- I'm not going to assess --

21 Q Do you think Mr. Shapley was the source?

22 A I'm not going to comment on that either.

23 Q Who else was in attendance for the October 7th meeting?

24 A Folks from my office.

25 Q Mr. Weede?

1 A I'm not going to identify people who haven't appeared, for the reasons we
2 have discussed.

3 Q Uh-huh.

4 A I just don't want to disclose names of participants.

5 Q Okay. And Ms. Hanson? That's our understanding of the -- were there
6 any other officials as part of that meeting?

7 A Folks from my office and the people we've previously discussed.

8 Q Okay. Was Ms. Wolf there?

9 A Ms. Wolf was not in attendance at the meeting.

10 Q How come?

11 A Because this was a leadership meeting.

12 Q Gary Shapley was there.

13 A He's in IRS leadership, as I understand it. He was the ASAC, I believe.

14 Q Okay.

15 A That's my recollection of his title.

16 Q So that counts as leadership?

17 A He was a participant in the meeting.

18 Q Okay. Do you know who arranged the meeting?

19 A My recollection is that Mr. Shapley sent me an email asking for a meeting to
20 get an update. And I think that communication was followed up on by his SAC.

21 Q Okay.

22 A And I agreed to sit down with those guys and the FBI and to say what I could,
23 even though we were still engaged in the deliberative process --

24 Q Uh-huh.

25 A -- to say what I could about where things stood.

1 Q Uh-huh. And what do you remember about what you said during that
2 meeting?

3 A I mean, I've described it in general terms, and I can't get into the particulars.
4 But, as to my authority, I recall describing the process in a very general, somewhat
5 cryptic way probably -- that it had taken place in D.C., that I had sought 515 authority, I
6 followed a process, and that now I was in the Central District of California --

7 Q Uh-huh.

8 A -- to see whether they would join us or participate in the prosecution moving
9 forward. That's my best recollection.

10 Q Okay.

11 We'll mark as exhibit 17 an email that Mr. Shapley sent to Mr. Batdorf, who is Mr.
12 Waldon's boss.

13 [Weiss Exhibit No. 17

14 Was marked for identification.]

15 BY MR. CASTOR:

16 Q So he CC'ed Waldon, who was at the meeting.

17 Item 1 from -- this isn't the first time you've seen this, right?

18 A I've seen this before.

19 Q Okay. Did you see it in conjunction with the whistleblower testimony
20 coming out, or did you see it back when it was written?

21 A I don't remember seeing this when it was written, no.

22 Q Okay. So Mr. Waldon didn't forward this to you?

23 A I'm not --

24 Q To the best of your knowledge, obviously.

25 A I recall seeing this after the whistleblower testified.

1 Q Okay.

2 So item number 1 on here is "Discussion about the agent leak," as you mentioned,
3 that the "DOJ IG will be notified," that "FBI headquarters is notified and they refer it to
4 their Counter Intelligence squad in a field office for investigation," and IRS CI indicated
5 that "we need to make a referral to TIGTA."

6 So is it fair to say that all the participants in the meeting were fairly enthusiastic
7 about pursuing the leak?

8 A Oh, I don't know about that. No, I'm not going to characterize whether
9 they were enthusiastic about pursuing a leak.

10 Q Uh-huh.

11 A I wanted to communicate that this was damn serious stuff --

12 Q Right.

13 A -- and that I was enthusiastic about putting a stop to it.

14 Q Okay. But the DOJ IG was notified. Did you ask them --

15 A I'm not going to get into particulars, but my office made the notifications
16 that were appropriate under the circumstances.

17 Q Okay. And then you asked IRS to make a referral to TIGTA?

18 A That's what I read here.

19 Q Okay. And do you remember if that happened?

20 A I don't re- -- I suspect that it did, but --

21 Q Okay.

22 A -- I don't have a specific recollection. But I would have no reason --

23 Q Okay.

24 A -- to question whether it did or not.

25 Chairman Jordan. But you did these; you did A, B, and C? This came from your

1 office? You notified Horowitz, and then you worked with the FBI -- "headquarters is
2 notified and they refer it to their Counter Intelligence squad" -- you were the instigator of
3 all that?

4 Mr. Weiss. I'm not saying that. All I'm saying is that my office made the
5 appropriate notifications given what I had read, heard, and learned about a leak relevant
6 to our ongoing investigation.

7 Chairman Jordan. And the "appropriate notifications," one of those would've
8 been to let the inspector general know at DOJ?

9 Mr. Weiss. The notifications would be to let the responsible authorities, who
10 would be, you know, required to investigate --

11 Chairman Jordan. Uh-huh.

12 Mr. Weiss. -- such an allegation.

13 Chairman Jordan. Okay.

14 Mr. Weiss. Yes.

15 BY MR. CASTOR:

16 Q Number 2 on this email: "Weiss stated that he is not the deciding person
17 on whether charges are filed."

18 What's your reaction to that?

19 A It's not what I said, nor is it what I believed, as I've told you guys repeatedly
20 today.

21 Q What do you think you did say at that meeting that would give Gary Shapley
22 the -- and, subsequently, Shapley, I think, has released his, you know, contemporaneously
23 handwritten notes. Because, you know, people are calling Gary Shapley a liar, and so
24 he's trying to defend himself.

25 A I believe people have called me a liar.

1 Q So I'm asking you what your -- I mean, what's your reaction? Like, do you
2 think you may have said something that was interpreted -- misinterpreted?

3 A Counsel, in all candor, I don't know. That's possible. It's possible
4 that -- as I said, I was trying to be careful. I wasn't trying to be -- I was trying to be
5 careful in what I said. Because I had a leak --

6 Q Uh-huh.

7 A -- that had just transpired, and I'm talking about deliberative process, which
8 is something unique to what prosecutors discuss. We usually don't go through those
9 kinds of things with agents. But, here, I thought it was appropriate to give them an
10 update. So I would have generally described that process.

11 Q Okay.

12 A I don't know -- it certainly -- perhaps somebody misunderstood what I said in
13 that regard.

14 Q Okay.

15 And then number 2 -- under 2(b), Mr. Shapley has notes about the process. The
16 first is, "Needs DOJ Tax approval first - stated that DOJ Tax will give 'discretion' (We
17 explained what that means and why that is problematic)."

18 Does that sync with your memory of what you --

19 A Not exactly. I don't doubt that I mentioned DOJ Tax --

20 Q Uh-huh.

21 A -- and, you know, a general reference to the role and the process.

22 Q Right.

23 A Not that -- I don't recall saying anything about DOJ Tax approval being
24 required first --

25 Q Okay.

1 A -- second, third, or anything --

2 Q Okay.

3 A -- of that nature.

4 Q But, as we've discussed, under the Justice Manual, DOJ Tax has to approve
5 felony charges, right?

6 A DOJ Tax has approval -- is required to approve Title 26 charges. Yes, we
7 have discussed that. And I welcomed DOJ Tax's input in this case. Never felt that I had
8 an issue in that regard.

9 Q Right. But whether you had Special Counsel authority or 515 authority, no
10 matter what kind of authority you had, you still had to have DOJ Tax's approval for tax
11 charges.

12 A You're still consulting with DOJ Tax --

13 Q Right.

14 A -- absolutely.

15 Q Okay. So, when Mr. Shapley writes, "Needs DOJ Tax approval first," I mean,
16 that is consistent with the facts of life, correct?

17 A I'm not -- look, I'm not challenging the DOJ Tax. And I believe I would've
18 said, as I've said here today, I'm not operating in a vacuum. There are processes here.
19 And others need to be involved.

20 Q Right.

21 A And DOJ Tax was performing its due diligence. And I welcomed that.

22 Q Okay.

23 I'm at the end of my hour, so I have to unfortunately stop.

24 [Recess.]

25 [REDACTED] All right. It is 3:52. We can go back on the record.

1 BY [REDACTED]:

2 Q Special Counsel Weiss, did you have any conversations with Attorney
3 General Barr about whether you should be appointed Special Counsel?

4 A I had conversations with Attorney General Barr, and I don't want to get into
5 the content of those conversations, because they're with the AG.

6 Q Okay. But you did have conversations to that effect with Attorney General
7 Barr?

8 A I had conversations with the Attorney General, yes.

9 Q I want to introduce as exhibit 18 an NPR article entitled "Barr Says No Need
10 for Special Counsel for Hunter Biden Probe, Election Fraud Claims," dated December 21,
11 2020.

12 [Weiss Exhibit No. 18

13 Was marked for identification.]

14 BY [REDACTED]:

15 Q Have you seen this before?

16 A I don't recall.

17 Q Okay.

18 On the bottom of the second page of this article -- I'm just going to read it out
19 loud -- it says, "Some Republicans are pushing for the Justice Department to name a
20 Special Counsel to handle the probe, which would add an extra layer of protection from
21 potential political influence in a sensitive case involving the president-elect's son. Asked
22 whether he agreed with the idea, Barr said no."

23 Quote, "'I think it's being handled responsibly and professionally currently within
24 the department, and to this point I have seen no reason to appoint a Special Counsel, and
25 I have no plan to do so before I leave,' he told reporters."

1 Did I read that correctly?

2 A You did read it correctly.

3 Q So it is accurate that Attorney General Barr did not see a reason to appoint a
4 Special Counsel in this case, correct?

5 A According to what you read. I don't know -- according to what you read,
6 that's correct. Otherwise, I wouldn't comment on any aspect of that.

7 Q And Attorney General Barr was an appointee of President Trump, correct?

8 A I understand that -- that is correct.

9 Q Okay.

10 Moving on, just a few quick questions about Alexander Mackler. Did
11 Mr. Mackler play any role in this case?

12 A He did not.

13 Q Did he provide any input into this case?

14 A He did not.

15 Q To the best of your recollection, did he have any conversations with anybody
16 involved in this case?

17 A I just don't -- I know nothing about any conversations he may have had with
18 anybody involved with this case.

19 Q Based on your --

20 A He had no conversations with me about this case.

21 Q Okay. And based on your interactions with Mr. Mackler as a former
22 employee of the Delaware U.S. Attorney's Office, do you have any reason to question
23 Mr. Mackler's integrity?

24 A I do not.

25 Q Do you have any reason to question Mr. Mackler's prosecutorial ethics?

1 A I do not.

2 Q Are you aware that Mr. Mackler was a -- or, actually, still is a member of the
3 Army JAG National Guard?

4 A I am. I believe he served in that capacity -- perhaps started in that capacity
5 as he left the U.S. Attorney's Office, if I recall.

6 Q And so he actually was on Active Duty and away from the office throughout
7 2019, correct?

8 A I don't know about throughout 2019, but my recollection is, the last several
9 months of his -- I think he was still on our rolls --

10 Q Uh-huh.

11 A -- but the last several months he was serving in the National Guard. And
12 the Department makes provisions for that, or did in this circumstance. I don't recall the
13 particulars.

14 Q Okay. Thank you.

15 All right. We can go off the record. Thank you.

16 [Recess.]

17 Mr. Castor. We'll go back on the record. It's 3:58.

18 Mrs. Spartz has some questions.

19 Mrs. Spartz. Thank you so much. Thank you for being here. And I apologize if
20 I haven't been here all the time. I tried to do my best.

21 But I just have a few clarifications. I'm not an attorney in this committee, but
22 just trying to understand procedurally. And then one question related to your
23 biography.

24 It looks like you worked at a financial services firm. Can you state which one?

25 Mr. Weiss. It was a firm called The Siegfried Group.

1 Mrs. Spartz. Okay. And what did you do, what kind of financial --

2 Mr. Weiss. I am not a financial expert at all. I actually helped the folks run the
3 business. So --

4 Mrs. Spartz. Okay. So it wasn't -- okay.

5 Mr. Weiss. -- it was in a business capacity. I used to represent those folks as a
6 lawyer, and I got involved in the business.

7 Mrs. Spartz. Okay. Okay.

8 Well, talking about statute of limitations, you know, I'm just trying to understand,
9 you know, from -- and I am -- you know, I was a CPA and did public accounting, but I
10 didn't deal with taxes, but I understand the processes in taxes.

11 And it looks like, just to clarify -- so, based on, you know, that you have this memo
12 that I think earlier was exhibit 2 that was provided to you, regarding to IRS conclusions
13 and recommendations, which was stated that, you know, success (ph), you know,
14 prosecute targets for years '14, '15, '16, '17, '18, and '19.

15 So, just procedurally, so the statute of limitations for the '14 and '15 has expired;
16 is that correct?

17 Mr. Weiss. Yeah. I'm -- the statute of limitations for '14 and '15 has expired.

18 Mrs. Spartz. Yes. What about '16?

19 Mr. Weiss. I'm not going to comment on anything --

20 Mrs. Spartz. Well, I'm just talking from theoretical standpoint, like, just in
21 general, how the law works, not specifically for this case from this specific situation, you
22 know, like, if you did based on the law. You know, I'm not talking about this situation,
23 what is it this time. Because I'm not an attorney on this case. But '16, would that be
24 expired by now too?

25 Mr. Weiss. I'm not going to speak to -- I don't know the particulars about the

1 statute of limitations generally. It would depend upon, I think, the given charges.

2 However, I am familiar with the statute of limitations as it pertains to potential
3 charges in this case, and that's not something I'm going to speak to.

4 Mrs. Spartz. But with the general statute of limitations on tax, you know, fraud
5 and anything else, what is generally it is? I mean, you don't know the law, but I'm just
6 trying to find out, because I don't familiar. What is the statute of limitations?

7 Mr. Weiss. I'm not a tax practitioner, but my understanding --

8 Mrs. Spartz. But you're a prosecutor, right?

9 Mr. Weiss. I am a prosecutor, yes.

10 Mrs. Spartz. Yeah. So you need to know that, right?

11 Mr. Weiss. No, I don't need to know all the statute of limitations applicable to all
12 Federal offenses. No, I don't know that that's required for me. But to the best of my --

13 Mrs. Spartz. But --

14 Mr. Weiss. -- to the best of my recollection, I think in tax cases it's a 6-year
15 statute of limitations. And I'm saying that's the best of my recollection.

16 Mrs. Spartz. Okay. So it's about 6 years. So do you usually look at that and
17 have a sense of urgency when you investigate anything with statute of limitations, or do
18 you actually look at that as a prosecutor?

19 Mr. Weiss. Prosecutors are aware of the statute of limitations.

20 Mrs. Spartz. So you have a sense of urgency.

21 Mr. Weiss. Prosecutors are aware of the statute of limitations as a general
22 matter, yes.

23 Mrs. Spartz. So when did you start to investigate this? In which year did you
24 start investigate this?

25 Mr. Weiss. We -- I think I've discussed that we got a referral in 2019.

1 Mrs. Spartz. 2019. So it took you several years to figure out until statute of
2 limitations.

3 Do you think you don't have enough resources? Because I've been in this -- I
4 understand Tax Code. It doesn't seem -- or you don't have enough resources to figure
5 out? Why does the investigation take so long?

6 I mean, because it seems to be very simple. You have a tax return. People
7 report stuff. This is not a complicated, convoluted scheme, you know, where people
8 doing some evaluations and try to do offshore things. It's very simple.

9 You know, you either have things that -- if you don't have enough resources or you
10 don't have people that have enough knowledge? It seems like that shouldn't be
11 complicated tax case taking 4 to 5 years to figure it out. What is happening --

12 Mr. Weiss. Yeah. I mean --

13 Mrs. Spartz. -- in the Department?

14 Mr. Weiss. -- was that a question?

15 Mrs. Spartz. Yeah, it's a question. Why take --

16 Mr. Weiss. I don't understand the question.

17 Mrs. Spartz. The question is why it takes you 4 to 5 years to figure out -- until
18 you figure out what to do, when the tax statute of limitation expires on this case, to deal
19 with simple tax transaction. Why is that? Is it a lack of resources in Department?

20 Mr. Weiss. Again, I'm not going to discuss the investigation. Your question, no
21 matter how you phrase it, asks as to the particulars of the investigation, and I'm not going
22 to discuss it.

23 Mrs. Spartz. Well, I'm not asking you. I'm just saying, every case I've seen, it
24 takes the Department special prosecutor that I've seen years to figure out something that
25 I probably can do it within half an hour, I'll be honest with you.

1 So you don't have enough professionals? Or -- this seems to me very strange, as
2 a professional. I can claim myself being a CPA professional in that business. I'm not
3 sure I understand what's happening there. And that is my question.

4 So what do you believe you'll be able to complete in the current investigation?
5 Are you planning to do it urgently, or are you going to spend another 5 years? What is
6 your -- like, do you have a sense of urgency when you deal with these cases at all?

7 Mr. Weiss. Yeah, I'm not going to put a timeframe on it. As I said previously in
8 response to counsel's questions, we plan to move as efficiently as possible.

9 Mrs. Spartz. Okay.

10 What about when you have a designation -- so I think earlier there was a question
11 of Special Counsel versus anything else, like Special Attorney. Is your accountability and
12 level of responses to Congress different, or is it exactly the same? Is there any
13 procedural difference, in general, Special Counsel than anyone -- other, you know,
14 attorney in the Department of Justice? Is it there is a different level of how you should
15 report to Congress?

16 It should be the same. So the only differences would be on jurisdiction, on what
17 kind of reporting, but there is no formalities, what you have to be telling us. Is there a
18 difference between that or not?

19 Mr. Weiss. If I understand your question, no, I'm not aware of any difference. I
20 am accountable for my actions and for the cases under my supervision whether I'm a
21 U.S. Attorney or whether I'm Special Counsel.

22 Mrs. Spartz. So all your responses for us would not be any different, right? So
23 you pretty much would not be able to say anything to us that you consider in the
24 investigation, doesn't matter how long, no matter in which capacity you work, either as
25 Special Attorney or Special Counsel? There is no difference, right? You would be

1 responding to us "no" on pretty much anything we ask you about an investigation. Is
2 there a level differentiation?

3 Mr. Weiss. No, there is no differentiation. As I've said before, I've tried to
4 answer --

5 Mrs. Spartz. Yeah.

6 Mr. Weiss. -- the questions as best I could, particularly with respect to my
7 authority. And it was my understanding that that was the primary purpose of my
8 appearance here today.

9 But I am unable to answer questions about ongoing litigation or the investigation,
10 yes. I understand your frustration, but I'm unable to address that.

11 Mrs. Spartz. No, I'm just trying to understand, because this is not just you; it's
12 every Special Counsel.

13 Mr. Weiss. Yeah.

14 Mrs. Spartz. I in my short time on this committee that has very slow
15 investigations, statute of limitation expires, and no one recalls anything by the time it's
16 done.

17 And I'm just trying to see procedurally -- you've been in this department for very
18 long. I mean, if we'd be doing in business like that, as an attorney, you'd be out of
19 practice if you would do that. You would go bankrupt. But it seems that we continue
20 this. And I'm just trying to figure out what is going on with the Department in general,
21 because this is a very -- you know, the story is always the same.

22 What is any consequences to the Department right now for, you understand, you
23 know, if you fail -- you know, you're talking about, you know, your duties and
24 having -- you know, which is important, you know, for the public and proper due
25 processes and rule of law -- if there is any generally consequences? If you believe that

1 there is something you do it, it is not? Is there any consequences or -- except, you
2 know, someone lets you go -- if there is any consequences in general.

3 How does the Department work if you do something to violate how the
4 prosecution happens or, like, any ethics or any other concerns? How does it happen in
5 the Department? Do you know the rules?

6 Mr. Weiss. Congresswoman, if I understand your question, it is -- I think it is, if I
7 do something that is inappropriate or unethical --

8 Mrs. Spartz. Ill intent.

9 Mr. Weiss. -- are there -- ill intent -- are there consequences? Absolutely, just
10 as with any other attorney practicing on behalf of or within the Department.

11 Mrs. Spartz. So what is the consequences?

12 Mr. Weiss. I'm not --

13 Mrs. Spartz. No, what is the -- like, what is the process for that, if somebody -- or
14 if somebody under you would do something like that, what is the processes for that?

15 Mr. Weiss. It depends what's done. And I'm not going to explore all kinds of
16 scenarios. But, you know, we are responsible to act professionally and to abide by rules
17 of conduct.

18 Mrs. Spartz. But are there internal processes or they're external? Is
19 Department of Justice can only --

20 Mr. Weiss. It depends what a prosecutor's actions are, with respect to what
21 consequences derive from that conduct. I can't -- there are any number of things that
22 could happen that could lead to problems for a prosecutor. We have responsibilities to
23 act in a certain way.

24 Mrs. Spartz. What is the incentive for you -- or what is internal incentive for you
25 to have a completion of the cases? Do you have internal incentives at Department once

1 you have productivity? Do you have internal incentives to actually do things fast, or you
2 don't generally?

3 Mr. Weiss. You have incentives -- all prosecutors have incentives. I certainly
4 have an incentive to prosecute this case as best I can. I know, am very much aware, that
5 people are watching this case. We're having a discussion about the case today. I'm
6 mindful of that.

7 So I am trying to perform my responsibilities as best I can and fulfill those
8 responsibilities to follow the facts and the law. That's the best I can do.

9 Mrs. Spartz. But if you would have something that -- not collaboration internal
10 to the Department, who would you address it with? Would you come to Congress?
11 And how would you address it, if you believe there is no collaboration internally and you
12 don't -- what is the process for you to -- would you let us know? Or who would you
13 know?

14 Mr. Weiss. I would -- if I wasn't satisfied with something -- this is a hypothetical,
15 so I shouldn't speculate, but I would stay within the Department and try to resolve it
16 there.

17 Mrs. Spartz. So generally it's internal. You generally don't come externally to
18 Congress or anything. This is internal.

19 Mr. Weiss. I would expect to get it resolved in Congress -- I'm sorry, not in
20 Congress. I would expect to get it resolved within the Department. Everyone in the
21 Department knows that, in my current capacity, I'm going to prepare a report at the end
22 of the day, and I'm going to describe what I've experienced along the way.

23 Mrs. Spartz. Okay. Just one last question.

24 Mr. Weiss. Sure.

25 Mrs. Spartz. So, generally, you know, theoretically, if we look at some of this

1 stuff, you know, when Vice President Biden was in office, which was '14, '15, and '16,
2 theoretically it would be that all of the years could be potentially -- two of them for sure
3 are statute of limitations -- theoretically all of the years would be statute of limitations,
4 unless something else happened would expire statute of limitations, all of the years with
5 what happened with Hunter, with his situation, with Burisma and any other transaction
6 during the time of the Vice President was in office.

7 Is that correct, based on -- assessment?

8 Mr. Weiss. I don't -- I'm not drawing a connection between charges in this case
9 versus the now-President's status as a Vice President. Our responsibility is to make
10 decisions based on the evidence before us. And that's what we've done in this case.

11 Mrs. Spartz. Okay. Thank you.

12 Mr. Weiss. Sure. Thank you.

13 BY MR. CASTOR:

14 Q I just have one more question on Mr. Mackler. Just to clarify, when was
15 the last time you spoke to him? I know you said you didn't speak about this case, but --

16 A I don't know. I don't know. I can't recall.

17 Q Was it when he was with your office, or was it after?

18 A No, no. I've spoken to him since he's left my office, which I think we
19 established was in 2019, so --

20 Q Okay.

21 A I just -- I don't know.

22 Q Okay.

23 A Don't recall it.

24 Q Certainly wasn't about this case?

25 A No. I never discussed this case with him that I can recall. No.

1 Q I'll go back to exhibit 12 -- I'm sorry. Mrs. Spartz was discussing exhibit 12.
2 Exhibit 17.

3 You had the right one, I think.

4 A This one?

5 Q It says exhibit 10 on the bottom, but that's from a different proceeding.

6 A Yeah. Sorry.

7 Q Where we last left off was on the first page, 2(b)(i), "Needs DOJ Tax approval
8 first." And then I think that's where we concluded our discussion.

9 So the next item on that page is "No venue." This is 2(b)(ii). "No venue in
10 Delaware has been known since at least June 2021."

11 Do you recall if that was discussed, venue in Delaware wasn't an option?

12 A I don't recall if it was discussed. But I discussed the fact that I had pursued
13 the process in D.C. and in L.A.

14 Q Okay. Obviously, if you could've pursued it in Delaware, that would've
15 been your first choice, certainly, right?

16 A Again, I discussed that we were, you know, in D.C. and that -- or we had
17 been in D.C. and, at this time, we were in the Central District of California.

18 Q Okay.

19 (iii): "Went to D.C. U.S. Attorney in early summer."

20 Of course, we know that that was in March, correct, when you went to --

21 A That's correct.

22 Q -- Mr. Graves?

23 A That's correct.

24 Q "-- to request to charge there." The U.S. Attorney "said they could not
25 charge in his district."

1 And then (1) underneath that was, "Weiss requested Special Counsel authority
2 when it was sent to D.C. and Main DOJ denied his request and told him to follow the
3 process."

4 And the way Shapley, you know, records this in his notes, it seems similar to the
5 way you described your interactions with Main Justice, in that you told us that you asked
6 for 515 authority -- that is, Special Counsel authority -- and that Main Justice -- I mean,
7 Shapley writes "denied his request," and you said that your request was never denied,
8 but Main Justice did tell you to follow the process, correct?

9 A I described that I had a conversation with Main Justice about following the
10 process. No one ever said -- no one ever denied --

11 Q Right.

12 A -- my authority. And I didn't request Special Counsel authority. I
13 requested what I characterized as 515 authority --

14 Q Right.

15 A -- and what we agreed was Special Attorney authority.

16 And I would also take issue with, I think, what's under, if I can read it correctly,
17 (iii): "Went to D.C. USAO in early summer to request to charge there -- Biden appointed
18 USA said they could not charge in his district."

19 As I've said on several occasions, I wasn't asking the Biden-appointed U.S.
20 Attorney in D.C. whether I could or could not charge in his district. I didn't present that
21 question for his consideration.

22 Q But these notes were prepared from the meeting. Is it possible
23 Mr. Shapley misunderstood what you were -- you were obviously, during the course of
24 this meeting, you were walking through some of these issues, correct? And he's making
25 notes about it?

1 A I can't speak to what Mr. Shapley -- clearly, he was -- "clearly" -- I suspect he
2 was taking notes. I don't know. I don't know why the notes came about this way.
3 But if he misheard or misunderstood something, the fact that he reduced it to notes
4 doesn't change the misunderstanding or --

5 Q Right.

6 A -- whether he misheard it. I know what I believe to be the case and what I
7 believe I said, you know, in that regard.

8 Chairman Jordan. Well, he got it exactly right in 2(b)(iii)(1), the next sentence
9 down, other than the term "counsel" versus "attorney": "USA Weiss requested Special
10 counsel authority when it was sent to D.C. and Main DOJ denied his request and told him
11 to follow the process."

12 That's exactly what you told us earlier, other than the word "denied." They
13 didn't grant your request. So it seems to me he got it exactly right there.

14 Mr. Weiss. Well, "denied" is a key word in that phrase. It wasn't -- it wasn't
15 denied. I --

16 Chairman Jordan. But it wasn't granted, right?

17 Mr. Weiss. Yes. We have been over this. It wasn't granted. They said,
18 follow the process. I followed the process. And in completing the process --

19 Chairman Jordan. But, Mr. Weiss, when you ask for something and they don't
20 give it to you, what is that?

21 Mr. Weiss. I asked for something, and in that conversation they didn't give it to
22 me, but at the --

23 Chairman Jordan. All right. It's a simple question.

24 Mr. Weiss. -- at the conclusion --

25 Chairman Jordan. When you ask for something and they didn't give it to you,

1 what is that?

2 Mr. Weiss. I'm not -- you want me to say it's a denial, but it's not. Not when I
3 know that, weeks later, I was specifically told, "You can proceed." So it's the same
4 question, it's the same request --

5 Chairman Jordan. Maybe weeks later, but at that point what is it?

6 Mr. Weiss. It's, "Proceed, with this process. We're asking you to go through
7 this process." From my mind, it's a sequencing event. It's not a denial in any way,
8 shape, or form. That's the way I interpreted it.

9 Chairman Jordan. Okay.

10 BY MR. CASTOR:

11 Q Flipping over the page to (iv): "Mid-September they sent the case to
12 central district of California -- coinciding with the confirmation of the new Biden
13 appointed USA -- decision is still pending."

14 And that's pretty much an accurate assessment, right?

15 A Inaccurate? Or accurate?

16 Q Accurate.

17 A No. I didn't bring this -- as we discussed, I didn't bring this about in
18 mid-September. I contacted the U.S. Attorney's Office in mid-August.

19 Q Right. But --

20 A It had nothing to do with coinciding with the appointment of a new Biden
21 appointee.

22 Q But your first communication with the U.S. Attorney out there, with Estrada,
23 was right after he was confirmed, correct?

24 A No. My understanding -- and I didn't track the dates -- was that he was
25 confirmed sometime in the month of September, mid-September. My first

1 communication with him was in mid-October.

2 Q Okay.

3 "If California doesn't" -- this is (v): "If California does not support charging USA
4 Weiss has no authority to charge in California."

5 Is that something that was discussed at the October 7th meeting?

6 A No. I would not have said that. It's not what I believed; it's not what I
7 said.

8 Q "He would have to request permission to bring charges in California from the
9 Deputy Attorney General/Attorney General."

10 Isn't that -- I mean, if Estrada said, no, I don't want to partner, I don't want to
11 co-counsel, whatever the word is, then you go and request 515 authority, correct?

12 A That's consistent with the process I've described --

13 Q Right.

14 A -- in most respects in D.C. But by this point in time, as we have discussed, I
15 had been through the process, I knew that the ultimate decision was, you can proceed in
16 D.C. and pursue charges. So I wasn't asking here.

17 Then the question at the conclusion of this process was simply deciding the
18 merits.

19 Q This meeting happened, like, right around the same time that you were
20 engaging with Mr. Estrada, correct?

21 A I engaged with Mr. Estrada after this conversation.

22 Q Okay. So, as of the October 7th meeting, you didn't have a final
23 determination from his office about whether they wanted to --

24 A As best I recall, I did not have a final determination.

25 Q Okay.

1 A I had not had that conversation with the U.S. Attorney.

2 Q But if they had said no, as it turns out they did, then your next move is to get
3 Special Counsel authority or 515 authority, whichever, if you're going to prosecute in the
4 Central District of California?

5 A As I think I mentioned, as it was in my mind, that issue had been resolved.
6 So my next move is to decide, okay, is this case moving forward? We've gotten
7 feedback from D.C. Now we've gotten feedback from L.A. We're deciding the case;
8 we're going to decide --

9 Q Right.

10 A -- how to proceed in the case. It's not asking for permission or resolving
11 any questions about whether I have authority to proceed.

12 Q Okay.

13 Then, 3: "They are not going to charge 2014/2015 tax years."

14 By this point in time of October of 2022 -- I mean, I believe the statute lapsed in
15 September. So, by this meeting, the statute had lapsed for the 2014 and 2015 tax
16 years?

17 A Yeah, I'm not going to discuss the statute, when it lapsed, or the
18 circumstances surrounding that. Nor am I going to discuss any conversations I had with
19 them about 2014.

20 Q Okay.

21 A I'll discuss authority, but I'm just not going to go beyond that.

22 Q But, I mean, it's my understanding that, you know, part of your -- I mean, we
23 didn't agree to a scope, because we obviously have questions --

24 A I understand.

25 Q -- that you're not willing to answer.

1 A I understand the committee has questions well beyond that, but -- and I
2 hope at the appropriate time I'll be able to answer them.

3 Q But I did think -- pardon me for suggesting this, but I did think that the
4 content of the October 7th meeting was all fair game.

5 A The content of the October 7 meeting as it pertains to authority is certainly
6 fair game. And I've tried to --

7 Q But --

8 A I've tried to discuss other aspects that I think inform the authority issue.
9 But that's the extent of what --

10 Q Okay.

11 A -- of the scope of what I'm authorized to discuss.

12 Q Okay. So can you confirm that the decision not to charge 2014 and 2015
13 was discussed at that meeting?

14 A I can't get into -- I can't get into the merits of that discussion. I can't get
15 into that discussion.

16 Q Okay. You don't have any reason to believe that Shapley is lying, correct?

17 A I don't -- I can't speak to Mr. Shapley. I'm not saying anything about
18 whether he's lying. I'm not suggesting that he's lying. I don't know the basis for his
19 statements or what he's committed to his notes.

20 Q Okay.

21 Do you remember Mr. Shapley stating that he did not concur with the decision to
22 not charge 2014 and 2015, as he writes in his notes here?

23 A Again, if I commented on that, it would speak to the decision itself, which I'm
24 not going to discuss.

25 I remember Mr. Shapley's body language at the meeting at various times. I do

1 remember that.

2 Q Okay. But do you remember him asserting, stating for the record that he
3 didn't concur with any particular decision?

4 A It's not something I'm going to discuss, because it would necessarily go
5 into -- be it a reaction to something I said about the merits of the case or the
6 investigation, and I just can't get into that at this point in time.

7 Q Okay.

8 And Special Agent Holley, the assistant special agent in charge, she testified, too,
9 that she remembers Burisma being discussed, the fact that if you don't charge 2014 and
10 2015, that all the Burisma income is tax-free.

11 Do you remember that being discussed?

12 A I'm not going to discuss the case, the investigation, or those kinds of details.

13 Q Okay. Did you have any concerns that, if you didn't charge 2014 and 2015,
14 all the Burisma income just goes tax-free?

15 A Again, I'm not going to discuss the case, the investigation, or those
16 particulars. I understand the question, and I appreciate why you ask the question.

17 Q Okay. So you could understand why members, our members at least, are
18 concerned about that issue, about the 2014 and 2015, specifically the Burisma years, you
19 know, that Hunter Biden is getting off scot-free here.

20 A Yeah, I understand why you're asking the questions on behalf of the
21 committee. And it's certainly something that I would intend to address and would plan
22 to address in the Special Counsel report.

23 Q Okay.

24 Number 5 on this document states that "no major investigative actions remain."

25 Is that something you remember being discussed at the October 7th meeting?

1 A Again, I'm not going to talk about investigative actions --

2 Q Okay.

3 A -- or what had been done and what remained at that time.

4 Q Right.

5 And when Shapley testified in May of 2023 to the committees -- or he testified
6 before the Ways and Means Committee, he told us that nothing had happened, you
7 know, that there weren't any -- and, by that time, he didn't know he'd been removed
8 from the case. He stated in May of 2023 that no investigative actions had occurred on
9 the Hunter Biden case.

10 So that is consistent with number 5 here, that "no major investigative actions
11 remain." Is that something you can concur with?

12 A No, it's not something I can comment on as of today. It's something I hope
13 to be able to comment on in the report.

14 Q Okay.

15 Do you remember that meeting -- and this relates to 6(c). Do you remember the
16 meeting as being contentious?

17 A There, you mean his reference to "communication issues" or "update
18 issues," that these issues were surprisingly contentious?

19 Q Well, the way I interpret number 6 -- and this is informed, obviously, by
20 Mr. Shapley's testimony -- that, at the end of the meeting, IRS -- and "us" meaning the
21 IRS -- and the FBI brought up some general issues, and they included communication
22 issues, update issues, which, as we understand them, are sort of -- you know, you can
23 conflate those. But (c), his observation that these were "surprisingly contentious."

24 A Yeah. I can't -- I don't know that I'm going to characterize whether these
25 issues were surprisingly contentious. I remember -- I do recall communication issues

1 and updates from this point forward coming up.

2 Q Okay.

3 A I remember Mr. Shapley talking about communications from this point
4 forward.

5 Q Uh-huh.

6 A And I'm at a meeting where, the day before, The Post and The Wall Street
7 Journal reported leaks that were purported to be coming from someone close to my
8 investigation and, I think, mentioned an agent. So I was unwilling to make any
9 commitments --

10 Q Okay.

11 A -- about further communication. I wanted to better understand, to the
12 extent possible, what had transpired, rather than making commitments to how
13 frequently --

14 Q Uh-huh.

15 A -- I was going to meet with Mr. Shapley or anybody else associated with the
16 team at that particular time.

17 Q Okay. So it sounds like it was contentious.

18 A You know, I'm just saying I was very sensitive to the issue and I was --

19 Q Right.

20 A -- concerned about the issue, because I am concerned about the
21 investigation --

22 Q Right.

23 A -- and trying to preserve the integrity of the investigation moving forward.

24 Q Right.

25 And just so you know, from our perspective -- and I think I mentioned this

1 earlier -- you know, we're sensitive to any allegation that Mr. Shapley was the leaker for
2 the story, because he has denied that he's done it. And, you know, if you're an IRS
3 agent or FBI agent and you leak to a reporter, I mean, that is a high crime. I mean, you
4 would lose your job. I mean, the stakes are super-high.

5 So, to the extent -- you know, I hope we can establish that, you know, there's no
6 evidence, there's zero evidence that Mr. Shapley was involved with any leaks.

7 A I can't comment on that. I don't pretend to be familiar with the evidence --

8 Q Right. But you don't have any evidence that Mr. Shapley was involved
9 with --

10 A I'm not going to say anything about that.

11 Chairman Jordan. When did you learn that Mr. Shapley and Mr. Ziegler were
12 coming to Congress under whistleblower status? And how did you learn that?

13 Mr. Weiss. I think -- I don't know whether I heard it in news media or from
14 somebody with the Department. But I think it was in, I don't know, somewhere around
15 April, that it cropped up in April of 2023 --

16 Chairman Jordan. Right.

17 Mr. Weiss. -- something of that nature.

18 Chairman Jordan. Right.

19 Mr. Weiss. I didn't know any of the particulars at that time. I don't think I
20 learned them until I saw the testimony.

21 Chairman Jordan. Who was the somebody from the Department who told you
22 that, if it wasn't the press?

23 Mr. Weiss. I don't know.

24 Chairman Jordan. You said it was one or the other.

25 Mr. Weiss. If it was somebody from the Department, it would've been

1 Mr. Weinsheimer.

1 [4:27 p.m.]

2 Chairman Jordan. Do you remember if he called you or emailed you or what?

3 Mr. Weiss. I don't recall. I believe I was on -- I was on what was supposed to
4 be a vacation at the time.

5 Chairman Jordan. When you go to another U.S. Attorney and ask them to
6 partner, what are you asking them to partner on?

7 Mr. Weiss. I'm asking them to -- to decide whether they're willing to be part of
8 the investigation, whether they're willing to assign someone to be co-counsel in the
9 investigation.

10 Chairman Jordan. Is it -- are you asking them to partner on investigation only
11 and/or prosecution?

12 Mr. Weiss. To the extent there were further investigative steps, they wouldn't
13 be precluded, but I was primarily focused on -- I mean, in my mind, prosecution piece of
14 the investigation.

15 Chairman Jordan. So you were ready to prosecute, you wanted to prosecute in
16 D.C. When you all go to Mr. Graves and you go to him and ask him to partner, you're
17 actually asking him to partner not so much on the investigation but on the decision that
18 you've already made in your mind to prosecute in that venue?

19 Mr. Weiss. No. No decision had been made at that point in time, but we -- this
20 is where we wanted to proceed. There were still -- still things that had to happen, but I
21 was thinking -- and I knew what resources we had available to us, so the discussion, in my
22 mind, with Mr. Graves is more -- when I'm asking about partnering, at least in my mind,
23 I'm thinking more about his office.

24 Chairman Jordan. Well, I'll go back to the original question. What are you
25 asking him to partner on?

1 Mr. Weiss. I'm asking whether they want to be --

2 Chairman Jordan. Partner on the prosecution?

3 Mr. Weiss. -- they want to be part of the case, and in my mind, I'm thinking more
4 about from an attorney standpoint, whether -- whether --

5 Chairman Jordan. Part of the case, to do what, to prosecute?

6 Mr. Weiss. Prosecutors, they're -- prosecutors perform both, you know,
7 prosecutorial aspects of their job and investigatory aspects of their job, depending upon
8 what they're doing.

9 Chairman Jordan. Okay. Because I just want to be clear, because you said you
10 were primarily -- I thought you said earlier, you were primarily asking -- when you went to
11 ask him to partner, you were asking them to partner on prosecuting the case?

12 Mr. Weiss. I was asking him to join in the prosecution of the case, whether they
13 wanted to be part of it.

14 Chairman Jordan. Got it.

15 Mr. Castor. Did you need them? Did you need their help?

16 Mr. Weiss. No. Well, did I need them -- as I said, we were prepared to
17 proceed. We were prepared to go forward if they chose not to participate.

18 Mr. Castor. But did you need extra bodies?

19 Mr. Weiss. I wouldn't -- I'm not going to talk about whether I needed more
20 resources or the particulars of those kinds of things.

21 Chairman Jordan. But you would only ask them to partner on prosecuting the
22 case if you felt that the case needed to be prosecuted, fair?

23 Mr. Weiss. I would only ask them to partner in the case if I was contemplating
24 prosecution in that jurisdiction, if that was part of the consideration. That's the only
25 reason it would be asked. Not that a decision had been made, just that it was being

1 considered.

2 Chairman Jordan. Well, that sort of brings us back to where we were, I guess,
3 earlier today. So you're asking Mr. Graves and the D.C. U.S. Attorney to partner with
4 you on the prosecution of the case. They declined.

5 Why didn't you then request 515 status so you could prosecute the case in D.C.?

6 Mr. Weiss. Again, because we -- there was still -- can't get into something that
7 would go into deliberative process, case discussions, and things of that nature. But
8 the --

9 Chairman Jordan. But did the discussion with Mr. Graves cause you to change
10 your mind on what you initially asked him to partner with you on?

11 Mr. Weiss. My discussion with Mr. Graves did not change my mind in any
12 respect, no.

13 Chairman Jordan. That's amazing. Okay.

14 Mr. Castor. Both Mr. Graves and Mr. Estrada testified that your request to
15 partner on the case was a difficult -- was difficult for them because they felt they were
16 stretched too thin. Did they communicate that to you?

17 Mr. Weiss. I'm not going to get into the specifics of the discussion.

18 BY MR. CASTOR:

19 Q Mr. Estrada said that he was dealing with -- and he really went into how
20 they've got just a terrible fentanyl problem, and they've got just -- they're overrun with
21 problems relating to the border.

22 And he talked about how they don't have enough attorneys in his office to handle
23 their own business, and so, he indicated to us the idea that he would be able to lend his
24 limited personnel -- he also said he's got a gigantic office, but, you know, his limited
25 resources to you was a real issue. Did he let you know about that?

1 A I'm not going to talk about the particulars of what he discussed in that
2 regard.

3 Chairman Jordan. But you didn't ask for additional help, said when you went to
4 Mr. Graves you weren't looking for people to help. You were just looking for him to
5 partner with the prosecution. You weren't actually asking him to give you attorneys to
6 help with the investigation.

7 Mr. Weiss. We were -- we were giving him the opportunity to join in the
8 investigation. If we decided to proceed in D.C., we would've proceeded with or without
9 assistance from Mr. Graves.

10 BY MR. CASTOR:

11 Q Did it surprise you that two Biden appointees didn't want to participate in a
12 case to prosecute the son of the President?

13 A I understand the question. I'm just not going to comment on whether I was
14 or was not surprised.

15 Mr. Castor. Okay.

16 Go off the record briefly.

17 [Discussion off the record.]

18 BY MR. CASTOR:

19 Q We'll go back on the record?

20 It's our understanding you filed a statement of interest on behalf of DOJ in a
21 patent infringement suit between Moderna and Arbutus relating to a COVID vaccine.
22 Does this ring any bells for you?

23 A No. I can't -- I can't speak to it. I'm sorry.

24 Q Okay. To the extent your office would file a statement of interest in a
25 matter such as this, what would be the process? Would you have communications with

1 Main Justice, or would you handle that without the --

2 Mr. Ivey. Could I ask though, the statement of interest that was filed by the
3 U.S. Attorney's Office in Delaware?

4 Mr. Castor. Yes.

5 Mr. Ivey. Okay. And the case then is related to what we're investigating in
6 some way or something totally different?

7 Chairman Jordan. Totally different. Let's go off the record.

8 Mr. Castor. This is -- we'll go off the record for a second.

9 [Discussion off the record.]

10 Mr. Ivey. Let's go back on the record.

11 Mr. Castor. Okay.

12 BY MR. CASTOR:

13 Q So when your office files a statement of interest, is it customary that
14 Main Justice be involved in that process?

15 A Again, I can't speak to the usual pattern when my office files a statement of
16 interest and the participation of DOJ and the component. It's so dependent upon the
17 particular circumstances, and because I'm not familiar with the circumstances here, I'm
18 just unable to intelligently comment on the matter.

19 Q Okay. Fair enough.

20 Does the name Brian Boynton ring any bells? He's a Principal Deputy Associate
21 Attorney General in the Civil Division.

22 A It does not.

23 Q Okay. So as you sit here today, you're not -- you don't have any
24 recollection of filing a statement of interest with this Moderna vaccine issue?

25 A Yeah, and, Counsel, I'm not saying we didn't or we did. I just don't -- I just

1 don't have a recollection.

2 Q Okay. Fair enough. All right.

3 Mr. Ivey. Could I -- I just want to --

4 Mr. Castor. You want me to go off the record, or you want to put this on the
5 record?

6 Mr. Ivey. No, I want this to be on the record.

7 Mr. Castor. All right.

8 [REDACTED]: And then I actually have, like, maybe three questions.

9 Mr. Ivey. Oh, well, go ahead.

10 [REDACTED]: Yeah.

11 Mr. Ivey. Go ahead.

12 [REDACTED]: Can you hear me if I stay here?

13 Mr. Castor. Yes.

14 [REDACTED]: Okay.

15 Mr. Castor. So we're starting a whole new -- we're starting a new round?

16 [REDACTED]: It's almost five o'clock. I don't think we're --

17 Mr. Ivey. No. Another hour, though, right?

18 Mr. Castor. All right. We're going to --

19 Mr. Ivey. Last round, but --

20 [REDACTED]: I'm not going to be constrained.

21 Mr. Ivey. All right.

22 Mr. Castor. We're going to go back on the record.

23 [REDACTED]: We'll go back on the record.

24 Mr. Castor. It's 4:38.

25 [REDACTED]: ?

1 [REDACTED]: Did you want to make a statement first?

2 Mr. Ivey. No, go ahead.

3 [REDACTED]: Okay.

4 BY [REDACTED]:

5 Q I want to turn back to exhibit 10 -- or I'm sorry, it's exhibit 17 -- it's the back
6 of exhibit 10, yeah -- the reference to communication issues, it's 6A on page 2.

7 Is it fair to say that communication can often be a challenge when you're pursuing
8 a case?

9 A You know, I'm -- sorry, I'm stumbling right now.

10 Q Let me rephrase it differently.

11 A Perhaps it can be a challenge. It's important -- it's incredibly important that
12 you have open communication. At least I believe it's important to a successful
13 prosecution, especially in a long-term case. People have a lot invested in the case,
14 so -- so I think it's an important part of partnering with agencies and with co-counsel.

15 Q And in this particular case, you had prosecutors and investigators who were
16 situated in different offices -- different physical offices, correct?

17 A That's correct.

18 Q And that can potentially make communication challenging as well?

19 A That can -- that can complicate things, but again, it's still important, yeah.

20 Q And you said you had a number of meetings -- you said this, I think, much
21 earlier today -- you had a number of meetings with supervisors and with various
22 members of the team, and that was an effort to make sure that they were heard and that
23 they were hearing from you, correct?

24 A I did -- I did speak to that, yes.

25 Q Okay. And that's an attempt to address communication, correct, to

1 improve communication?

2 A I was certainly interested in, yes, maintaining communications.

3 Q You said that you recall Mr. Shapley's body language during this meeting.

4 Can you describe what Mr. Shapley's body language was?

5 A I don't know that I could describe the particulars, but I knew at various
6 points in time, based on the nature of Mr. Shapley's reaction, that I suspected he wasn't
7 happy with something I was saying. Whatever that might've been -- and I don't recall
8 what it was in reaction to, but I do recall times in which he wasn't pleased with whatever
9 it was that was coming out of my mouth.

10 Mr. Ivey. Mr. Weiss, I wanted to thank you for coming and testifying today, and I
11 know it's been a long, difficult day. I appreciated your statement at the beginning
12 where you reference that this was unprecedented and that -- because you're in the
13 middle of a prosecution, and you did reference not only at the beginning, but over
14 multiple occasions, that you're going to produce a report.

15 And I just wanted to flag for the chairman and the committee that this is exactly
16 why I objected to him being brought in previously or that -- the committee doing
17 investigations in the middle of prosecutions like this.

18 So I'm a little concerned that what's going to happen at the hearing is, statements
19 will be made that he wasn't answering questions or he was being evasive or anything like
20 that. The only reason he's here is because we required him to come in. And because,
21 as he pointed out, he's in the middle of an investigation, there's a lot of stuff he can't
22 answer.

23 So hopefully when we get to the hearing, nobody will be making allegations like
24 that directly.

25 Chairman Jordan. Well, he's here voluntarily, and DOJ offered to have him to

1 come in to talk to us about the three different letters that we -- that was the focus of
2 our -- the primary focus of our asking questions.

3 Obviously, we think things flow from that, and that's why Mr. Castor and others
4 asked the questions we did, and Mr. Weiss made the determination not to answer most
5 of those.

6 Mr. Ivey. Well, I think he was right not to answer them. I think he's sort of
7 stuck in the --

8 Chairman Jordan. I'm just saying, DOJ offered to have him come talk to us
9 because of the various letters were sent this summer --

10 Mr. Castor. Yeah.

11 Chairman Jordan. -- and the concern about the different positions that the
12 letters seem to indicate that the Department was taking.

13 Mr. Castor. In July, DOJ offered a number of dates, I think four dates, two in
14 September, two in October. We were working with the Department, you know, for that.
15 So this was not a voluntary transcribed interview that was conducted under the threat of
16 subpoena or anything. It was -- it was voluntary.

17 Mr. Ivey. I appreciate that. I don't think we should be doing these for the
18 reasons I stated, but fair enough.

19 Chairman Jordan. You can take that up with the Attorney General.

20 Mr. Ivey. Will do.

21 ██████: We can go off the record.

22 Ms. Nabity. We're off the record.

23 [Whereupon, at 4:41 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

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit T



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

The Honorable Jim Jordan
Chairman
Committee on Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Jordan:

This responds to your letter of June 29, 2023, to the Department of Justice (Department) expressing interest in an individual ongoing criminal investigation and prosecution conducted by David Weiss, the U.S. Attorney for the District of Delaware. U.S. Attorney Weiss has consistently made clear in his letters to the House Judiciary Committee (Committee) and Members of Congress that he has ultimate authority over the matter, including the authority to bring a case in any jurisdiction, consistent with federal law, the Principles of Federal Prosecution, and Department regulations. U.S. Attorney Weiss said he welcomes the opportunity to meet with the Committee at an appropriate time, consistent with the law and Department policy. The Department, with this letter, affirms that commitment. The Office of Legislative Affairs will reach out to your staff tomorrow to discuss the appropriate timeline and scope of such an appearance.

Interest in an individual ongoing criminal investigation

The Department respects and gives due weight to your interest in this matter, and we can provide the following information at this time. Your letter refers generally to assertions made by two Internal Revenue Service investigators regarding U.S. Attorney Weiss's investigation. U.S. Attorney Weiss was appointed by President Donald J. Trump. He began this investigation during the previous administration. After the change in administrations, U.S. Attorney Weiss was asked to remain in his position to continue his leadership of the investigation.¹

U.S. Attorney Weiss brought charges in this case for two misdemeanor tax offenses and for a felony firearms offense. Mr. Robert Hunter Biden agreed to enter a plea of guilty to the tax offenses and to enter into a pre-trial diversion agreement with regard to the firearm charge.² A hearing is scheduled for July 26, 2023, in the U.S. District Court for the District of Delaware to

¹ Letter from U.S. Attorney David Weiss to Chairman Jim Jordan (June 7, 2023) ("June 7 Letter").

² Press Release, United States Attorney's Office for the District of Delaware, Tax and Firearm Charges Filed Against Robert Hunter Biden (June 20, 2023), <https://www.justice.gov/usao-de/pr/tax-and-firearm-charges-filed-against-robert-hunter-biden>.

The Honorable Jim Jordan

Page 2

consider a plea agreement between the United States and Mr. Robert Hunter Biden. Sentencing will follow upon entry of a guilty plea.

U.S. Attorney Weiss has clearly stated that he has been “granted ultimate authority over this matter, including responsibility for deciding where, when and whether to file charges and for making decisions necessary to preserve the integrity of the prosecution, consistent with federal law, the Principles of Federal Prosecution, and Departmental regulations.”³ He has said he has “never been denied the authority to bring charges in any jurisdiction.”⁴ U.S. Attorney Weiss has assured that his “decisions have been made—and with respect to the matter must be made—without reference to political considerations.”⁵

U.S. Attorney Weiss also made clear that he has “not requested Special Counsel designation pursuant to 28 CFR § 600 *et seq.*”⁶ U.S. Attorney Weiss further explained that if he wanted to bring charges outside the District of Delaware, he could either “partner” with the U.S. Attorney’s Office for the other district, or seek “Special Attorney” status pursuant to 28 U.S.C. § 515.⁷ Section 515 provides that “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 . . . 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.” As U.S. Attorney Weiss explained, he was assured that he “would be granted this authority if it proved necessary.”⁸ That assurance “came months before the October 7, 2022, meeting referenced throughout the whistleblowers’ allegations.”⁹ As Attorney General Garland has testified, U.S. Attorney Weiss “has full authority” to make “referrals” to other districts “or to bring cases in other jurisdictions if he feels it’s necessary.”¹⁰

The Office of Legislative Affairs will work with your staff to discuss the appropriate timing and scope for providing further information from U.S. Attorney Weiss.¹¹ In determining the timing and scope, the Department must consider the integrity of the ongoing criminal investigation and prosecution and the Department’s longstanding policy that we seek “whenever possible to provide information about closed, rather than open, matters.”¹² Indeed, legal barriers

³ June 7 Letter.

⁴ Letter from U.S. Attorney David Weiss to Senator Lindsey Graham (July 10, 2023) (“July 10 Letter”).

⁵ June 7 Letter.

⁶ July 10 Letter. Attorney General William Barr also addressed questions about whether to appoint a special counsel in the matter. In December 2020, Attorney General Barr said, “I think it’s being handled responsibly and professionally currently within the department, and to this point I have seen no reason to appoint a special counsel, and I have no plan to do so before I leave.” See Ryan Lucas, *Barr Says No Need For Special Counsel For Hunter Biden Probe, Election Fraud Claims*, NPR (Dec. 21, 2020), <https://www.npr.org/2020/12/21/948787251/barr-says-no-need-for-special-counsel-for-hunter-biden-probe-election-fraud-clai>.

⁷ Letter from U.S. Attorney David Weiss to Chairman Jim Jordan (June 30, 2023) (“June 30 Letter”).

⁸ July 10 Letter.

⁹ *Id.*

¹⁰ March 1, 2023, Senate Judiciary Committee Hearing (“March 1, 2023 Testimony”); April 26, 2022, Senate Appropriations Subcommittee Hearing. See also February 22, 2021, Senate Judiciary Committee Hearing (“February 22, 2021 Testimony”).

¹¹ June 30 Letter.

¹² Letter from Assistant Attorney General Robert Raben to Chairman John Linder (Jan. 27, 2000) (“Linder Letter”) at 3.

The Honorable Jim Jordan
Page 3

and ethics obligations prevent the Department from discussing the particulars of a criminal prosecution while it remains pending in court.

Oversight of the Department's programs and operations

Your letter also identifies general areas where the Committee may have legislative oversight authority: the Department's "programs and operations" within the "jurisdiction" of the Committee. The Department respects that the Rules of the 118th Congress grant the Committee jurisdiction to initiate legislative inquiries regarding a range of the Department's work and administration.¹³ We also respect the scope of Congress's oversight authorities in service of its legislative responsibilities.¹⁴

As the Department explained in its letter of January 20, 2023, courts have long held that the Constitution "requires each Branch to engage in a 'realistic evaluation of [one another's] needs'" when Congress seeks Executive Branch information, and that "[t]he Committee can assist the Department in making this process as efficient as possible by helping the Department understand the scope of its interests."¹⁵ The Office of Legislative Affairs is available to meet with your staff so we can understand the legislative purpose and scope of your inquiry into the Department's programs and operations, which your letter does not specify.¹⁶ Providing that information is a necessary first step to enable the Department and the Committee to begin a process of accommodation, as appropriate.

In any accommodation process, the Department applies its longstanding policies and practices to protect the integrity of our work, as the Department conveyed to the Committee at the outset of this Congress.¹⁷ Subject to the necessary discussions referenced above, those principles apply to your requests for transcribed interviews with several Department personnel, including line agents and prosecutors. As noted, the Department safeguards non-public information about open investigations, sensitive law enforcement information, and internal deliberations.¹⁸ Moreover, the longstanding policy of the Department is to "ensur[e] that

¹³ See H.R. Rules, 118th Cong., Rule X, cl. 1(*l*) (identifying nineteen subjects over which the Committee has been delegated "legislative jurisdiction"); *id.* Rule X, cl.2 (assigning standing committees "general oversight responsibilities" on the subjects within the scope of their legislative jurisdiction).

¹⁴ See *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020) (The Supreme Court has "held that each House has power 'to secure information in order to legislate,'" and that this "power is 'broad' and 'indispensable.'" (quoting *McGrain v. Daugherty*, 273 U.S. 135, 161 (1927), and *Watkins v. United States*, 354 U.S. 178, 187 (1957)). See also U.S. CONST. art. I, § 1.

¹⁵ Letter from Assistant Attorney General Carlos Uriarte to Chairman Jim Jordan (Jan. 20, 2023) ("January 20 Letter") (quoting *United States v. AT&T Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977)).

¹⁶ See *Trump*, 140 S. Ct. at 2031 – 32 ("Because this power [to conduct investigations] is 'justified solely as an adjunct to the legislative process,'" it is subject to several limitations, including that a congressional request for information "must serve a 'valid legislative purpose,'" that it cannot be "for the purpose of 'law enforcement'" or other "powers are assigned under our Constitution to the Executive or the Judiciary," and also that recipients of such requests retain protections such as constitutional rights as well as certain "common law and constitutional privileges." (cleaned up)).

¹⁷ January 20 Letter.

¹⁸ See generally Linder Letter. See also, e.g., letter from Deputy Attorney General Rod Rosenstein to Senator Chuck Grassley (June 27, 2018) ("Regardless of political affiliation, thoughtful former Department leaders recognize that departures from our confidentiality policies pose an extraordinary threat to the Department's independence and

The Honorable Jim Jordan
Page 4

appropriate supervisory personnel, rather than line attorneys and agents, answer Congressional questions about Department actions.”¹⁹ Where a congressional committee has requested the testimony of the Department’s line personnel pursuant to a legitimate oversight inquiry, the Department has historically been able to meet a committee’s informational needs by providing documents, testimony or briefings from supervisory personnel, or written responses.

Conclusion

We hope you find this response helpful, and we hope you will accept our invitation to meet with your staff. Please do not hesitate to contact this office if we can provide further assistance regarding this or any other matter.

Sincerely,

CARLOS
URIARTE

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CARLOS URIARTE
Date: 2023.07.13
16:59:53 -04'00'

Carlos Felipe Uriarte
Assistant Attorney General

cc:

The Honorable Jerrold L. Nadler
Ranking Member
Committee on Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable James Comer
Chairman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

integrity . . . Requiring the Department of Justice to disclose details about criminal investigations would constitute a dangerous departure from important principles.”); *Position of the Executive Department Regarding Investigative Reports*, 40 Op. Att’y Gen. 45, 46 (1941) (“It is the position of this Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to ‘take care that the laws be faithfully executed,’ and that congressional or public access to them would not be in the public interest.” (quoting U.S. CONST. art. 2, § 3)); Memorandum for Edward L. Morgan, Deputy Counsel to the President from Thomas E. Kauper, Deputy Assistant Attorney General, Office of Legal Counsel (Dec. 19, 1969)) (“[T]he Executive cannot effectively investigate if Congress is, in a sense, a partner in the investigation. If a congressional committee is fully apprised of all details of an investigation as the investigation proceeds, there is a substantial danger that congressional pressures will influence the course of the investigation.”).

¹⁹ Linder Letter at 3, 6.

The Honorable Jim Jordan
Page 5

The Honorable Jamie Raskin
Ranking Member
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Jason Smith
Chairman
House Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Richard Neal
Ranking Member
House Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit U



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Jordan:

This responds to your letter to the Attorney General, dated July 21, 2023, expressing continued interest in an individual ongoing criminal investigation and prosecution led by the U.S. Attorney for the District of Delaware, David Weiss. The Department of Justice (Department) appreciates the Committee on the Judiciary's (Committee's) acceptance of our offer for U.S. Attorney Weiss to testify at a public hearing before the Committee. The Department is ready to offer U.S. Attorney Weiss to testify shortly after Congress returns from the August district work period, as described more fully below.

Across administrations, the Department has long recognized its obligation to protect law enforcement work from even the perception of political interference, including from Congress.¹ Our longstanding principles and duty to take care that the law be faithfully executed require us to maintain the confidentiality of sensitive law enforcement information and to protect line attorneys and agents so they can do their jobs for the American people free from improper political pressures. These concerns are heightened while a matter is open and investigative steps, prosecutorial decisions, or judicial proceedings are ongoing. At the same time, we are deeply concerned by any misrepresentations about our work—whether deliberate or arising from misunderstandings—that could unduly harm public confidence in the evenhanded administration of justice, to which we are dedicated. The Department, therefore, reaffirms U.S. Attorney Weiss's commitment to providing public testimony, consistent with law and Department policy, to protect these principles.

Your letter refers to assertions made by two Internal Revenue Service investigators regarding U.S. Attorney Weiss's authority and asks additional questions about U.S. Attorney Weiss's recent letters explaining the scope of his authority. U.S. Attorney Weiss is the appropriate person to speak to these issues, as he is both the senior Department official

¹ See, e.g., Letter from Assistant Attorney General Robert Raben to Chairman John Linder (Jan. 27, 2000) ("Congressional inquiries during the pendency of a matter pose an inherent threat to the integrity of the Department's law enforcement and litigation functions.").

The Honorable Jim Jordan

Page 2

responsible for the investigation as well as the person with direct knowledge of the facts necessary to respond to the assertions in which you have expressed interest.

The Department believes it is strongly in the public interest for the American people and for Congress to hear directly from U.S. Attorney Weiss on these assertions and questions about his authority at a public hearing. To address these issues, U.S. Attorney Weiss is available to appear at a public hearing before the Committee, consistent with the law and Department policy, after the House returns from its August district work period. U.S. Attorney Weiss is available on September 27, September 28, October 18, and October 19. To be clear, the most appropriate time for any testimony on these subjects is after the matter is closed, especially under the circumstances where the matter is pending before a court and subject to judicial supervision, not to mention legal and ethical bars that limit what the Department can say while the matter is pending in court. While testimony at this early juncture must be appropriately limited to protect the ongoing matter and important confidentiality interests, the Department acknowledges your stated interest in addressing aspects of this matter in the near term, such as U.S. Attorney Weiss's authority and jurisdiction to bring charges wherever he deems appropriate.

As the Department has repeatedly stated, we remain committed to working with you to address the Committee's expressed interests consistent with the Department's duties and policies. We are, therefore, deeply concerned by your notification today that the Committee has authorized deposition subpoenas for the individuals identified in your letter. Any attempts at compulsory process are unjustified and premature. The Committee authorized subpoenas less than a business day after your July 21 letter and *before* the stated deadline in that letter. It has been less than a month since the Committee's original requests, and little more than a week since the Department responded to that letter on the date requested by the Committee. During a staff discussion last week, the Department and Committee agreed to continue discussions. Such discussions would ensure we understand the Committee's interests and that you understand the Department's longstanding approach across administrations regarding such requests, including those that seek information about ongoing aspects of our work and testimony from line personnel. We remain available to discuss your interests further.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

CARLOS
URIARTE

Digitally signed by
CARLOS URIARTE
Date: 2023.07.24
18:22:43 -04'00'

Carlos Felipe Uriarte
Assistant Attorney General

The Honorable Jim Jordan

Page 3

cc:

The Honorable Jerrold L. Nadler

Ranking Member

Committee on the Judiciary

U.S. House of Representatives

Washington, DC 20515

The Honorable James Comer

Chairman

Committee on Oversight and Accountability

U.S. House of Representatives

Washington, DC 20515

The Honorable Jamie Raskin

Ranking Member

Committee on Oversight and Accountability

U.S. House of Representatives

Washington, DC 20515

The Honorable Jason Smith

Chairman

House Committee on Ways and Means

U.S. House of Representatives

Washington, DC 20515

The Honorable Richard Neal

Ranking Member

House Committee on Ways and Means

U.S. House of Representatives

Washington, DC 20515

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,


Defendants.

Exhibit V

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Mark F. Daly, Senior Litigation Counsel, Tax Division, U.S. Department of Justice 

You are hereby commanded to be and appear before the
Committee on the Judiciary 

of the House of Representatives of the United States at the place, date, and time specified below.

- ☐ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: _____
Date: _____ Time: _____

- ☒ **to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: 2237 Rayburn House Office Building
Date: September 27, 2023 Time: 10:00 a.m.

- ☐ **to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
Date: _____ Time: _____

To The U.S. Marshals Service, or any authorized Member or congressional staff

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at
the city of Washington, D.C. this 14 day of September, 2023.

Attest:

Kevin F. McChesney

Clerk


Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for

Mark F. Daly, Senior Litigation Counsel, Tax Division, U.S. Department of Justice 

Address U.S. Department of Justice, 950 Pennsylvania Avenue, N.W. Washington, DC 20530

before the Committee on the Judiciary 

*U.S. House of Representatives
118th Congress*

Served by (print name) _____

Title _____

Manner of service _____

Date _____

Signature of Server _____

Address _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit W

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Jack Morgan, Trial Attorney, Tax Division, U.S. Department of Justice

You are hereby commanded to be and appear before the
Committee on the Judiciary

of the House of Representatives of the United States at the place, date, and time specified below.

- ☐ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: _____
Date: _____ Time: _____

- ☒ **to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: 2237 Rayburn House Office Building
Date: September 28, 2023 Time: 10:00 a.m.

- ☐ **to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
Date: _____ Time: _____

To The U.S. Marshals Service, or any authorized Member or congressional staff

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at
the city of Washington, D.C. this 14 day of September, 2023.

Attest:

Kevin F. McCubben
Clerk

J. G. [Signature]
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for

Jack Morgan, Trial Attorney, Tax Division, U.S. Department of Justice



Address U.S. Department of Justice, 950 Pennsylvania Avenue, N.W. Washington, DC 20530

before the Committee on the Judiciary



*U.S. House of Representatives
118th Congress*

Served by (print name) _____

Title _____

Manner of service _____

Date _____

Signature of Server _____

Address _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit X

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

September 14, 2023

Mr. Mark F. Daly
Senior Litigation Counsel
Tax Division
U.S. Department of Justice
601 D Street, NW
Washington, DC 20004

Dear Mr. Daly:

The Committee on the Judiciary is conducting oversight of the Executive Branch's commitment to impartial justice, as well as investigating the veracity of statements made in response to congressional inquiries related to the Department of Justice's investigation of Hunter Biden. As a part of this oversight, the Committee has determined that it requires testimony from several Department officials, including you, who have first-hand knowledge of the Department's investigation.

In a letter dated June 29, 2023, the Committee, along with the Committees on Ways and Means and Oversight and Accountability, requested transcribed interviews with eleven Department officials, including you.¹ The Department declined our request for voluntary compliance.² On July 21, 2023, the Committees reiterated our request for voluntary transcribed interviews.³ Once again, the Department did not agree to our request.⁴ Consequently, the Committee served subpoenas on August 21, 2023, compelling the appearance of two of those witnesses.⁵

¹ Letter from Chairmen Jim Jordan, Jason Smith, and James Comer, to Merrick B. Garland, Att'y Gen., U.S. Dep't of Just. (June 29, 2023).

² Letter from Carlos Felipe Uriarte, Assistant Att'y Gen., U.S. Dep't of Just., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 13, 2023).

³ Letter from Chairmen Jim Jordan, Jason Smith, and James Comer, to Merrick B. Garland, Att'y Gen., U.S. Dep't of Just. (July 21, 2023).

⁴ Letter from Carlos Felipe Uriarte, Assistant Att'y Gen., U.S. Dep't of Just., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 24, 2023).

⁵ See Subpoena from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, Mr. Thomas J. Sobocinski, Special Agent in Charge, Baltimore Field Office, Fed. Bureau of Investigation (Aug. 21, 2023); Subpoena from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Ms. Ryeshia Holley, Assistant Special Agent in Charge, Baltimore Field Office, Fed. Bureau of Investigation (Aug. 21, 2023).

Mr. Mark F. Daly
 September 14, 2023
 Page 2

The Supreme Court has recognized that Congress has a “broad and indispensable” power to conduct oversight, which “encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them.”⁶ Pursuant to the Rules of the House of Representatives, the Committee is authorized to conduct oversight of the Department as well as criminal justice matters in the United States to inform potential legislative reforms.⁷ In this matter, potential legislation could include, but is not limited to, strengthening laws protecting whistleblowers from retaliation, reforming the “special attorney” statute,⁸ codifying the special counsel regulations,⁹ and reforming the Department’s Tax Division.

The Supreme Court has also recognized that Congress may seek information from the Executive Branch about “corruption, maladministration or inefficiency in agencies of the Government.”¹⁰ Here, whistleblowers have brought forward numerous concerns, backed by contemporaneous documentary evidence, of corruption (e.g., preferential treatment for the President’s son), maladministration (e.g., retaliation against whistleblowers), and inefficiency (e.g., an investigation so bogged down by delays and micromanagement that the statute of limitations lapsed before prosecutors could file certain charges). These are among the matters about which the Committees require testimony to inform potential legislative reforms.

Based on information provided by whistleblowers and made available to the Committee, you have unique information that is relevant and necessary to inform our oversight and potential legislative reforms.¹¹ For instance, according to whistleblower testimony, you attended a “tax summit” in October 2021 with prosecutors and investigators during which attendees agreed to “move forward” with producing a prosecution report recommending charges against Hunter Biden for tax years 2014 to 2019.¹² Additionally, you apparently gave a presentation at a June 15, 2022 meeting to discuss reasons why the Department should not charge Hunter Biden’s case.¹³ Further, whistleblower testimony suggests that, in early August 2022, you may have been on a phone call in which prosecutors informed investigators they were going to approve the recommendation of charges against Hunter Biden for 2017 to 2019 (and possibly 2016) tax years, but not for 2014 to 2015.¹⁴ The Committee has sought to obtain the Department’s voluntary compliance with our request to conduct a transcribed interview with you, and has engaged in good faith with the Department to address the purported reasons why it could not comply. Even still, the Department has not agreed to make you available.

⁶ *Trump v. Mazars*, 140 S. Ct. 2019, 2031 (2020) (internal quotation marks omitted).

⁷ Rules of the U.S. House of Representatives, R. X (2023).

⁸ See 28 U.S.C. § 515.

⁹ See 28 C.F.R. § 600 *et seq.*

¹⁰ *Watkins v. United States*, 354 U.S. 178, 200 n.33 (1957).

¹¹ See Transcribed Interview of Gary A. Shapley, Jr., Supervisory Special Agent, Internal Revenue Serv. (May 26, 2023) [hereinafter Shapley Interview]; Transcribed Interview of Joseph Ziegler, Special Agent, Internal Revenue Serv. (June 1, 2023) [hereinafter Ziegler Interview].

¹² Ziegler Interview, *supra* note 11, at 32–33.

¹³ *Id.* at 160–61.

¹⁴ *Id.* at 38.

Mr. Mark F. Daly
September 14, 2023
Page 3

Accordingly, in light of the Department's non-compliance with our earlier voluntary requests, please find attached a subpoena compelling your appearance at a deposition. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is stylized with a large, looping "J" and a cursive "Jordan".

Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

Enclosure

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit Y

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

September 14, 2023

Mr. Jack Morgan
Trial Attorney
Tax Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Mr. Morgan:

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Mr. Jack Morgan
 September 14, 2023
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¹² Ziegler Interview, *supra* note 10, at 32–33.

¹³ *Id.* at 160–61.

¹⁴ *Id.* at 38.

Mr. Jack Morgan
September 14, 2023
Page 3

Accordingly, in light of the Department's non-compliance with our earlier voluntary requests, please find attached a subpoena compelling your appearance at a deposition. Thank you for your attention to this matter.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

Enclosure

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit Z

-----Original Message-----

From: Castor, Stephen
Sent: Tuesday, September 26, 2023 2:05 PM
To: Zdeb, Sara (OLA) <[REDACTED]@usdoj.gov>
Subject: RE: Morgan/Daly

Ok we will move the deposition return dates to Oct 26 (Daly) and Oct 30 (Morgan).

Confirming Graves, Estrada, and Goldberg.

I will get back to you on Weiss so I can confirm TI preference over hearing, but please leave 11/7 and 11/8 open.

-----Original Message-----

From: Zdeb, Sara (OLA) <[REDACTED]@usdoj.gov>
Sent: Tuesday, September 26, 2023 1:35 PM
To: Castor, Stephen <[REDACTED]@mail.house.gov>
Subject: RE: Morgan/Daly

Thanks. I can confirm there are no scheduling conflicts for Daly on October 26 or Morgan on October 30 (or later that week), so we would appreciate the Committee moving the return dates to those days. That will also give us time to keep discussing the requests.

We are good to confirm the dates below for voluntary TIs by Graves, Estrada, and Goldberg.

We're also good to confirm either November 7 or 8 for Weiss, provide you confirm it will be a voluntary TI and that the committee does not anticipate reupping a request for a second appearance at a hearing in the near term. If you do, we'll need to discuss further whether to proceed with a TI or a hearing before locking in his appearance for the reasons we discussed (i.e., he's available only for a single appearance at this time particularly given resource constraints while his investigation is ongoing).

-----Original Message-----

From: Castor, Stephen <[REDACTED]@mail.house.gov>
Sent: Tuesday, September 26, 2023 10:42 AM
To: Zdeb, Sara (OLA) <[REDACTED]@usdoj.gov>
Subject: [EXTERNAL] RE: Morgan/Daly

Yes this is my expectation. Can you confirm the Department would be willing to move the return date on the deposition subpoenas to Oct 26 (Daly) and a tbd date during the week of Oct 30 (Morgan)? We would then work with the Department on a scope understanding for a voluntary transcribed interview.

Can we also confirm dates that you proposed for the other witnesses. Graves (10/3), Estrada (10/20), Goldberg (10/24), and Weiss (11/7 or 11/8).

-----Original Message-----

From: Zdeb, Sara (OLA) <[REDACTED]@usdoj.gov>
Sent: Tuesday, September 26, 2023 9:23 AM
To: Castor, Stephen <[REDACTED]@mail.house.gov>
Subject: RE: Morgan/Daly

Hi Steve -- just checking in to confirm that you plan to reschedule the return dates for this week's subpoenas. We're operating under that assumption based on our discussion this weekend, and on the witnesses' unavailability this week, but if you could confirm I'd appreciate it.

-----Original Message-----

From: Zdeb, Sara (OLA)
Sent: Sunday, September 24, 2023 5:45 PM
To: Castor, Stephen <[REDACTED]@mail.house.gov>
Subject: RE: Morgan/Daly

Hi Steve -- Thanks for chatting yesterday and for your openness to moving next week's dates given the work-related and sensitive personal conflicts, respectively, that we've flagged for Messrs. Daly and Morgan. Obviously, we continue to have more fundamental concerns about the subpoenas for their testimony for various reasons that you and I have discussed, but putting those aside for the moment, my understanding is that there should be no scheduling conflicts on October 26 for Mr. Daly or on October 30 (or any other day that week) for Mr. Morgan. I'd appreciate the opportunity to continue talking about your need for their testimony as your inquiry progresses, but in the meantime, would you mind confirming that you're able to reschedule the return dates of the subpoenas?

I also have some more information for you on SC Weiss. He's available on either November 7 or November 8. As discussed, we're able to make him available for a single appearance in the near term to discuss the subject of his authority (including questions about the October 7 meeting). My understanding from our discussion is that your priority is to bring him in for a TI. We're happy to lock in a voluntary TI for either of those dates provided this will, in fact, be his only near-term appearance. If you anticipate reupping a hearing request after a TI and while his investigation is ongoing (as opposed to at the conclusion of his investigation, when we would expect the committee to request a hearing with him like other recent special counsels), then we should discuss now whether to proceed with a hearing as opposed to a TI on one of those dates, because given resource constraints we can't do both.

Happy to discuss if helpful. Thanks again for taking time out of your weekend to connect yesterday.

Sara

-----Original Message-----

From: Castor, Stephen <[REDACTED]@mail.house.gov>
Sent: Saturday, September 23, 2023 4:59 PM
To: Zdeb, Sara (OLA) <[REDACTED]@usdoj.gov>
Subject: [EXTERNAL] Re: Morgan/Daly

Yes, I have read the letter. I just tried you. Can also talk tomorrow.

> On Sep 23, 2023, at 1:14 PM, Zdeb, Sara (OLA) <[REDACTED]@usdoj.gov> wrote:
>

> Hi Steve - sorry to intrude on your weekend, and not sure if you've had a chance to get through the letter we sent late yesterday, but wanted to make sure you'd seen that there are a few timing conflicts for Morgan/Daly next week in addition to the broader issues we've reiterated about their appearances. Do you have a minute sometime this weekend to discuss? I'm free today until around 5:30 and tomorrow from 11 on.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit AA



Robert N. Driscoll
Attorney at Law

T (202) [REDACTED] F (202) [REDACTED]
[REDACTED]@mcglinchey.com

McGlinchey Stafford PLLC
1275 Pennsylvania Avenue NW, Suite 420
Washington, DC 20004

October 24, 2023

By Email Only

The Honorable Jim Jordan
Chairman, Committee on the Judiciary
US House of Representatives
2138 Rayburn House Building
Washington, DC 20515
c/o Caroline Nabity, Chief Counsel (via email at [REDACTED]@mail.house.gov)
Betsy Ferguson, Deputy General Counsel (via email at [REDACTED]@mail.house.gov).

RE: Mark Daly

Dear Chairman Jordan,

This firm represents Mark Daly, a career attorney and long-time civil servant of the Department of Justice in the Tax Division and senior litigation counsel in the Office of Special Counsel headed by the US Attorney for the District of Delaware David C. Weiss. We are in possession of the subpoena directing Mr. Daly to appear before your committee for a transcribed interview currently scheduled for October 26, 2023. I have also held brief conversations with your staff, who were exceedingly gracious and professional regarding the subpoena and Mr. Daly's appearance.

As you are aware and as I have been informed, the Department of Justice—as Mr. Daly's employer—has asserted various equities in the matters the committee would like to discuss. Among other things, I have been informed that the Justice Department has raised constitutional objections to the subpoena in question relating to both the subpoena power of the committee and its ability to subpoena a DOJ line attorney regarding an active matter in light of statutory issues related to taxpayer privacy, grand jury secrecy issues under Fed.R.Crim.P. 6(e), and other things.

It is also clear to me from my conversations with congressional staff that the committee asserts weighty constitutional interests of its own relating to its oversight responsibilities and the enforcement of its subpoenas.

The constitutional and statutory questions raised by the competing claims of the executive and legislative branches of government in instances like this are thorny, complex, and in many instances unresolved by the third branch of government—the courts. But these issues are not necessarily novel. In my career, I have been on both sides of these intra-branch disputes with respect to various clients. Both sides have good faith arguments and can find support for them in precedent, case law, or constitutional theory. The answers to the questions raised are often far from clear or certain.

mcglinchey.com

The Honorable Jim Jordan

October 24, 2023


Page 2 of 2

What is clear to me, however, is that this dispute is not Mr. Daly's dispute. It is a dispute between the legislative and executive branches—specifically his employer and the committee—and it should be worked out between those two parties, which should both want to avoid forcing a long-time apolitical career tax lawyer into a Hobson's choice where he must choose to comply with either his employer or a congressional subpoena. I urge a negotiated resolution between the committee and DOJ regarding whether Mr. Daly is an appropriate witness at all, what the appropriate scope of questioning will be given the statutory restrictions on sharing taxpayer information and the ongoing nature of the investigation about which the committee seeks information, and who should be present at any questioning to protect the various interests asserted by the Justice Department. It is not up to Mr. Daly, nor me as his lawyer representing his personal interests, to resolve those issues or to weigh in with our independent analysis. I merely urge you to come to some type of accommodation with the Justice Department and to postpone Mr. Daly's scheduled testimony if necessary to do so to allow more time for negotiation.

For planning purposes, given that the committee has issued a subpoena, it is my current intention to appear with Mr. Daly on Thursday, as discussed with your staff. However, it is also my advice to Mr. Daly that, if the constitutional dispute between the legislative and executive branches of government is unresolved, his interests are best protected by following the instructions of the branch that employs him. Thus, we will follow whatever instructions are clearly given by the Justice Department, in writing, regarding any restrictions on his testimony, up to and including an instruction that he not appear, and I will instruct him not to answer questions as directed by the DOJ to preserve any bona fide disputes for future resolutions by the federal judiciary or otherwise. I will let you know promptly if I receive any such communication that directs Mr. Daly not to appear.

Thank you for your consideration.

Sincerely,



Robert N. Driscoll

Counsel for Mark Daly

cc: The Honorable Jerrold L. Nadler, Ranking Member

c/o [REDACTED], Minority Staff (via email at [REDACTED]@mail.house.gov)

Bradley Weinsheimer, Associate Deputy Attorney General, DOJ

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

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U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit BB



U.S. Department of Justice

Office of the Deputy Attorney General

Bradley Weinsheimer
Associate Deputy Attorney General

Washington, D.C. 20530

October 25, 2023

Mr. Robert Driscoll
McGlinchey Stafford
1275 Pennsylvania Avenue NW, Suite 420
Washington, D.C. 20004
Via Email

Dear Mr. Driscoll:

I write concerning your client Mark Daly. I serve as the senior career official at the Department of Justice (Department). Consistent with this role, in which I have served since 2018, I possess and exercise delegated authority to provide current and former Department employees with direction concerning the disclosure and protection of Department information, including with respect to congressional requests for testimony. I write to you in that capacity.

On September 14, 2023, the House Committee on the Judiciary (Committee) issued a deposition subpoena to your client for testimony regarding the work of the Department of Justice (Department) on an ongoing individual criminal investigation and prosecution led by Special Counsel David Weiss.¹ The Committee's correspondence, including the letter accompanying the subpoena to your client, states that it seeks testimony about meetings and conversations among investigators and prosecutors about the weight of evidence and charging decisions in this open matter. The Department offered voluntary appearances by three senior officials on appropriate topics as an alternative to the Committee pursuing such testimony from line-level attorneys, including your client. Although the Committee accepted the Department's offered alternative and these officials have appeared for interviews, the Committee has continued to pursue testimony from your client. Pursuant to the Rules of the House of Representatives, incorporated by reference in the Committee Rules transmitted with the subpoena, agency counsel is prohibited from attending the deposition.

The Department has written to the Committee explaining that principles and policies for safeguarding the confidentiality of the Department's work further the public interest in the integrity of law enforcement investigations.² These principles and policies have been followed across administrations and are grounded in constitutional concerns. As discussed in that letter, excluding agency counsel in these circumstances undermines the Executive Branch's ability to

¹ Letter from Hon. Jim Jordan to Mark Daly (Sept. 14, 2023).

² Letter from Asst. Attorney General Carlos Uriarte to Hon. Jim Jordan (Oct. 25, 2023). The concerns expressed in this letter are incorporated here by reference.

protect its confidentiality interests in the course of the constitutionally mandated accommodation process.³ In addition, the exclusion of agency counsel interferes with the Executive Branch's ability to protect potentially privileged information.⁴ The underlying principles that inform the Department's position are longstanding across administrations. Here, the subpoena issued by the Committee prohibits the attendance of agency counsel at an appearance where the Committee has indicated it will ask questions regarding information Mr. Daly learned within the scope of his official duties, including potentially privileged information.⁵ On the basis of a 2019 Office of Legal Counsel opinion, the Department has determined that the exclusion of agency counsel means that the subpoena lacks legal effect and cannot constitutionally be enforced.

Having carefully considered the relevant facts and authority, Department and Executive Branch precedents and longstanding principles, and the Department's determination that not appearing would be lawful because this subpoena lacks legal effect, I recommended to the Deputy Assistant Attorney General serving as the Head of the Tax Division and to the Attorney General that Mr. Daly be directed not to appear before the Committee pursuant to this subpoena. The Attorney General and the Head of the Tax Division approved my recommendation. Accordingly, the Department directs Mr. Daly not to appear before the Committee pursuant to the subpoena.

This directive is consistent with longstanding principles of the Justice Department regarding congressional requests for information, as well as the Department's respect for Congress's authority to conduct legitimate oversight of the Executive Branch and our mutual obligations under the constitutionally mandated accommodation process. Department witnesses are expected to abide by their obligations under the law and Department policy, including the Justice Manual, to refrain from disclosing information that has not been authorized for public release. This includes information about ongoing investigations and prosecutions, sensitive law enforcement information, and Executive Branch deliberative processes, such as those that underlie investigative and prosecutorial decisions. The presence of agency counsel during congressional interviews is essential to ensure, among other things, that Department witnesses fully understand and abide by their obligations and that the Department has the ability to raise objections or assert privileges or other Executive Branch confidentiality interests.

This directive is also consistent with our continuing commitment to good-faith negotiations with the Committee in response to its interest in this matter. The Department remains willing to discuss with the Committee appropriate requests for information and the circumstances under which the Department may be able to provide that information. Nothing in this directive shall be understood to waive or limit, on behalf of Mr. Daly or of the Department, any potentially applicable privileges, objections, or confidentiality interests regarding this or other congressional requests for information.


³ *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. ___, at *2, *19 (May 23, 2019).

⁴ *Id.* at *8 (quoting *Authority of Agency Officials to Prohibit Employees from Providing Information to Congress*, 28 Op. O.L.C. 79, 81 (2004)).

⁵ *Id.* at *2.

Pursuant to 5 U.S.C § 2302(b)(13), the provisions of this letter are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are controlling.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Bradley Weinsheimer', is written over a horizontal line.

Bradley Weinsheimer

**IN THE UNITED STATES DISTRICT COURT
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Defendants.

Exhibit CC



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Jordan:

This is a further response to the Committee's September 14, 2023, deposition subpoenas issued to line-level attorneys in the Department of Justice's (Department) Tax Division about an ongoing individual investigation and prosecution led by Special Counsel David Weiss.

The Department is committed to upholding the American people's strong interest in appropriate accountability and transparency regarding our work. This commitment is reflected by the significant resources we invest in responding to congressional requests, including this one.¹ Indeed, we have made extraordinary efforts to provide appropriate information on this matter through voluntary testimony by seven current and former senior Department officials, including Special Counsel Weiss. The Department remains committed to transparency regarding Special Counsel Weiss's investigation. As the Attorney General testified, he intends to make public as much of Mr. Weiss's final report as possible, consistent with law and Department policy.

The Department is also dedicated to protecting the American people's strong interest in public safety, the integrity of law enforcement investigations, and the evenhanded administration of justice. This dedication informs the times when we must decline to disclose information, in order to safeguard law enforcement work. The Committee is seeking to depose, under threat of criminal contempt, line-level attorneys for information inextricably intertwined with an ongoing criminal investigation and prosecution. The Committee's subpoenas encompass information Department attorneys are duty-bound not to disclose, including information protected by statutes such as 26 U.S.C. § 6103 and Federal Rule of Criminal Procedure 6(e). You have continued to pursue testimony from line-level attorneys even when reasonable and responsive alternatives have already been offered and provided. These demands implicate the very core of the Executive Branch's constitutionally assigned authority to enforce the law, as well as statutory restrictions, potential privileges, and other important confidentiality interests. It is extraordinary for Congress to attempt to compel testimony that would intrude upon so many aspects of the public's interest in the confidentiality and integrity of law enforcement work.

¹ See generally Letter from Carlos Uriarte, Assistant Att'y Gen., U.S. Dep't of Just., to U.S. Rep. Jim Jordan (Jan. 20, 2023) ("January 20th Letter").

The Honorable Jim Jordan

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The Department will continue to protect the integrity of law enforcement work, on this matter and others, as we have done for decades across administrations of both political parties.² In light of these important interests and the extraordinary efforts we have made to provide appropriate information to the Committee, we urge the Committee to end its pursuit of additional testimony from line-level career attorneys.

The Department's Extraordinary Efforts

The Department has made exceptional efforts to provide appropriate information to the Committee out of the respect and due weight the Department has given your interest in this ongoing matter.³ Among other things, with the Department's authorization the Committee received testimony from two current U.S. Attorneys, a former U.S. Attorney, a current Tax Division Acting Deputy Assistant Attorney General, and two current senior supervisory Federal Bureau of Investigation (FBI) agents. Special Counsel Weiss himself is scheduled to testify on November 7. Although the Department has not authorized any witness to provide nonpublic, sensitive information regarding the ongoing matter, the work we have done to identify information that *can* be shared—for example, about Mr. Weiss's scope of authority—and the fact that the Department has authorized such appearances at all is extraordinary.

The Department offered testimony from three of these senior officials as an *alternative* to the Committee's continued pursuit of testimony from line-level Tax Division attorneys.⁴ The Department's policy of declining to provide line attorneys for congressional testimony is longstanding and protects their safety and the integrity of their work. Our offer was, therefore, a reasonable compromise—senior officials providing responsive testimony on appropriate topics such as Mr. Weiss's authority—to avoid unnecessary conflict over line-level attorneys' testimony that could risk the integrity of an open matter. Yet you have persisted in seeking such testimony, including about meetings and conversations among investigators and prosecutors on the weight of evidence and charging decisions. This could result in exactly the kinds of disclosures that could undermine an ongoing investigation and prosecution. Indeed, as Attorney General Robert Jackson explained more than 80 years ago, disclosure of this kind of information could be of tremendous value to a defendant or prospective defendant, as it would allow counsel to know “how much or how little information the Government has, and what witnesses or sources of information it can rely upon.”⁵ This is in addition to risking dangerous chilling effects, statutory violations, and constitutional concerns discussed below.

² See Letter from Rod Rosenstein, Deputy Att'y Gen., to U.S. Sen. Charles Grassley at 6–7 (June 27, 2018) (“Rosenstein Letter”) (“It may seem tempting to depart from Department policies and traditions in an effort to deflect short-term criticism, but such deviations ultimately may cause a loss of public confidence in the even-handed administration of justice. . . . I urge you and your colleagues to support us in following the rules.”).

³ See Letter from Carlos Uriarte, Assistant Att'y Gen., U.S. Dep't of Just., to U.S. Rep. Jim Jordan (Sept. 22, 2023) (“Sept. 22 Letter”); Letter from Carlos Uriarte, Assistant Att'y Gen., U.S. Dep't of Just., to U.S. Rep. Jim Jordan (Sept. 11, 2023); Letter from Carlos Uriarte, Assistant Att'y Gen., U.S. Dep't of Just., to U.S. Rep. Jim Jordan (July 24, 2023); Letter from Carlos Uriarte, Assistant Att'y Gen., U.S. Dep't of Just., to U.S. Rep. Jim Jordan (July 13, 2023).

⁴ Sept. 22 Letter at 3.

⁵ 40 Op. Att'y Gen. 45, 46 (1941) (“Jackson Opinion”).

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In any event, it is not clear why you need to speak to these particular line-level attorneys.⁶ “While fact-finding by a legislative committee is undeniably a part of its task, legislative judgments normally depend more on the predicted consequences of proposed legislative actions and their political acceptability, than on precise reconstruction of past events,” as may be necessary for law enforcement or judicial functions.⁷ Moreover, these line attorneys did not exercise any authority over whether, where, or when to bring charges in this matter; that authority lies with Mr. Weiss, who is scheduled to appear in front of the Committee days from now. And to the extent you had questions about the role of the Tax Division, a Deputy Assistant Attorney General—one of the most senior career officials in the Tax Division—was made available to speak on that topic.

Confidentiality Protects Public Safety and the Fair Administration of Justice

Keeping the American people safe from criminal and national security threats often requires confidentiality. Among other things, the Department must protect information that could reveal law enforcement sources and methods, or that could discourage witnesses from coming forward.⁸ These principles are consistent and longstanding. More than 80 years ago, Attorney General Robert Jackson declined to provide FBI investigative files to Congress because “much of this information is given in confidence and can only be obtained upon pledge not to disclose its sources.”⁹ We have since reiterated that “[t]o demand the prosecutor’s documents while the case is in progress would irreversibly taint our principles of justice,” and that disclosing such information to Congress “could harm the reputations of innocent people or even place witnesses in danger of retaliation.”¹⁰ Protecting such information also avoids the serious consequences of revealing investigative methods or signaling that the Department will not keep sources confidential.

Confidentiality is also critical to ensuring that cases are prosecuted effectively and that justice is done for victims and communities. As the Department explained decades ago, “the disclosure of documents from our open files could also provide a ‘road map’ of the Department’s ongoing investigations,” including to suspects and defendants.¹¹ Disclosing investigative information about a suspect or defendant outside the guardrails of Department policies or the rules of evidence and due process that apply in court—with an apolitical judge as gatekeeper—

⁶ See *Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731–32 (D.C. Cir. 1974).

⁷ *Id.* at 732; see also Jackson Opinion at 50 (“The information here involved was collected, and is chiefly valuable, for use by the executive branch of the Government in the execution of the laws. It can be of little, if any, value in connection with the framing of legislation or the performance of any other constitutional duty of the Congress.”).

⁸ See, e.g., *Mandatory Disclosure of Civil Rights Cold Case Records*, 43 Op. O.L.C. ___, at *10 (Feb. 4, 2019) (“Investigative files often contain factual information that could, if disclosed, compromise an investigation or prosecution, reveal sensitive investigative techniques, or endanger confidential sources.”).

⁹ Jackson Opinion at 46.

¹⁰ Letter from Janet Reno, U.S. Att’y Gen., to U.S. Rep. Dan Burton at 2 (Aug. 4, 1998). See also Memorandum from Thomas E. Kauper, Deputy Assistant Att’y Gen., U.S. Dep’t of Just., to Edward L. Morgan, Deputy Counsel to the Pres. at 3 (Dec. 19, 1969) (“Kauper Memorandum”) (“The protection of individuals from the prejudicial effects of unsubstantiated information collected by the government itself has long been recognized as a major reason for the refusal to give Congress access to open investigative files.”).

¹¹ Letter from Robert Raben, Assistant Att’y Gen., U.S. Dep’t of Just., to U.S. Rep. John Linder at 4 (Jan. 27, 2000) (“Linder Letter”).

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may risk creating claims of undue prejudice and undermine the ability of the Department to obtain an otherwise appropriate conviction.¹²

Further, as the Department observed during the Reagan Administration, producing law enforcement files to Congress could mean that “a person who is ultimately not prosecuted may be subjected to unfair and prejudicial publicity—and thus suffer substantial and lasting damage to his professional and community standing—based on unfounded allegations.”¹³ In addition, providing confidential law enforcement files in an ongoing matter would place Congress in a position to exert pressure over or attempt to influence the prosecution and could create the appearance of undue political influence. These concerns may be heightened in the context of certain congressional requests. As Attorney General Janet Reno asked in response to a congressional demand for nonpublic law enforcement information and prosecutorial deliberations in an open matter: “Suppose, for example, a Congressional committee wants to stop us from prosecuting someone the committee supports. What’s to stop the committee from threatening Department lawyers with contempt, forcing them to produce their internal memos and making them public to everyone including the defendant’s legal team?”¹⁴

The Committee’s subpoenas directly implicate these concerns. The record is clear that the Committee seeks testimony on evidence in the case and meetings about “recommending charges” or “reasons why the Department should not charge.”¹⁵ To produce such information to Congress risks the kinds of outside influences or appearances of selective decision-making that could undermine the fair and effective administration of justice. It could also prospectively chill decision-making by Department personnel and our law enforcement partners, as well as undermine confidence in the Department’s ability to protect sources, methods, and other sensitive law enforcement information from improper influence or disclosure.

Protecting Line Personnel and Their Work

Across administrations, the Department has supported its personnel and safeguarded the integrity of their work by ensuring that when the Department speaks to Congress it does so through an appropriately senior official. This is true for routine as well as high-profile oversight matters. When the Department produces internal documents to Congress, it discloses the names of senior officials but protects the privacy of line personnel. When the Department appears at a hearing or sends a letter to Congress, it does so through a senior and appropriately accountable official. This policy of protecting line personnel is standard Department practice, and it has been so for decades.

¹² See, e.g., *Response to Congressional Requests for Information Regarding Decisions Under the Independent Counsel Act*, 10 Op. O.L.C. 68, 77 (1986) (citing *Delaney v. United States*, 199 F.2d 107, 114 (1st Cir. 1952)).

¹³ *Id.*

¹⁴ Letter from Janet Reno, U.S. Att’y Gen, to U.S. Rep. Dan Burton at 2 (Aug. 4, 1998). See also Rosenstein Letter at 7 (“Regardless of political affiliation, thoughtful former Department leaders recognize that departures from our confidentiality policies pose an extraordinary threat to the Department’s independence and integrity. . . . [D]isclosing information about criminal investigations constitutes ‘real-time, raw-take transparency taken to its illogical limit, a kind of reality TV of federal criminal investigation’ that is ‘antithetical to the interests of justice.’”).

¹⁵ See Letter from U.S. Rep. Jim Jordan to U.S. Dep’t of Just. Tax Division Attorney at 2 (Sept. 14, 2023).

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Exceptions are extraordinarily rare and fact-specific. As Attorney General Garland said last year, the Department’s “institutional backbone, and its historical memory, is our talented and dedicated career workforce.”¹⁶ The Department explained to Congress during the Bush Administration that we must “ensure that our line attorneys and agents can exercise the independent judgment essential to the integrity of our law enforcement activities and to public confidence in those activities.”¹⁷ We remain steadfastly committed to enabling our line personnel to do their work free from political pressures or improper influence of any kind, from any source. And because senior officials responsible for the Department’s operations are the ones who “make the decisions that are the subjects of Congressional review,” they “should be the ones to explain the decisions.”¹⁸

The wisdom of this enduring approach is clear today from the very real threat of “doxing,” harassment, and even physical violence against public servants and their families after being identified as working on high-profile matters.¹⁹ As Attorney General Garland testified to the Committee last month, “what is dangerous is when anyone singles out a career prosecutor or a career FBI agent. And we know, as a matter of fact, that that kind of singling out has led to threats.”²⁰ Indeed, the Committee has received testimony about threats and harassment of Department employees working on Mr. Weiss’s investigation, specifically, as well as on other high-profile matters.²¹

The Department also must guard against the chilling effect of prosecutors and investigators being singled out as a result of their work on a high-profile matter. No one is above the law, and like cases must be treated alike. As Attorney General Garland recently testified to the Committee, “[t]here is not one set of laws for the powerful and another for the powerless, one for the rich and another for the poor, one for Democrats and another for Republicans, or different rules, depending upon one’s race, or ethnicity, or religion.”²² Our line personnel must not be chilled from working on a matter, taking an appropriate investigative step, or making the right decision based on the facts and the law and nothing more.²³

¹⁶ Merrick Garland, U.S. Att’y Gen, Address to Conference of U.S. Att’ys (Oct. 31, 2022).

¹⁷ Letter from William E. Moschella, Assistant Att’y Gen., U.S. Dep’t of Just., to U.S. Sen. Susan Collins at 1 (Mar. 23, 2005) (“Moschella Letter”).

¹⁸ *Id.*

¹⁹ See, e.g., Press Release, U.S. Dep’t of Just., Two Tennessee Men Arrested for Planning Attacks on Law Enforcement Personnel and the FBI’s Knoxville Field Office (Dec. 16, 2022), <https://www.justice.gov/opa/pr/two-tennessee-men-arrested-planning-attacks-law-enforcement-personnel-and-fbi-s-knoxville>.

²⁰ *Oversight of the Dep’t of Just.: Hearing before the H. Comm. on the Judiciary*, 118th Cong. (2023) (statement of Merrick Garland, U.S. Att’y Gen.) (“Garland Testimony”).

²¹ See Ken Dilanian, *Threats Mount Against Prosecutors and FBI Agents Working on Hunter Biden Probe*, NBC News (Sept. 14, 2023) <https://www.nbcnews.com/politics/justice-department/prosecutors-fbi-agents-hunter-biden-investigation-threatened-rcna104932>; Betsy Woodruff Swan, *Chief Prosecutor of Jan. 6 Rioters Describes ‘Pervasive’ Threats to His Office*, Politico (Oct. 20, 2020), <https://www.politico.com/news/2023/10/20/jan-6-prosecutor-pervasive-threats-00122733>.

²² See Garland Testimony.

²³ See 10 Op. O.L.C. at 77 (“Employees of the Department would likely be reluctant to express candidly their views and recommendations on controversial and sensitive matters if those views could be exposed to public scrutiny by Congress upon request.”).

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Respect for Congress's Important Role in Our Democracy

The Department respects that “[t]he oversight process is, of course, an important underpinning of the legislative process.”²⁴ Legitimate legislative oversight is necessary to Congress’s constitutional role of legislating on behalf of, and being directly democratically responsive to, the American people. The Department respects that the Rules of the 118th Congress grant the Committee jurisdiction to initiate legislative inquiries regarding a range of our work.²⁵ Indeed, in our first letter to the current Committee we reiterated that we “share your belief that congressional oversight is vital to our functioning democracy.”²⁶

But legislative investigations and law enforcement investigations serve different purposes under our system of government. Our constitutional system requires that each person receive equal justice under the general laws enacted by Congress. Decisions in specific cases must be based on the law and the facts, not political factors or popular opinion. Considerations that may appropriately inform legislative policymaking must remain irrelevant to how any individual is treated in our justice system. Law enforcement authority is thus “assigned under our Constitution to the Executive and the Judiciary.”²⁷ As the Office of Legal Counsel explained nearly forty years ago, “[t]he Framers intended that Congress not be involved in such prosecutorial decisions or in questions regarding the criminal liability of specific individuals.”²⁸ This separation of “the power to enact laws” from “the power to execute laws” is not a mere formality, but is a constitutional protection for individual liberty.²⁹ Therefore, Congress’s authority to conduct legislative investigations “does not lead inexorably to the conclusion that the Executive must supply the fruits of its own investigation efforts to Congress.”³⁰

²⁴ Linder Letter at 1.

²⁵ The Department’s prior correspondence has noted the scope of Congress’s oversight authorities in service of its legislative responsibilities. See Letter from Carlos Uriarte, Assistant Att’y Gen., U.S. Dep’t of Just., to U.S. Rep. Jim Jordan at 3 (July 13, 2023) (noting the scope of legislative oversight authority delegated to the Committee pursuant to House Rules). The Department continues to reserve all objections to the Committee’s oversight requests regarding this matter, including but not limited to the scope of, or authority for, the Committee’s investigation or any particular request. See, e.g., Linder Letter at 3 & nn.13–16.

²⁶ January 20th Letter at 2.

²⁷ *Trump v. Mazars LLP*, 140 S. Ct. 2019, 2032 (2020) (quoting *Quinn*, 349 U.S. at 161); *Watkins v. United States*, 354 U.S. 178, 187 (1957) (explaining that Congress is not “a law enforcement or trial agency,” as those “are functions of the executive and judicial departments of government.”); *Kilbourne v. Thompson*, 103 U.S. 168, 192 (1881) (concluding that the “House of Representatives not only exceeded the limit of its own authority, but assumed a power which could only be properly exercised by another branch of the government, because it was in its nature clearly judicial”); *Fletcher v. Peck*, 10 U.S. 87, 136 (1810) (“It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments.”).

²⁸ See *Legislation Providing for Court-Ordered Disclosure of Grand Jury Materials to Congressional Comm.s*, 9 Op. O.L.C. 86, 88 (1985) (“A legislative effort to require prosecution of specific individuals would seem to be inconsistent with many of the policies upon which the Constitution’s prohibition against bills of attainder was based.”) (citing *United States v. Brown*, 381 U.S. 437, 447 (1965) and *United States v. Lovett*, 328 U.S. 303, 315 (1946)).

²⁹ *Id.*; see also *Prosecution for Contempt of Congress of an Exec. Branch Official Who Has Asserted a Claim of Exec. Privilege*, 8 Op. O.L.C. 101, 110–12 & nn.16, 17 (1984) (“The Framers did not wish the Legislative Branch to have excessive authority over the individual decisions respecting the execution of the laws.”).

³⁰ Kauper Memorandum at 2.

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The Department must therefore decline to facilitate disclosures that would interfere with its investigations or prosecutions. The Committee’s demands for information about charging decisions and weighing evidence pose exactly that risk. As Attorney General William French Smith explained early in the Reagan Administration, our policy against disclosing to Congress the sensitive information in law enforcement files is premised on the Executive’s constitutionally assigned “responsibility to ‘take Care that the Laws be faithfully executed,’”³¹ and “courts have repeatedly held that ‘the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case.’”³² Our policy against producing line prosecutors for testimony is grounded in significant part on this concern. Across administrations of both political parties, the Department has made clear that “congressional efforts to subpoena line prosecutors ‘pose a long-term constitutional threat by impinging upon the core, judicially-unreviewable, Executive Branch function of rendering independent decisions concerning the undertaking or forbearance of criminal prosecutions.’”³³

The American people must also have confidence that the law is being executed in an evenhanded, apolitical manner. Nearly fifty years ago Attorney General Edward Levi explained, “[n]either the law in general nor the criminal law in particular can be entirely enforced by the government. Ultimately, enforcement must spring from the faith of citizens People must believe, if not in the wisdom of a particular law, at least in the fairness and honesty of the enforcement process.”³⁴ Congressional intrusion into ongoing Department investigations “inescapably create[s] the risk that the public and the courts will perceive undue political and Congressional influence over law enforcement and litigation decisions.”³⁵

In light of these principles, the Committee’s subpoenas are particularly problematic given that under the relevant House and Committee Rules, Department counsel are barred from attending the depositions. The public’s strong interest in the integrity of law enforcement work is one critical reason counsel for the Department must be present when agency witnesses testifying on those matters appear before Congress. Excluding agency counsel in these circumstances undermines the Executive Branch’s ability to protect its confidentiality interests in the course of the constitutionally mandated accommodation process.³⁶ In addition, the exclusion of agency counsel interferes with the Executive Branch’s ability to protect potentially privileged information, including law enforcement sensitive information.³⁷ The underlying principles that inform the Department’s position are longstanding across administrations. Therefore, as the Office of Legal Counsel explained under Attorney General William Barr, “Congress may not

³¹ *Assertion of Exec. Privilege in Response to Congressional Demands for Law Enforcement Files*, 6 Op. O.L.C. 31, 33 (1982) (quoting U.S. Const., Art. II, § 3).

³² *Id.* (quoting *United States v. Nixon*, 418 U.S. 683, 693 (1974)).

³³ Letter from Ron Weich, Assistant Att’y Gen., U.S. Dep’t of Just., to U.S. Rep. Darrell Issa and U.S. Sen. Charles Grassley at 5 (Dec. 6, 2011) (quoting Stuart Gerson, *The Legislative Politicization of the U.S. Department of Justice*, Washington Legal Foundation at 1 (Nov. 18, 1994)). *See also, e.g.*, Moschella Letter at 1.

³⁴ Edward Levi, U.S. Att’y Gen, Address to the Graduating Class of the FBI Academy at 9 (Mar. 20, 1975).

³⁵ Linder Letter at 3.

³⁶ *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Emps.*, 43 Op. O.L.C. ___, at *2, *19 (May 23, 2019).

³⁷ *See also id.* at *8 (explaining that the authority to control disclosure of this information “extend[s] to all . . . information protected by [executive] privilege,” including . . . law enforcement files[.]” (quoting *Authority of Agency Officials to Prohibit Emps. from Providing Information to Congress*, 28 Op. O.L.C. 79, 81 (2004))).

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compel an executive branch witness to appear without agency counsel.”³⁸ Here, the subpoenas issued by the Committee prohibit the attendance of agency counsel at appearances by line-level attorneys where the Committee has indicated it will ask questions regarding information they learned within the scope of their official duties, including regarding the ongoing criminal investigation.³⁹ Because these subpoenas demand deposition testimony without agency counsel present, they lack legal effect and cannot constitutionally be enforced.⁴⁰

Protecting the Public Interest by Adhering to Longstanding Principles

In a 1940 speech to U.S. Attorneys, Attorney General Jackson explained that “[t]he prosecutor has more control over life, liberty, and reputation than any other person in America[,]” and that “the greatest danger of abuse in prosecuting power lies” in the possibility that it will be used against “some person whom he dislikes or desires to embarrass,” or that the prosecutor “selects some group of unpopular persons and then looks for an offense.”⁴¹ Thus, “[o]nly by extreme care can we protect the spirit as well as the letter of our civil liberties, and to do so is a responsibility of the federal prosecutor.”⁴² We continue to adhere to these principles today. In a speech to U.S. Attorneys last year, Attorney General Garland said of the need for confidentiality in law enforcement: “The health of our democracy requires that we speak through our work and our filings in court, because anything else jeopardizes the viability of our investigations and the civil liberties of our citizens. And the health of our democracy requires that we adhere to these norms even when—especially when—the circumstances we face are not normal.”⁴³

The Department remains willing to continue providing appropriate information to the Committee voluntarily, consistent with these principles. We urge the Committee to work with us to avoid unnecessary conflict, including by ceasing to pursue this testimony from line attorneys.

Sincerely,

**CARLOS
URIARTE**

Digitally signed by
CARLOS URIARTE
Date: 2023.10.25
15:46:02 -04'00'

Carlos Felipe Uriarte
Assistant Attorney General

³⁸ *Id.* at *2.

³⁹ *See id.*

⁴⁰ *See id.*

⁴¹ Robert Jackson, U.S. Att’y Gen., Address to the Conference of U.S. Att’ys entitled “The Federal Prosecutor” at 4 (1940).

⁴² *Id.* at 2.

⁴³ Merrick Garland, U.S. Att’y Gen., Address to the Conference of U.S. Att’ys (2022). *See also* Rosenstein Letter at 6 (“It is important for the Department of Justice to follow established policies and procedures, especially when the stakes are high . . . We should be most on guard when we believe that our own uncomfortable present circumstances justify ignoring timeless principles respected by our predecessors.”).

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cc:

The Honorable Jerrold L. Nadler
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit DD

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4

5 COMMITTEE ON THE JUDICIARY,

6 U.S. HOUSE OF REPRESENTATIVES,

7 WASHINGTON, D.C.

8

9

10

11

12 DEPOSITION OF: MARK DALY

13

14

15

16

17 Thursday, October 26, 2023

18

19 Washington, D.C.

20

21

22 The deposition in the above matter was held in room 2237, Rayburn House Office

23 Building, commencing at 10:10 a.m.

1 Appearances:

2

3

4 For the COMMITTEE ON THE JUDICIARY:

5

6 STEVE CASTOR, GENERAL COUNSEL

7 DILLON CHEPP, COUNSEL

8 SEAN CLERGET, COUNSEL

9 BETSY FERGUSON, DEPUTY GENERAL COUNSEL

10 BRITTANY HAVENS, PROFESSIONAL STAFF MEMBER

11 RACHEL JAG, COUNSEL

12 [REDACTED], MINORITY OVERSIGHT COUNSEL

13 [REDACTED], MINORITY CHIEF OVERSIGHT COUNSEL

14 [REDACTED], MINORITY OVERSIGHT COUNSEL

15 [REDACTED], MINORITY PROFESSIONAL STAFF MEMBER

1 [Daly Exhibit Nos. 1-5

2 Were marked for identification.]

3 Mr. Castor. All right. We are ready to go on the record.

4 Good morning.

5 This was supposed to be a deposition for Mark Daly, a senior litigation counsel
6 with the Tax Division of the Department of Justice. He was served a subpoena on
7 September 14th with a return date of September 27th, and that is marked as exhibit 1, a
8 cover letter and subpoena.

9 The Justice Department asked us to reschedule the dates for Mr. Daly and his
10 colleague, Mr. Morgan, who also received a subpoena, and they provided new dates for
11 the subpoena and agreed to move the date of the subpoena to October 26th, which is
12 today. Exhibit 2 is a copy of that email traffic.

13 Now apparently, DOJ all along was going to tell Mr. Daly and also Mr. Morgan not
14 to appear, so it's curious why we needed to move the date from September to
15 October 26th, almost a month, from September 27th to October 26th. I'm not sure if
16 there's a good-faith basis for doing that on behalf of DOJ.

17 We marked as exhibit 3 the notice of deposition for today.

18 And exhibit 4 is a letter we received on October 24th from counsel, personal
19 counsel for Mr. Daly. Mr. Daly's personal counsel indicated to us that Mr. Daly was
20 willing to appear and answer our questions. But obviously, he has received an order
21 from the Justice Department not to appear.

22 Exhibit 5 is a letter we received on October 25th from the Justice Department
23 indicating that they would not be permitting Mr. Daly to appear today.

24 [REDACTED], do you have anything you would like to add for the record?

25 [REDACTED]. I think you've represented -- you've listed the documents correctly.

1 I do want to note the DOJ letter, which was received last night, notes concerns
2 about -- and for the record, the Democrat minority are not taking a position on this
3 matter. But I do want to note the letter received from the Justice Department expresses
4 concern about confidentiality interests, expresses concerns about protecting line
5 personnel and their work, and notes that they have concerns about doxxing, harassment,
6 and physical violence against public servants and their families in connection with this
7 matter, and describes some of the efforts they've made to comply with the majority's
8 requests.

9 Mr. Castor. Okay. That is all for today.

10 We will go off the record.

11 [Whereupon, at 10:14 a.m., the deposition was concluded.]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit EE

From: [Duval, Kate](#)
To: [Ferguson, Betsy](#); [Nabity, Caroline](#)
Cc: [Bidelman, Kiley](#); [Murphy, Bill](#); [Moore, M](#); [Castor, Stephen](#)
Subject: RE: Morgan Subpoena
Date: Friday, November 3, 2023 1:52:28 PM
Attachments: [image001.png](#)
[Morgan Direction Letter 11022023.pdf](#)

Caroline and Betsy,

Thank you for our call this afternoon. This email confirms that as we discussed, although our client Jack Morgan has no a per se objection to testifying, given the competing constitutional claims and interests expressed by his employer the Department of Justice, he will be following his employer's directive.

You asked for a copy of the letter I received from the Department with that directive. It is attached.

Best,
Kate



Catherine Duval
Zuckerman Spaeder LLP
[REDACTED] [@zuckerman.com](#)

1800 M STREET NW, SUITE 1000 • WASHINGTON, DC 20036-5807
202 [REDACTED] direct • 202 [REDACTED] mobile • 202 [REDACTED] fax

► [Download vCard](#) | [zuckerman.com](#)

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From: Ferguson, Betsy <[REDACTED]@mail.house.gov>
Sent: Thursday, November 2, 2023 7:30 PM
To: Duval, Kate <[REDACTED]@zuckerman.com>
Cc: Bidelman, Kiley <[REDACTED]@mail.house.gov>; Nabity, Caroline <[REDACTED]@mail.house.gov>; Murphy, Bill <[REDACTED]@zuckerman.com>; Moore, M <[REDACTED]@zuckerman.com>; Castor, Stephen <[REDACTED]@mail.house.gov>
Subject: Re: Morgan Subpoena

EXTERNAL

How about a call at 1:30pm?

Betsy Ferguson
Committee on the Judiciary
Chairman Jim Jordan
U.S. House of Representatives
(202) [REDACTED] (cell)

Sent from my iPhone

On Nov 2, 2023, at 5:58 PM, Duval, Kate <[REDACTED]@zuckerman.com> wrote:

Hi Betsy,

This afternoon was full, but we could talk sometime between 12:30-2pm tomorrow.
Does that work on your end?

Best,
Kate

-----Original Message-----

From: Ferguson, Betsy <[REDACTED]@mail.house.gov>
Sent: Thursday, November 2, 2023 1:48 PM
To: Duval, Kate <[REDACTED]@zuckerman.com>
Cc: Bidelman, Kiley <[REDACTED]@mail.house.gov>; Nabity, Caroline
<[REDACTED]@mail.house.gov>; Murphy, Bill <[REDACTED]@zuckerman.com>;
Moore, M <[REDACTED]@zuckerman.com>; Castor, Stephen
<[REDACTED]@mail.house.gov>
Subject: RE: Morgan Subpoena

EXTERNAL

Hi Kate,

Thanks for confirming receipt. It would be helpful to connect before Monday. Please let us know your availability for a call later this afternoon or tomorrow before 3pm.

-Betsy

-----Original Message-----

From: Duval, Kate <[REDACTED]@zuckerman.com>
Sent: Wednesday, November 1, 2023 6:25 PM
To: Castor, Stephen <[REDACTED]@mail.house.gov>

Cc: Bidelman, Kiley <[REDACTED]@mail.house.gov>; Ferguson, Betsy
<[REDACTED]@mail.house.gov>; Nabity, Caroline
<[REDACTED]@mail.house.gov>; Murphy, Bill <[REDACTED]@zuckerman.com>;
Moore, M <[REDACTED]@zuckerman.com>
Subject: Re: Morgan Subpoena

Hi Steve,

Confirming receipt of the subpoena and copying my colleagues. We appreciate your accommodation on scheduling, thank you.

We understand that, because Mr. Morgan is a career civil servant at the Department of Justice being subpoenaed to testify about his work there, the Department has interests and equities in this matter. As discussed on our call with Committee counsel, although we are not parties to the Committee's dialogue with the Department about such equities, we do anticipate needing to be cognizant and respectful of concerns raised by his employer and superiors.

If it would be helpful, always happy to have a call with you and/or other Committee staff.

Best,
Kate Duval
Zuckerman Spaeder LLP
202-[REDACTED]

Sent from my iPad

On Nov 1, 2023, at 10:40 AM, Castor, Stephen <[REDACTED]@mail.house.gov> wrote:

EXTERNAL

Ms. Duval,

Attached is a new deposition subpoena for your client Mr. Morgan. I trust this manner of service is acceptable to you, but if that is not the case, we can make alternative arrangements to serve him.

Best Regards,

Steve Castor
General Counsel
House Judiciary Committee

Rep. Jim Jordan, Chairman

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit FF



U.S. Department of Justice
Office of the Deputy Attorney General

Bradley Weinsheimer
Associate Deputy Attorney General

Washington, D.C. 20530

November 2, 2023

Ms. Catherine Duval
Zuckerman Spaeder LLP
1800 M Street NW, Suite 1000
Washington, D.C. 20036
Via Email

Dear Ms. Duval:

I write concerning your client Jack Morgan. I serve as the senior career official at the Department of Justice (Department). Consistent with this role, in which I have served since 2018, I possess and exercise delegated authority to provide current and former Department employees with direction concerning the disclosure and protection of Department information, including with respect to congressional requests for testimony. I write to you in that capacity.

On September 14, 2023, the House Committee on the Judiciary (Committee) issued a deposition subpoena to your client for testimony regarding the work of the Department on an ongoing individual criminal investigation and prosecution led by Special Counsel David Weiss.¹ On November 1, 2023, the Committee issued an additional deposition subpoena to your client with a return date of November 6, 2023.² The Committee's correspondence, including the letters accompanying the subpoenas to your client, states that the Committee seeks testimony about meetings and conversations among investigators and prosecutors about the weight of evidence and charging decisions in this open matter. The Department offered voluntary appearances by three senior officials on appropriate topics as an alternative to the Committee pursuing such testimony from line-level attorneys, including your client. Although the Committee accepted the Department's offered alternative and these officials have appeared for interviews, the Committee has continued to pursue testimony from your client. Pursuant to the Rules of the House of Representatives, incorporated by reference in the Committee Rules transmitted with the subpoenas, agency counsel is prohibited from attending the deposition.

The Department has written to the Committee explaining that principles and policies for safeguarding the confidentiality of the Department's work further the public interest in the integrity of law enforcement investigations.³ These principles and policies have been followed

¹ Letter from Hon. Jim Jordan to Jack Morgan (Sept. 14, 2023).

² Letter from Hon. Jim Jordan to Jack Morgan (Nov. 1, 2023).

³ Letter from Asst. Attorney General Carlos Uriarte to Hon. Jim Jordan (Oct. 25, 2023). The concerns expressed in this letter are incorporated here by reference.

across administrations and are grounded in constitutional concerns. As discussed in that letter, excluding agency counsel in these circumstances undermines the Executive Branch's ability to protect its confidentiality interests in the course of the constitutionally mandated accommodation process.⁴ In addition, the exclusion of agency counsel interferes with the Executive Branch's ability to protect potentially privileged information.⁵ The underlying principles that inform the Department's position are longstanding across administrations. Here, the subpoena issued by the Committee prohibits the attendance of agency counsel at an appearance where the Committee has indicated it will ask questions regarding information Mr. Morgan learned within the scope of his official duties, including potentially privileged information.⁶ On the basis of a 2019 Office of Legal Counsel opinion, the Department has determined that the exclusion of agency counsel means that the subpoena lacks legal effect and cannot constitutionally be enforced.

Having carefully considered the relevant facts and authority, Department and Executive Branch precedents and longstanding principles, and the Department's determination that not appearing would be lawful because this subpoena lacks legal effect, I recommended to the Deputy Assistant Attorney General serving as the Head of the Tax Division and to the Attorney General that Mr. Morgan be directed not to appear before the Committee pursuant to these subpoenas. The Attorney General and the Head of the Tax Division approved my recommendation. Accordingly, the Department directs Mr. Morgan not to appear before the Committee pursuant to the subpoenas.

This directive is consistent with longstanding principles of the Justice Department regarding congressional requests for information, as well as the Department's respect for Congress's authority to conduct legitimate oversight of the Executive Branch and our mutual obligations under the constitutionally mandated accommodation process. Department witnesses are expected to abide by their obligations under the law and Department policy, including the Justice Manual, to refrain from disclosing information that has not been authorized for public release. This includes information about ongoing investigations and prosecutions, sensitive law enforcement information, and Executive Branch deliberative processes, such as those that underlie investigative and prosecutorial decisions. The presence of agency counsel during congressional interviews is essential to ensure, among other things, that Department witnesses fully understand and abide by their obligations and that the Department has the ability to raise objections or assert privileges or other Executive Branch confidentiality interests.

This directive is also consistent with our continuing commitment to good-faith negotiations with the Committee in response to its interest in this matter. The Department remains willing to discuss with the Committee appropriate requests for information and the circumstances under which the Department may be able to provide that information. Nothing in this directive shall be understood to waive or limit, on behalf of Mr. Morgan or of the

⁴ *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. ___, at *2, *19 (May 23, 2019).

⁵ *Id.* at *8 (quoting *Authority of Agency Officials to Prohibit Employees from Providing Information to Congress*, 28 Op. O.L.C. 79, 81 (2004)).

⁶ *Id.* at *2.

Department, any potentially applicable privileges, objections, or confidentiality interests regarding this or other congressional requests for information.

Pursuant to 5 U.S.C § 2302(b)(13), the provisions of this letter are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are controlling.

Sincerely,



Bradley Weinsheimer

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit GG

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5 COMMITTEE ON THE JUDICIARY,

6 U.S. HOUSE OF REPRESENTATIVES,

7 WASHINGTON, D.C.

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13 DEPOSITION OF: JACK MORGAN

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18 Monday, November 6, 2023

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20 Washington, D.C.

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23 The deposition in the above matter was held in Room 2237, Rayburn House Office

24 Building, commencing at 10:08 a.m.

1 Appearances:

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5 For the COMMITTEE ON THE JUDICIARY:

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7 STEVE CASTOR, GENERAL COUNSEL

8 RACHEL JAG, COUNSEL

9 LILLIAN MEADOWS, COUNSEL

10 CAROLINE NABITY, CHIEF COUNSEL FOR OVERSIGHT

11 [REDACTED], MINORITY OVERSIGHT COUNSEL

12 [REDACTED], MINORITY CHIEF OVERSIGHT COUNSEL

13 [REDACTED], MINORITY PROFESSIONAL STAFF MEMBER

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1 Mr. Castor. Good morning.

2 This was supposed to be a deposition for Jack Morgan, a former senior litigation
3 counsel with the Justice Department's Tax Division. He's now serving as an Assistant
4 United States Attorney in the Eastern District of Virginia.

5 He was served a subpoena on September 14th, with a return date of September
6 28th. We're marking that as exhibit 1.

7 [Morgan Exhibit No. 1

8 Was marked for identification.]

9 Mr. Castor. The Justice Department asked us to reschedule the deposition dates
10 for Mr. Morgan and his colleague Mr. Daly, who also received a subpoena, and they
11 provided new dates for the subpoena and agreed to move the date of the deposition to
12 October 30th.

13 Of course, that was pointless, because they are not here, and they knew all along
14 they were going to direct him not to appear.

15 Exhibit 2 is a copy of the email traffic of the Justice Department discussing with us
16 moving the date of the deposition.

17 [Morgan Exhibit No. 2

18 Was marked for identification.]

19 Mr. Castor. Mr. Morgan then obtained personal counsel. And, in discussions
20 with her, Ms. Kate Duval, we settled on a new date for the deposition, a third date, to be
21 today, November 6th. We served a copy of the subpoena. We're marking that as
22 exhibit 3.

23 [Morgan Exhibit No. 3]

24 Was marked for identification.]

25 Mr. Castor. We noticed that, in accordance with the committee's rules, on

1 October 27th. And that's exhibit 4.

2 [Morgan Exhibit No. 4

3 Was marked for identification.]

4 Mr. Castor. Exhibit 5 is a letter we received, dated November 2, 2023, from the
5 Justice Department indicating they would not be permitting Mr. Morgan to appear today,
6 raising the question of why we couldn't have done this all back on September 28th.

7 [Morgan Exhibit No. 5]

8 Was marked for identification.]

9 Mr. Castor. Exhibit 6 is just some email traffic from Ms. Duval advising us that
10 her client Mr. Morgan will not be appearing today.

11 [Morgan Exhibit No. 6

12 Was marked for identification.]

13 Mr. Castor. [REDACTED], do you have anything for the Democrats?

14 [REDACTED]. Did you introduce the October 25th Justice Department letter? Can
15 we introduce that as exhibit 7?

16 Mr. Castor. Of course.

17 [Morgan Exhibit No. 7]

18 Was marked for identification.]

19 [REDACTED]. And this does note the Justice Department's concerns with, among
20 other things, the safety of their career employees. And I think I read that into the
21 record the last time, so I won't read it again --

22 Mr. Castor. All right.

23 [REDACTED]. -- but I'd like to introduce that into the record.

24 I also want to note that the email traffic from Ms. Duval -- we were forwarded a
25 copy of that. It does note that he, Mr. Morgan, has no per se objection to testifying,

1 but, given the competing constitutional claims and interests expressed by his employer,
2 the Department of Justice, he will be following his employer's directive.

3 Mr. Castor. Okay.

4 With that, we'll note that it's now 10:11, Mr. Morgan has not appeared, and we
5 will conclude this portion of the non-deposition deposition.

6 [Whereupon, at 10:12 a.m., the deposition was concluded.]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit HH

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

February 22, 2024

Mr. Mark F. Daly
Senior Litigation Counsel
Tax Division
U.S. Department of Justice
c/o Robert Driscoll
McGlinchey Stafford PLLC
1275 Pennsylvania Avenue NW, Suite 420
Washington, D.C. 20004

Dear Mr. Daly:

Attached to this letter please find a subpoena issued by the Committee on the Judiciary (the Committee) compelling your appearance for a deposition.

The Committee requires your deposition testimony to further several of its critical investigative and oversight interests. As an initial matter, your testimony is necessary to assist the Committee in determining whether sufficient grounds exist to draft articles of impeachment against President Joseph R. Biden. In addition, your deposition testimony is relevant to the Committee's ongoing oversight of the Executive Branch's commitment to impartial justice, as well as its investigation into the veracity of statements made in response to congressional inquiries related to the Department of Justice's (DOJ) investigation of Hunter Biden, President Biden's son.

On December 13, 2023, the House of Representatives adopted House Resolution 918, which directed the Committee, along with the Committees on Oversight and Accountability and Ways and Means, to continue the House's ongoing impeachment inquiry.¹ As part of its impeachment inquiry, the Committee is investigating, among other things, whether President Biden "abuse[d] his power as President to impede, obstruct, or otherwise hinder investigations or the prosecution of Hunter Biden."² As background, for years, the Internal Revenue Service (IRS)

¹ H. Res. 918, 118th Cong. (2023).

² Memorandum from Chairmen Jim Jordan, James Comer, and Jason Smith, to Members of the H. Comm. on the Judiciary, H. Comm. on Oversight & Accountability, and H. Comm. on Ways & Means, at 29 (Sept. 27, 2023).

Mark F. Daly
February 22, 2024
Page 2

and DOJ have been investigating Hunter Biden for tax crimes.³ In spring 2023, two IRS whistleblowers who were intimately involved in that investigation came forward and exposed several ways that DOJ had deviated from its standard processes during the Hunter Biden investigation.⁴ Some of the information the Committee has uncovered suggest that political interference may have impeded the Hunter Biden investigation and prosecution, and the Committee is investigating whether President Biden (directly or through his political appointees) has in any way attempted to meddle in the investigation.

As a member of the team that was assigned to work on the Hunter Biden matter, you have firsthand knowledge of the investigation's day-to-day operations. Your testimony is thus critical to the impeachment inquiry. For example, you were present at an October 2021 "tax summit" where you, along with other members of the team, agreed to move forward with generating a prosecution memorandum that would recommend bringing criminal charges against Hunter Biden for tax years 2014 to 2019.⁵ Months later, however, on June 15, 2022, you gave a presentation and argued just the opposite: that Hunter Biden should *not* be charged for the 2014 and 2015 tax years.⁶ Although Hunter Biden's counsel was willing to agree to toll the statute of limitations for charges related to those tax years, DOJ ultimately allowed the statute of limitations to lapse without bringing charges.⁷ The Committee must understand why DOJ decided not to bring these charges, and, given your personal knowledge of this aspect of the investigation, the Committee believes you can shed important light on that decision, including whether it was impacted by political interference.

The Committee also believes that you may be able to shed light on why the U.S. Attorney for the District of Columbia and the U.S. Attorney for the Central District of California refused to partner with the prosecution team to bring charges against Hunter Biden. Because tax charges must be filed in the judicial district where the defendant resides or where the tax return is prepared or filed, charges against Hunter Biden related to the 2014 and 2015 tax years would have needed to be filed in the District of Columbia, where Hunter Biden lived until 2017, and for later years, in the Central District of California, where Hunter Biden moved in 2017. The lead prosecutor assigned to the Hunter Biden case, David Weiss, the U.S. Attorney for the District of Delaware, could not have filed charges outside of his district before his Special Counsel appointment on August 11, 2023.⁸ Thus, Weiss would have needed to partner with Matthew Graves, the U.S. Attorney for the District of Columbia, and/or Martin Estrada, the U.S. Attorney for the Central District of California, to bring charges against Hunter Biden in those districts. However, both refused to partner with him.

³ Transcribed Interview of Gary Shapley, Supervisory Special Agent, Internal Revenue Serv. at 12 (May 26, 2023) [hereinafter "Shapley Interview"].

⁴ *See Id.*; *see also* Transcribed Interview of Joseph Ziegler, Special Agent, Internal Revenue Serv. (Jun. 1, 2023) [hereinafter "Ziegler Interview"].

⁵ Ziegler Interview at 32-33.

⁶ Shapley Interview at 142; *see also* Ziegler Interview at 163-164.

⁷ Transcribed Interview of Hon. David Weiss, Special Counsel, U.S. Dep't of Justice at 92-94 (Nov. 7, 2023).

⁸ Letter from Hon. David Weiss, U.S. Atty, U.S. Dep't of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Jun. 30, 2023).

Mark F. Daly
 February 22, 2024
 Page 3

According to one of the IRS whistleblowers, DOJ's Tax Division authored an extensive prosecution memo recommending charges for the 2014 and 2015 tax years and presented this memorandum to the U.S. Attorney's Office for the District of Columbia during a meeting in March 2022.⁹ It has been reported that you then informed the other IRS whistleblower that the first assistant in that office, a non-presidentially-appointed career prosecutor, was optimistic about bringing charges and stated she would assign a prosecutor to assist. However, just a couple of days later, according to the first IRS whistleblower, you told the other IRS whistleblower that U.S. Attorney Graves personally reviewed the report and indicated that he did not support the charges or the investigation as a whole and would not allow charges to proceed in his district.¹⁰ Given your role on the prosecution team, and the fact that you were present at the meeting where members of the Tax Division presented the issue to the office, the Committee believes that you may be able to shed light on these events, including whether political interference played any role in U.S. Attorney Graves's failure to partner with the prosecution team.

Likewise, the Committee believes that you may have insight into why the U.S. Attorney's Office for the Central District of California did not work with Weiss's team to bring charges against Hunter Biden for later tax years.¹¹ According to one of the IRS whistleblowers, you gave a presentation to that office in mid-September 2022 about bringing charges against Hunter Biden for the 2016 through 2019 tax years. The Committee believes you may be able to shed light on this meeting, including what was discussed and whether political interference played any role in U.S. Attorney Estrada's failure to partner with the prosecution team.

The Committee has attempted to get this information from other sources but has been unable to do so. For example, witnesses, including Weiss and Lesley Wolf, a former senior member of the prosecution team, have refused to discuss with the Committee the decision to allow the statute of limitations for the 2014 and 2015 tax years to lapse, often citing concerns about revealing information related to an ongoing investigation or the deliberative process privilege. These concerns and purported privileges have no factual or legal basis.

For starters, there is no ongoing investigation related to the 2014 and 2015 tax years because the statute of limitations for those charges has lapsed. Thus, questions about DOJ's decision not to bring charges related to those years—including U.S. Attorney Graves's failure to partner with Weiss—necessarily do not involve an ongoing investigation. Beyond that, concerns about an ongoing investigation “rest[] on no constitutional privilege or case law authority,” but rather on self-serving opinions issued unilaterally by the DOJ's Office of Legal Counsel (OLC).¹² These authorities are not binding on Congress and are ultimately unpersuasive. In fact, the Supreme Court has noted, contrary to DOJ's position, that “a congressional committee. . .

⁹ Transcribed Interview of Hon. Matthew Graves, U.S. Atty, U.S. Dep't of Justice at 16-17 (Oct. 3, 2023).

¹⁰ *Id.* at 24-25 & 32.

¹¹ The Committee also intends to ask you about these topics: the sweetheart plea deal offered to Hunter Biden; Weiss's authority, and his requests for special attorney and special counsel status; the IRS investigation involving whistleblowers Gary Shapley and Joseph Ziegler; and other issues.

¹² *Obstruction of Justice: Does the Justice Department have to Respond to Lawfully Issued and Valid Congressional Subpoenas: Hearing Before the H. Comm. on Oversight and Government Reform*, 112th Congress (2011) (statement of Morton Rosenberg, Fellow, Const. Project).

Mark F. Daly
 February 22, 2024
 Page 4

engaged in legitimate legislative investigation need not grind to a halt” in the face of an ongoing criminal investigation.¹³ In short, there is no “ongoing investigation” privilege in statutory or common law,¹⁴ and the historical record is replete with examples of DOJ providing congressional committees with information related to ongoing criminal investigations.¹⁵ Accordingly, there is no legal basis to withhold information from the Committee on the basis of an “ongoing” investigation,¹⁶ especially in the context of an impeachment inquiry.

Nor does a purported deliberative process privilege prevent you from testifying before the Committee.¹⁷ The U.S. Court of Appeals for the District of Columbia Circuit has held that “the privilege disappears altogether when there is any reason to believe government misconduct occurred.”¹⁸ As the Committee has detailed, there is substantial evidence of governmental misconduct; namely, that DOJ deviated from standard investigative procedures (including by declining to bring charges that the prosecution team originally recommended bringing) in its investigation of Hunter Biden such that he received special treatment than otherwise afforded to similarly situated Americans.¹⁹ In short, there is no valid basis to withhold information from the Committee on the basis of the deliberative process privilege.

You have firsthand knowledge that is critical to the Committee’s impeachment inquiry, and the Committee has been unable to get that information from other sources. No privilege

¹³ *Hutcheson v. United States*, 369 U.S. 599, 618 (1962).

¹⁴ See William McGurn, Opinion, *The ‘Ongoing Investigation’ Dodge on Hunter Biden*, WALL ST. J. (July 10, 2023) (quoting former Assistant U.S. Attorney Andrew McCarthy as stating, “The executive branch response of ‘ongoing investigation’ is really a political objection, rather than a legal one. There is no ‘ongoing investigation’ privilege.”). See also Christopher R. Smith, *I Fought the Law and the Law Lost: The Case for Congressional Oversight Over Systemic DOJ Discovery Abuse in Criminal Cases*, 9 CARDOZO PUB. L. POL’Y & ETHICS J. 85, 107 (2010) (“To preclude Congress from investigating prosecutorial misconduct because of open investigations would completely undermine Congress’s constitutional duty to investigate government misconduct, an important legislative branch check on the executive branch.”).

¹⁵ See MORTON ROSENBERG, WHEN CONGRESS COMES CALLING: A STUDY ON THE PRINCIPLES, PRACTICES, AND PRAGMATICS OF LEGISLATIVE INQUIRY, CONST. PROJECT, at 75-82 (2017) (listing numerous examples of Congress obtaining testimony related to an ongoing criminal investigation); *Obstruction of Justice: Does the Justice Department Have to Respond to Lawfully Issued and Valid Congressional Subpoenas*, Hearing Before the H. Comm. on Oversight and Gov’t Reform, 112th Cong. (2011) [hereinafter *Hearing on Obstruction of Justice*] (statement of Louis Fisher, Scholar in Residence, Const. Project) (“Congress has often obtained records related to ongoing criminal investigations.”).

¹⁶ Even assuming that an “ongoing” investigation is an appropriate basis on which to withhold information from the Committee, it is certainly inapplicable with respect to your testimony relating to the 2014 and 2015 tax year charges because the statute of limitations for these charges has expired. The Department conducts investigations to determine whether sufficient evidence exists to pursue prosecution. If the Department is barred from pursuing prosecution by the expiration of the statute of limitations, it follows that any related investigation would no longer be “ongoing.”

¹⁷ See, Letter from Bradley Weinsheimer, Associate Deputy Attorney General, U.S. Dept. of Justice to Robert Driscoll, Manager, McGlinchey Stafford PLLC (Oct. 25, 2023) (“Department witnesses are expected to... refrain from disclosing information that has not been authorized for public release. This includes information about ongoing investigations and prosecutions, sensitive law enforcement information, and Executive Branch deliberative processes, such as those that underlie investigative and prosecutorial decisions.”).

¹⁸ *In re Sealed Case*, 121 F.3d 729, 746 (D.C. Cir. 1997).

¹⁹ See generally H. COMM. ON THE JUDICIARY ET AL., 118TH CONG., THE JUSTICE DEPARTMENT’S DEVIATIONS FROM STANDARD PROCESSES IN ITS INVESTIGATION OF HUNTER BIDEN (2023).

Mark F. Daly
 February 22, 2024
 Page 5

prevents you from sharing this information with the Committee. You must appear and testify so that the Committee has the facts it needs as it investigates whether President Biden committed an impeachable offense.

The information you possess is also related to several of the Committee's legislative and oversight objectives. Pursuant to the Rules of the House of Representatives, the Committee is authorized to conduct oversight of DOJ as well as criminal justice matters in the United States to inform potential legislative reforms.²⁰ The Committee believes that information from your deposition will inform potential legislation including, but not limited to, reforms to the "special attorney" statute,²¹ codifying regulations related to special counsels,²² reforming DOJ's Tax Division, and strengthening laws protecting whistleblowers from retaliation.

When we subpoenaed you to appear for a deposition in the fall,²³ DOJ instructed you to not appear.²⁴ The primary basis for DOJ's instruction was that, pursuant to an OLC opinion, the Committee's subpoena was unlawful because under House rules, agency counsel could not accompany you to your deposition. DOJ's position is unpersuasive, and you have a legal obligation to appear before the Committee.

At the outset, after you are served with this legally valid and enforceable subpoena, you have a legal obligation to comply by appearing before the Committee.²⁵ Concerns about who can, and who cannot, attend the deposition do not affect the legality or enforceability of the subpoena itself and the legal duty to comply that flows from it. The OLC opinion cites no support for its leap that excluding agency counsel renders the subpoena itself invalid and unenforceable. On the merits of excluding agency counsel, the Constitution clearly specifies that each chamber of Congress "may determine the Rules of its Proceedings."²⁶ A rule that dictates who may attend committee depositions is a rule that governs House proceedings and thus easily falls within its rulemaking authority under the Constitution.

Moreover, as an extraordinary accommodation, the Committee is willing to allow agency counsel to remain physically present just outside the Committee room in which the deposition will occur and will permit a recess at any time for you and/or your personal counsel to consult with agency counsel about any matters that may arise during the deposition. The Committee believes that this accommodation will allow you to consult with agency counsel as necessary and alleviates the concerns that DOJ has articulated about proceeding without agency counsel.

To sum up, the Committee requires your testimony, and you have a legal obligation to provide it. Most importantly your testimony is directly relevant to the House's impeachment

²⁰ Rules of the U.S. House of Representatives, R. X (2023).

²¹ See 28 U.S.C. § 515.

²² See 28 C.F.R. § 600 *et seq.*

²³ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark F. Daly, Senior Litigation Counsel, Dep't of Justice (Sept. 14, 2023).

²⁴ Letter from Bradley Weinsheimer, Associate Deputy Attorney General, U.S. Dept. of Justice to Catherine Duval, Partner, Zuckerman Spaeder LLP (Nov. 2, 2023).

²⁵ See, e.g., *Watkins v. United States*, 354 U.S. 178, 187–88 (1957)

²⁶ U.S. Const. art. I, § 5, cl. 2.

Mark F. Daly
 February 22, 2024
 Page 6

inquiry. Specifically, your testimony is critical to the question of whether President Biden abused his power to directly or indirectly impede, obstruct, or hinder DOJ's investigation or prosecution of Hunter Biden. Congress's authority to access information is broadest during an impeachment investigation,²⁷ a fact which even Presidents and other Executive Branch officials have traditionally recognized.²⁸ Indeed, conducting an impeachment inquiry based on anything less than all pertinent evidence would be an affront to the Constitution and irreparably damage public faith in the impeachment process.²⁹

Additionally, the Supreme Court has recognized that Congress has a "broad and indispensable" power to conduct oversight that "encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them."³⁰ It is also well established that Congress may seek information from the Executive Branch about "corruption, maladministration or inefficiency in agencies of the Government."³¹ Here, the Committee has documentary and testimonial evidence, obtained from whistleblowers, of corruption (e.g., preferential treatment for the President's son), maladministration (e.g., retaliation against whistleblowers), and inefficiency (e.g., frequent delays in the investigation due to unprecedented approval requirements to conduct basic investigative tasks). These are among the matters about which the Committee requires your testimony to inform potential legislative reforms.

²⁷ TODD GARVEY, CONG. RSCH. SERV., LSB11083, IMPEACHMENT INVESTIGATIONS, PART II: ACCESS, at 1 (2023) ("[T]here is reason to believe that invocation of the impeachment power could improve the committees' legal claims of access to certain types of evidence relevant to the allegations of misconduct against President Biden."). See also *In re Application of Comm. on Judiciary*, 414 F. Supp. 3d 129, 176 (D.D.C. 2019) ("[D]enying [the House Judiciary Committee] evidence relevant to an impeachment inquiry could pose constitutional problems."), *aff'd*, 951 F.3d 589 (D.C. Cir. 2020), *vacated and remanded sub nom. on other grounds DOJ v. House Comm. on the Judiciary*, 142 S. Ct. 46 (2021); *In re Request for Access to Grand Jury Materials*, 833 F.2d 1438, 1445 (11th Cir. 1987) (concluding that "limit[ing] the investigatory power of the House in impeachment proceedings . . . would clearly violate separation of powers principles.").

²⁸ See TODD GARVEY, CONG. RSCH. SERV., LSB11083, IMPEACHMENT INVESTIGATIONS, PART II: ACCESS, at 2 (2023) ("As a historical matter, all three branches have suggested that the House possesses a robust right of access to information when it is investigating for impeachment purposes."); Jonathan David Schaub, *The Executive's Privilege*, 70 DUKE L.J. 1, 87 (2020) ("[P]residents and others have recognized throughout the history of the country that their ability to withhold information from Congress disappears in the context of impeachment.").

²⁹ See *In re Application of Comm. on Judiciary* at 176 ("In authorizing disclosure of grand jury material for use in impeachment investigations of judges and of a President, courts have found this interest in conducting a full and fair impeachment inquiry to be sufficiently particularized. . . . Impeachment based on anything less than all relevant evidence would compromise the public's faith in the process."); *In re Request for Access to Grand Jury Materials* at 1445 ("Public confidence in a procedure as political and public as impeachment is an important consideration justifying disclosure."); *In re Report and Recommendation of June 5, 1972 Grand Jury*, 370 F. Supp. 1219, 1230 (D.D.C. 1974) ("It would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair [impeachment] inquiry based on all the pertinent information.").

³⁰ *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020) (internal quotation marks omitted).

³¹ *Watkins v. United States*, 354 U.S. 178, 200 n.33 (1957).

Mark F. Daly
February 22, 2024
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For the reasons above, there is no valid legal basis for you to defy this subpoena. Accordingly, please find the attached subpoena compelling your appearance at a deposition.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is stylized with a large, looping "J" and a cursive "Jordan".

Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit II

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

February 22, 2024

Mr. Jack Morgan
U.S. Department of Justice
c/o Catherine S. Duval
Zuckerman Spaeder LLP
1800 M Street NW, Suite 1000
Washington, DC 20036

Dear Mr. Morgan:

Attached to this letter please find a subpoena issued by the Committee on the Judiciary (the Committee) compelling your appearance for a deposition.

The Committee requires your deposition testimony to further several of its critical investigative and oversight interests. As an initial matter, your testimony is necessary to assist the Committee in determining whether sufficient grounds exist to draft articles of impeachment against President Joseph R. Biden. In addition, your deposition testimony is relevant to the Committee's ongoing oversight of the Executive Branch's commitment to impartial justice, as well as its investigation into the veracity of statements made in response to congressional inquiries related to the Department of Justice's (DOJ) investigation of Hunter Biden, President Biden's son.

On December 13, 2023, the House of Representatives adopted House Resolution 918, which directed the Committee, along with the Committees on Oversight and Accountability and Ways and Means, to continue the House's ongoing impeachment inquiry.¹ As part of its impeachment inquiry, the Committee is investigating, among other things, whether President Biden "abuse[d] his power as President to impede, obstruct, or otherwise hinder investigations or the prosecution of Hunter Biden."² As background, for years, the Internal Revenue Service (IRS) and DOJ have been investigating Hunter Biden for tax crimes.³ In spring 2023, two IRS whistleblowers who were intimately involved in that investigation came forward and exposed

¹ H. Res. 918, 118th Cong. (2023).

² Memorandum from Chairmen Jim Jordan, James Comer, and Jason Smith, to Members of the H. Comm. on the Judiciary, H. Comm. on Oversight & Accountability, and H. Comm. on Ways & Means, at 29 (Sept. 27, 2023).

³ Transcribed Interview of Gary Shapley, Supervisory Special Agent, Internal Revenue Serv. at 12 (May 26, 2023) [hereinafter "Shapley Interview"].

Jack Morgan
February 22, 2024
Page 2

several ways that DOJ had deviated from its standard processes during the Hunter Biden investigation.⁴ Some of the information the Committee has uncovered suggest that political interference may have impeded the Hunter Biden investigation and prosecution, and the Committee is investigating whether President Biden (directly or through his political appointees) has in any way attempted to meddle in the investigation.

As a member of the team that was assigned to work on the Hunter Biden matter, you have firsthand knowledge of the investigation's day-to-day operations. Your testimony is thus critical to the impeachment inquiry. For example, you were present at an October 2021 "tax summit" where you, along with other members of the team, agreed to move forward with generating a prosecution memorandum that would recommend bringing criminal charges against Hunter Biden for tax years 2014 to 2019.⁵ Months later, however, on June 15, 2022, you gave a presentation and argued just the opposite: that Hunter Biden should *not* be charged for the 2014 and 2015 tax years.⁶ Although Hunter Biden's counsel was willing to agree to toll the statute of limitations for charges related to those tax years, DOJ ultimately allowed the statute of limitations to lapse without bringing charges.⁷ The Committee must understand why DOJ decided not to bring these charges, and, given your personal knowledge of this aspect of the investigation, the Committee believes you can shed important light on that decision, including whether it was impacted by political interference.

The Committee also believes that you may be able to shed light on why the U.S. Attorney for the District of Columbia and the U.S. Attorney for the Central District of California refused to partner with the prosecution team to bring charges against Hunter Biden. Because tax charges must be filed in the judicial district where the defendant resides or where the tax return is prepared or filed, charges against Hunter Biden related to the 2014 and 2015 tax years would have needed to be filed in the District of Columbia, where Hunter Biden lived until 2017, and for later years, in the Central District of California, where Hunter Biden moved in 2017. The lead prosecutor assigned to the Hunter Biden case, David Weiss, the U.S. Attorney for the District of Delaware, could not have filed charges outside of his district before his Special Counsel appointment on August 11, 2023.⁸ Thus, Weiss would have needed to partner with Matthew Graves, the U.S. Attorney for the District of Columbia, and/or Martin Estrada, the U.S. Attorney for the Central District of California, to bring charges against Hunter Biden in those districts. However, both refused to partner with him.

According to one of the IRS whistleblowers, DOJ's Tax Division authored an extensive prosecution memo recommending charges for the 2014 and 2015 tax years and presented this memorandum to the U.S. Attorney's Office for the District of Columbia in March 2022.⁹ It has

⁴ See *Id.*; see also Transcribed Interview of Joseph Ziegler, Special Agent, Internal Revenue Serv. (Jun. 1, 2023) [hereinafter "Ziegler Interview"].

⁵ Ziegler Interview at 32-33.

⁶ Shapley Interview at 142; see also Ziegler Interview at 163-164.

⁷ Transcribed Interview of Hon. David Weiss, Special Counsel, U.S. Dep't of Justice at 92-94 (Nov. 7, 2023).

⁸ Letter from Hon. David Weiss, U.S. Atty, U.S. Dep't of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Jun. 30, 2023).

⁹ Transcribed Interview of Hon. Matthew Graves, U.S. Atty, U.S. Dep't of Justice at 16-17 (Oct. 3, 2023).

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 February 22, 2024
 Page 3

been reported that the first assistant in that office, a non-presidentially-appointed career prosecutor, was optimistic about bringing charges and stated she would assign a prosecutor to assist. However, just a couple of days later, according to IRS whistleblower testimony, U.S. Attorney Graves personally reviewed the report and indicated that he did not support the charges or the investigation as a whole and would not allow charges to proceed in his district.¹⁰ Given your role on the prosecution team, and the fact that members of the Tax Division (where you worked at the time) presented the issue to the office, the Committee believes that you may be able to shed light on these events, including whether political interference played any role in U.S. Attorney Graves's failure to partner with the prosecution team. Likewise, the Committee believes that you may have insight into why the U.S. Attorney's Office for the Central District of California did not work with Weiss's team to bring charges against Hunter Biden for later tax years.¹¹

The Committee has attempted to get this information from other sources but has been unable to do so. For example, witnesses, including Weiss and Lesley Wolf, a former senior member of the prosecution team, have refused to discuss with the Committee the decision to allow the statute of limitations for the 2014 and 2015 tax years to lapse, often citing concerns about revealing information related to an ongoing investigation or the deliberative process privilege. These concerns and purported privileges have no factual or legal basis.

For starters, there is no ongoing investigation related to the 2014 and 2015 tax years because the statute of limitations for those charges has lapsed. Thus, questions about DOJ's decision not to bring charges related to those years—including U.S. Attorney Graves's failure to partner with Weiss—necessarily do not involve an ongoing investigation. Beyond that, concerns about an ongoing investigation “rest[] on no constitutional privilege or case law authority,” but rather on self-serving opinions issued unilaterally by the DOJ's Office of Legal Counsel (OLC).¹² These authorities are not binding on Congress and are ultimately unpersuasive. In fact, the Supreme Court has noted, contrary to DOJ's position, that “a congressional committee. . . engaged in legitimate legislative investigation need not grind to a halt” in the face of an ongoing criminal investigation.¹³ In short, there is no “ongoing investigation” privilege in statutory or common law,¹⁴ and the historical record is replete with examples of DOJ providing

¹⁰ *Id.* at 24-25 & 32.

¹¹ The Committee also intends to ask you about these topics: the sweetheart plea deal offered to Hunter Biden; Weiss's authority, and his requests for special attorney and special counsel status; the IRS investigation involving whistleblowers Gary Shapley and Joseph Ziegler; and other issues.

¹² *Obstruction of Justice: Does the Justice Department have to Respond to Lawfully Issued and Valid Congressional Subpoenas: Hearing Before the H. Comm. on Oversight and Government Reform*, 112th Congress (2011) (statement of Morton Rosenberg, Fellow, Const. Project).

¹³ *Hutcheson v. United States*, 369 U.S. 599, 618 (1962).

¹⁴ See William McGurn, Opinion, *The 'Ongoing Investigation' Dodge on Hunter Biden*, WALL ST. J. (July 10, 2023) (quoting former Assistant U.S. Attorney Andrew McCarthy as stating, “The executive branch response of ‘ongoing investigation’ is really a political objection, rather than a legal one. There is no ‘ongoing investigation’ privilege.”). See also Christopher R. Smith, *I Fought the Law and the Law Lost: The Case for Congressional Oversight Over Systemic DOJ Discovery Abuse in Criminal Cases*, 9 CARDOZO PUB. L. POL'Y & ETHICS J. 85, 107 (2010) (“To preclude Congress from investigating prosecutorial misconduct because of open investigations would completely undermine Congress's constitutional duty to investigate government misconduct, an important legislative branch check on the executive branch.”).

Jack Morgan
February 22, 2024
Page 4

congressional committees with information related to ongoing criminal investigations.¹⁵ Accordingly, there is no legal basis to withhold information from the Committee on the basis of an “ongoing” investigation,¹⁶ especially in the context of an impeachment inquiry.

Nor does a purported deliberative process privilege prevent you from testifying before the Committee.¹⁷ The U.S. Court of Appeals for the District of Columbia Circuit has held that “the privilege disappears altogether when there is any reason to believe government misconduct occurred.”¹⁸ As the Committee has detailed, there is substantial evidence of governmental misconduct; namely, that DOJ deviated from standard investigative procedures (including by declining to bring charges that the prosecution team originally recommended bringing) in its investigation of Hunter Biden such that he received special treatment than otherwise afforded to similarly situated Americans.¹⁹ In short, there is no valid basis to withhold information from the Committee on the basis of the deliberative process privilege.

You have firsthand knowledge that is critical to the Committee’s impeachment inquiry, and the Committee has been unable to get that information from other sources. No privilege prevents you from sharing this information with the Committee. You must appear and testify so that the Committee has the facts it needs as it investigates whether President Biden committed an impeachable offense.

The information you possess is also related to several of the Committee’s legislative and oversight objectives. Pursuant to the Rules of the House of Representatives, the Committee is authorized to conduct oversight of DOJ as well as criminal justice matters in the United States to inform potential legislative reforms.²⁰ The Committee believes that information from your deposition will inform potential legislation including, but not limited to, reforms to the “special

¹⁵ See MORTON ROSENBERG, WHEN CONGRESS COMES CALLING: A STUDY ON THE PRINCIPLES, PRACTICES, AND PRAGMATICS OF LEGISLATIVE INQUIRY, CONST. PROJECT, at 75-82 (2017) (listing numerous examples of Congress obtaining testimony related to an ongoing criminal investigation); *Obstruction of Justice: Does the Justice Department Have to Respond to Lawfully Issued and Valid Congressional Subpoenas*, Hearing Before the H. Comm. on Oversight and Gov’t Reform, 112th Cong. (2011) [hereinafter *Hearing on Obstruction of Justice*] (statement of Louis Fisher, Scholar in Residence, Const. Project) (“Congress has often obtained records related to ongoing criminal investigations.”).

¹⁶ Even assuming that an “ongoing” investigation is an appropriate basis on which to withhold information from the Committee, it is certainly inapplicable with respect to your testimony relating to the 2014 and 2015 tax year charges because the statute of limitations for these charges has expired. The Department conducts investigations to determine whether sufficient evidence exists to pursue prosecution. If the Department is barred from pursuing prosecution by the expiration of the statute of limitations, it follows that any related investigation would no longer be “ongoing.”

¹⁷ See, Letter from Bradley Weinsheimer, Associate Deputy Attorney General, U.S. Dept. of Justice to Robert Driscoll, Manager, McGlinchey Stafford PLLC (Oct. 25, 2023) (“Department witnesses are expected to... refrain from disclosing information that has not been authorized for public release. This includes information about ongoing investigations and prosecutions, sensitive law enforcement information, and Executive Branch deliberative processes, such as those that underlie investigative and prosecutorial decisions.”).

¹⁸ *In re Sealed Case*, 121 F.3d 729, 746 (D.C. Cir. 1997).

¹⁹ See generally H. COMM. ON THE JUDICIARY ET AL., 118TH CONG., THE JUSTICE DEPARTMENT’S DEVIATIONS FROM STANDARD PROCESSES IN ITS INVESTIGATION OF HUNTER BIDEN (2023).

²⁰ Rules of the U.S. House of Representatives, R. X (2023).

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attorney” statute,²¹ codifying regulations related to special counsels,²² reforming DOJ’s Tax Division, and strengthening laws protecting whistleblowers from retaliation.

When we subpoenaed you to appear for a deposition in the fall,²³ DOJ instructed you to not appear.²⁴ The primary basis for DOJ’s instruction was that, pursuant to an OLC opinion, the Committee’s subpoena was unlawful because under House rules, agency counsel could not accompany you to your deposition. DOJ’s position is unpersuasive, and you have a legal obligation to appear before the Committee.

At the outset, after you are served with this legally valid and enforceable subpoena, you have a legal obligation to comply by appearing before the Committee.²⁵ Concerns about who can, and who cannot, attend the deposition do not affect the legality or enforceability of the subpoena itself and the legal duty to comply that flows from it. The OLC opinion cites no support for its leap that excluding agency counsel renders the subpoena itself invalid and unenforceable. On the merits of excluding agency counsel, the Constitution clearly specifies that each chamber of Congress “may determine the Rules of its Proceedings.”²⁶ A rule that dictates who may attend committee depositions is a rule that governs House proceedings and thus easily falls within its rulemaking authority under the Constitution.

Moreover, as an extraordinary accommodation, the Committee is willing to allow agency counsel to remain physically present just outside the Committee room in which the deposition will occur and will permit a recess at any time for you and/or your personal counsel to consult with agency counsel about any matters that may arise during the deposition. The Committee believes that this accommodation will allow you to consult with agency counsel as necessary and alleviates the concerns that DOJ has articulated about proceeding without agency counsel.

To sum up, the Committee requires your testimony, and you have a legal obligation to provide it. Most importantly your testimony is directly relevant to the House’s impeachment inquiry. Specifically, your testimony is critical to the question of whether President Biden abused his power to directly or indirectly impede, obstruct, or hinder DOJ’s investigation or prosecution of Hunter Biden. Congress’s authority to access information is broadest during an impeachment investigation,²⁷ a fact which even Presidents and other Executive Branch officials have

²¹ See 28 U.S.C. § 515.

²² See 28 C.F.R. § 600 *et seq.*

²³ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Jack Morgan, Assistant U.S. Atty, U.S. Dep’t of Justice (Nov. 1, 2023).

²⁴ Letter from Bradley Weinsheimer, Associate Deputy Attorney General, U.S. Dept. of Justice to Catherine Duval, Partner, Zuckerman Spaeder LLP (Nov. 2, 2023).

²⁵ See, e.g., *Watkins v. United States*, 354 U.S. 178, 187–88 (1957)

²⁶ U.S. Const. art. I, § 5, cl. 2.

²⁷ TODD GARVEY, CONG. RSCH. SERV., LSB11083, IMPEACHMENT INVESTIGATIONS, PART II: ACCESS, at 1 (2023) (“[T]here is reason to believe that invocation of the impeachment power could improve the committees’ legal claims of access to certain types of evidence relevant to the allegations of misconduct against President Biden.”). See also *In re Application of Comm. on Judiciary*, 414 F. Supp. 3d 129, 176 (D.D.C. 2019) (“[D]enying [the House Judiciary Committee] evidence relevant to an impeachment inquiry could pose constitutional problems.”), *aff’d*, 951 F.3d 589 (D.C. Cir. 2020), *vacated and remanded sub nom. on other grounds DOJ v. House Comm. on the Judiciary*, 142 S. Ct. 46 (2021); *In re Request for Access to Grand Jury Materials*, 833 F.2d 1438, 1445 (11th Cir. 1987) (concluding

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Page 6

traditionally recognized.²⁸ Indeed, conducting an impeachment inquiry based on anything less than all pertinent evidence would be an affront to the Constitution and irreparably damage public faith in the impeachment process.²⁹

Additionally, the Supreme Court has recognized that Congress has a “broad and indispensable” power to conduct oversight that “encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them.”³⁰ It is also well established that Congress may seek information from the Executive Branch about “corruption, maladministration or inefficiency in agencies of the Government.”³¹ Here, the Committee has documentary and testimonial evidence, obtained from whistleblowers, of corruption (e.g., preferential treatment for the President’s son), maladministration (e.g., retaliation against whistleblowers), and inefficiency (e.g., frequent delays in the investigation due to unprecedented approval requirements to conduct basic investigative tasks). These are among the matters about which the Committee requires your testimony to inform potential legislative reforms.

For the reasons above, there is no valid legal basis for you to defy this subpoena. Accordingly, please find the attached subpoena compelling your appearance at a deposition.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

that “limit[ing] the investigatory power of the House in impeachment proceedings . . . would clearly violate separation of powers principles.”).

²⁸ See TODD GARVEY, CONG. RSCH. SERV., LSB11083, IMPEACHMENT INVESTIGATIONS, PART II: ACCESS, at 2 (2023) (“As a historical matter, all three branches have suggested that the House possesses a robust right of access to information when it is investigating for impeachment purposes.”); Jonathan David Schaub, *The Executive’s Privilege*, 70 DUKE L.J. 1, 87 (2020) (“[P]residents and others have recognized throughout the history of the country that their ability to withhold information from Congress disappears in the context of impeachment.”).

²⁹ See *In re Application of Comm. on Judiciary* at 176 (“In authorizing disclosure of grand jury material for use in impeachment investigations of judges and of a President, courts have found this interest in conducting a full and fair impeachment inquiry to be sufficiently particularized. . . . Impeachment based on anything less than all relevant evidence would compromise the public’s faith in the process.”); *In re Request for Access to Grand Jury Materials* at 1445 (“Public confidence in a procedure as political and public as impeachment is an important consideration justifying disclosure.”); *In re Report and Recommendation of June 5, 1972 Grand Jury*, 370 F. Supp. 1219, 1230 (D.D.C. 1974) (“It would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair [impeachment] inquiry based on all the pertinent information.”).

³⁰ *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020) (internal quotation marks omitted).

³¹ *Watkins v. United States*, 354 U.S. 178, 200 n.33 (1957).

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit JJ



Robert N. Driscoll
Attorney at Law

T (202) [REDACTED] F (202) [REDACTED]
[REDACTED]@mcglinchey.com

McGlinchey Stafford PLLC
1275 Pennsylvania Avenue NW, Suite 420
Washington, DC 20004

February 24, 2024

By Email Only

The Honorable Jim Jordan
Chairman, Committee on the Judiciary
US House of Representatives
2138 Rayburn House Building
Washington, DC 20515
c/o Stephen Castor, General Counsel (via email at [REDACTED]@mail.house.gov)
Betsy Ferguson, Deputy General Counsel (via email at [REDACTED]@mail.house.gov)
Kiley Bidelman, Republican Chief Clerk (via email at [REDACTED]@mail.house.gov).

RE: Mark Daly

Dear Chairman Jordan,

Thank you for your February 22 letter and subpoena directed to Mark Daly. This confirms their receipt and my acceptance of the subpoena on behalf of Mr. Daly. Thank you as well for thoroughly explaining the committee's rationale for seeking testimony from Mr. Daly.

As you know, Mr. Daly is an apolitical line career attorney in the Justice Department's Tax Division. As you may not know, Mr. Daly is also currently assigned to David Weiss's Special Counsel team that indicted Hunter Biden and is actively prosecuting that case in the U.S. District Court for the Central District of California.

Through counsel, Mr. Biden has moved to dismiss the indictment due to "selective" and "vindictive" prosecution theories based on an assertion that the prosecution is the product of political pressure placed on the Department by the Committee on the Judiciary of the House of Representatives. Thus, Mr. Daly is currently a career DOJ employee prosecuting a case that the defendant claims was brought because of political pressure from Republican elected officials, including members of the Judiciary Committee, while at the same time the Judiciary Committee seeks his testimony to investigate its theory that the pending case was unduly narrowed or delayed due to political pressure or influence from the current President or his Democratic political appointees.

Under the circumstances, I respectfully suggest that attempting to compel testimony from a line lawyer during a pending prosecution to elicit testimony about the facts and deliberations surrounding that very prosecution would set a dangerous precedent, as future congressional leaders and committees could subpoena prosecuting attorneys in any high-profile prosecution that is the subject of intense political debate. It is one thing to attempt to question the Attorney General or a Senate-confirmed political appointee with decision-making authority about a decision to prosecute or decline to prosecute a particular matter as part of congressional oversight. However, it is quite another to attempt to compel testimony from a line lawyer who is handling a case while that case is actively being litigated.

mcglinchey.com

The Honorable Jim Jordan

February 24, 2024

Page 2 of 3

While I have not attempted to create an exhaustive list of potential hazards of such an approach, one particular risk bears mention: Partisans on the committee (of either party) or their staff could attempt to create a record, or essentially take extrajudicial discovery outside the strictures of the Federal Rules of Criminal Procedure, which could weaken a criminal prosecution and possibly create appellate issues or defenses that might not otherwise exist—potentially undermining the government’s case or the defendant’s right to a fair trial. Of course, this concern is beyond clear issues related to Fed. R. Crim. P. 6(e), 26 U.S.C. § 6103, or applicable rules of professional conduct that will arise with any testimony of a line prosecutor in a criminal tax case.

Your letter acknowledges that the committee has already interviewed Acting Deputy Assistant Attorney General Goldberg, U.S. Attorney (and now Special Counsel) Weiss, and other Justice Department political appointees who had final decision-making authority in the Biden prosecution. And your letter acknowledges that the Department has not permitted these employees to answer questions related to certain charging decisions and deliberative processes regarding a pending prosecution. While I do not yet know what position the Department will take here, I fully expect the Department to take the same position with respect to Mr. Daly. Thus, the committee’s investigative goals will not be advanced in the least should Mr. Daly be permitted to appear for testimony. Rather, all that will be achieved is that a career lawyer in the Department who is in the midst of a high-profile prosecution will be caught in the cross-fire of a bitter interbranch constitutional dispute that he has no ability to resolve.

If the committee wishes to challenge the Department’s position on the legal issues that arise when there is oversight of a pending prosecution (and to be clear, there are legitimate and valid interests to be protected by both the Executive and Legislative branches in a circumstance such as this), I suggest that can be accomplished via civil litigation to compel testimony of a senior DOJ official who has already, at the instruction of agency counsel, declined to answer specific questions the committee finds crucial. Subpoenaing a line lawyer and subjecting him to questioning about an active prosecution under threat of contempt of Congress, or future protracted federal litigation, creates unnecessary stress and potential collateral issues for a career line lawyer who asked for none of this. Moreover, we should all want Mr. Daly to be focusing on his current mission and pending case before him, not spending his time distracted by an interbranch constitutional dispute that is not his to resolve.

In light of the foregoing, I respectfully suggest that Mr. Daly is not the appropriate witness to serve as a vehicle to resolve the committee’s dispute with DOJ over the validity of DOJ’s legal positions.

I therefore request that the committee withdraw its subpoena and find another path to achieve its objectives. Should the subpoena remain outstanding, please know that the most likely outcome is that—as I did this fall with respect to a prior subpoena—I will counsel Mr. Daly to follow any instructions from his employer, the Department of Justice, with respect to whether to appear or whether to limit his testimony in any respect due to the pending prosecution. Until I receive any such instructions and evaluate them, I will plan on appearing with Mr. Daly on March 1

The Honorable Jim Jordan

February 24, 2024

Page 3 of 3

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Driscoll', with a stylized, cursive flourish at the end.

Robert N. Driscoll

Counsel for Mark Daly

cc: The Honorable Jerrold L. Nadler, Ranking Member
c/o [REDACTED], Minority Staff (via email at [REDACTED]@mail.house.gov)

Bradley Weinsheimer, Associate Deputy Attorney General, DOJ

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit KK



U.S. Department of Justice

Office of the Deputy Attorney General

Bradley Weinsheimer
Associate Deputy Attorney General

Washington, D.C. 20530

February 29, 2024

Mr. Robert Driscoll
McGlinchey Stafford
1275 Pennsylvania Avenue NW, Suite 420
Washington, D.C. 20004
Via Email

Dear Mr. Driscoll:

I write concerning your client Mark Daly. I serve as the senior career official at the Department of Justice (Department). Consistent with this role, in which I have served since 2018, I possess and exercise delegated authority to provide current and former Department employees with direction concerning the disclosure and protection of Department information, including with respect to congressional requests for testimony. I write to you in that capacity.

I write regarding a deposition subpoena issued to your client by the House Committee on the Judiciary (Committee) on February 22, 2024.¹ As background, on September 14, 2023, the Committee issued a deposition subpoena to your client for testimony regarding the work of the Department on an ongoing individual criminal investigation and prosecution led by Special Counsel David Weiss.² On November 1, 2023, the Committee issued an additional deposition subpoena to your client with a return date of November 6, 2023.³ The Committee's correspondence at that time, including the letters accompanying the subpoenas to your client, stated that the Committee sought testimony about meetings and conversations among investigators and prosecutors about the weight of evidence and charging decisions in an open matter. Pursuant to the Rules of the House of Representatives, incorporated by reference in the Committee Rules transmitted with the subpoenas, agency counsel was prohibited from attending the deposition. The Department offered voluntary appearances by three senior officials on appropriate topics as an alternative to the Committee pursuing such testimony from line-level attorneys, including your client. Although the Committee accepted the Department's offered alternative and these officials appeared for interviews last fall, the Committee continued to pursue testimony from your client via the November 1, 2023 subpoena.

On November 2, 2023, I wrote to you to convey that the Department had determined, on the basis of a 2019 Office of Legal Counsel (OLC) opinion, that the exclusion of agency counsel

¹ Letter from Hon. Jim Jordan to Mark Daly (Feb. 22, 2024).

² Letter from Hon. Jim Jordan to Mark Daly (Sept. 14, 2023).

³ Letter from Hon. Jim Jordan to Mark Daly (Nov. 1, 2023).

meant that the subpoenas lacked legal effect and could not constitutionally be enforced. My letter explained that, having carefully considered the relevant facts and authority, Department and Executive Branch precedents and longstanding principles, and the Department's determination that not appearing would be lawful because this subpoena lacks legal effect, I recommended to the Deputy Assistant Attorney General serving as the Head of the Tax Division and to the Attorney General that Mr. Daly be directed not to appear before the Committee pursuant to this subpoena. The Attorney General and the Head of the Tax Division approved my recommendation. Accordingly, my November 2, 2023 letter conveyed that the Department was directing Mr. Daly not to appear before the Committee pursuant to the subpoena. Mr. Daly complied with the Department's direction.

Several months passed before the Committee communicated again with the Department regarding any interest in seeking your client's testimony.⁴ As noted, last week the Committee issued an additional deposition subpoena to your client seeking testimony on the same topics regarding the same criminal investigation and prosecution, which remains ongoing and in which there are currently multiple public indictments filed in multiple districts. Furthermore, as explained in correspondence from the Department to the Committee today, although the Committee has described this subpoena as part of an impeachment inquiry into whether President Biden "abuse[d] his power as President to impede, obstruct, or otherwise hinder investigations (including Congressional investigations) or the prosecution of Hunter Biden," the factual record the Committee developed in its own investigation demonstrated that this matter has been handled without improper interference; other information the Committee is requesting is not pertinent to the impeachment inquiry; and, in any event, the Committee has not explained how your client would have any relevant personal knowledge of such conduct by President Biden or the White House.⁵ Pursuant to the Rules of the House of Representatives, incorporated by reference in the Committee Rules transmitted with this additional subpoena, agency counsel is prohibited from attending this deposition, as well.

As discussed in my letter of November 2, 2023, the Department has written to the Committee explaining that principles and policies for safeguarding the confidentiality of the Department's work further the public interest in the integrity of law enforcement investigations.⁶ These principles and policies have been followed across administrations and are grounded in constitutional concerns. As discussed in the Department's prior correspondence with the Committee, excluding agency counsel in these circumstances undermines the Executive Branch's ability to protect its confidentiality interests in the course of the constitutionally mandated accommodation process.⁷ In addition, the exclusion of agency counsel interferes with

⁴ In the interim, on December 13, 2023, the House of Representatives passed a resolution purporting to authorize the Committee to seek civil enforcement of the November 1, 2023 subpoena to your client. As of the date of this letter, the Department is unaware of any action by the Committee or the House to pursue such an effort.

⁵ Letter from Asst. Attorney General Carlos Uriarte to Hon. Jim Jordan (Feb. 29, 2024). A copy of this correspondence is enclosed.

⁶ Letter from Asst. Attorney General Carlos Uriarte to Hon. Jim Jordan (Oct. 25, 2023). The concerns expressed in this letter are incorporated here by reference.

⁷ *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. ___, at *2, *19 (May 23, 2019).

the Executive Branch's ability to protect potentially privileged information.⁸ The underlying principles that inform the Department's position are longstanding across administrations. Here, the subpoena issued by the Committee prohibits the attendance of agency counsel at an appearance where the Committee has indicated it will ask questions regarding information Mr. Daly learned within the scope of his official duties, including potentially privileged information.⁹ On the basis of 2019 Office of Legal Counsel opinions, the Department has determined that the exclusion of agency counsel means that the subpoena is invalid and lacks legal effect.¹⁰ It therefore cannot constitutionally be enforced by civil or criminal means or through any inherent contempt power of Congress.¹¹ Accordingly, the Department has determined that Mr. Daly cannot be subject to criminal prosecution for declining to appear or to answer questions pursuant to this subpoena.¹²

Furthermore, having carefully considered the relevant facts and authority (including developments since November 2, 2023), Department and Executive Branch precedents and longstanding principles; and the Department's determination that not appearing would be lawful because this subpoena lacks legal effect, I recommended to the Deputy Assistant Attorney General serving as the Head of the Tax Division and to the Attorney General that Mr. Daly be directed not to appear before the Committee pursuant to the February 22, 2024 subpoena. The Attorney General and the Head of the Tax Division approved my recommendation. Accordingly, the Department directs Mr. Daly not to appear before the Committee pursuant to the subpoena.

This directive is consistent with longstanding principles of the Justice Department regarding congressional requests for information, as well as the Department's respect for Congress's authority to conduct legitimate oversight of the Executive Branch and our mutual obligations under the constitutionally mandated accommodation process. Department witnesses are expected to abide by their obligations under the law and Department policy, including the Justice Manual, to refrain from disclosing information that has not been authorized for public release. This includes information about ongoing investigations and prosecutions, sensitive law enforcement information, and Executive Branch deliberative processes, such as those that underlie investigative and prosecutorial decisions. The presence of agency counsel during congressional interviews is essential to ensure, among other things, that Department witnesses fully understand and abide by their obligations and that the Department has the ability to raise objections or assert privileges or other Executive Branch confidentiality interests. Under the

⁸ *Id.* at *8 (quoting *Authority of Agency Officials to Prohibit Employees from Providing Information to Congress*, 28 Op. O.L.C. 79, 81 (2004)).

⁹ *Id.* at *2.

¹⁰ See *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. __, at *2, *19 (May 23, 2019); *Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. O.L.C. __ (Nov. 1, 2019).

¹¹ See *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. __, at *14; *Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. O.L.C. __, at *4-*5.


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circumstances here, such as the specific requests to your client for information learned within the scope of his official duties, including information that is potentially privileged, following the Department's directive not to appear would protect the confidentiality interests of the Executive Branch and the separation of powers.

This directive is also consistent with our continuing commitment to good-faith negotiations with the Committee in response to its interest in this matter. The Department remains willing to discuss with the Committee appropriate requests for information and the circumstances under which the Department may be able to provide that information. Nothing in this directive shall be understood to waive or limit, on behalf of Mr. Daly or of the Department, any potentially applicable privileges, objections, or confidentiality interests regarding this or other congressional requests for information.

Pursuant to 5 U.S.C § 2302(b)(13), the provisions of this letter are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are controlling.

Sincerely,


Bradley Weinsheimer

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit LL



U.S. Department of Justice

Office of the Deputy Attorney General

Bradley Weinsheimer
Associate Deputy Attorney General

Washington, D.C. 20530

February 29, 2024

Ms. Catherine Duval
Zuckerman Spaeder LLP
1800 M Street NW, Suite 1000
Washington, D.C. 20036
Via Email

Dear Ms. Duval:

I write concerning your client Jack Morgan. I serve as the senior career official at the Department of Justice (Department). Consistent with this role, in which I have served since 2018, I possess and exercise delegated authority to provide current and former Department employees with direction concerning the disclosure and protection of Department information, including with respect to congressional requests for testimony. I write to you in that capacity.

I write regarding a deposition subpoena issued to your client by the House Committee on the Judiciary (Committee) on February 22, 2024.¹ As background, on September 14, 2023, the Committee issued a deposition subpoena to your client for testimony regarding the work of the Department on an ongoing individual criminal investigation and prosecution led by Special Counsel David Weiss.² On November 1, 2023, the Committee issued an additional deposition subpoena to your client with a return date of November 6, 2023.³ The Committee's correspondence at that time, including the letters accompanying the subpoenas to your client, stated that the Committee sought testimony about meetings and conversations among investigators and prosecutors about the weight of evidence and charging decisions in an open matter. Pursuant to the Rules of the House of Representatives, incorporated by reference in the Committee Rules transmitted with the subpoenas, agency counsel was prohibited from attending the deposition. The Department offered voluntary appearances by three senior officials on appropriate topics as an alternative to the Committee pursuing such testimony from line-level attorneys, including your client. Although the Committee accepted the Department's offered alternative and these officials appeared for interviews last fall, the Committee continued to pursue testimony from your client via the November 1, 2023 subpoena.

On November 2, 2023, I wrote to you to convey that the Department had determined, on the basis of a 2019 Office of Legal Counsel (OLC) opinion, that the exclusion of agency counsel

¹ Letter from Hon. Jim Jordan to Jack Morgan (Feb. 22, 2024).

² Letter from Hon. Jim Jordan to Jack Morgan (Sept. 14, 2023).

³ Letter from Hon. Jim Jordan to Jack Morgan (Nov. 1, 2023).

meant that the subpoenas lacked legal effect and could not constitutionally be enforced. My letter explained that, having carefully considered the relevant facts and authority, Department and Executive Branch precedents and longstanding principles, and the Department's determination that not appearing would be lawful because this subpoena lacks legal effect, I recommended to the Deputy Assistant Attorney General serving as the Head of the Tax Division and to the Attorney General that Mr. Morgan be directed not to appear before the Committee pursuant to this subpoena. The Attorney General and the Head of the Tax Division approved my recommendation. Accordingly, my November 2, 2023 letter conveyed that the Department was directing Mr. Morgan not to appear before the Committee pursuant to the subpoena. Mr. Morgan complied with the Department's direction.

Several months passed before the Committee communicated again with the Department regarding any interest in seeking your client's testimony.⁴ As noted, last week the Committee issued an additional deposition subpoena to your client seeking testimony on the same topics regarding the same criminal investigation and prosecution, which remains ongoing and in which there are currently multiple public indictments filed in multiple districts. Furthermore, as explained in correspondence from the Department to the Committee today, although the Committee has described this subpoena as part of an impeachment inquiry into whether President Biden "abuse[d] his power as President to impede, obstruct, or otherwise hinder investigations (including Congressional investigations) or the prosecution of Hunter Biden," the factual record the Committee developed in its own investigation demonstrated that this matter has been handled without improper interference; other information the Committee is requesting is not pertinent to the impeachment inquiry; and, in any event, the Committee has not explained how your client would have any relevant personal knowledge of such conduct by President Biden or the White House.⁵ Pursuant to the Rules of the House of Representatives, incorporated by reference in the Committee Rules transmitted with this additional subpoena, agency counsel is prohibited from attending this deposition, as well.

As discussed in my letter of November 2, 2023, the Department has written to the Committee explaining that principles and policies for safeguarding the confidentiality of the Department's work further the public interest in the integrity of law enforcement investigations.⁶ These principles and policies have been followed across administrations and are grounded in constitutional concerns. As discussed in the Department's prior correspondence with the Committee, excluding agency counsel in these circumstances undermines the Executive Branch's ability to protect its confidentiality interests in the course of the constitutionally mandated accommodation process.⁷ In addition, the exclusion of agency counsel interferes with

⁴ In the interim, on December 13, 2023, the House of Representatives passed a resolution purporting to authorize the Committee to seek civil enforcement of the November 1, 2023 subpoena to your client. As of the date of this letter, the Department is unaware of any action by the Committee or the House to pursue such an effort.

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the Executive Branch's ability to protect potentially privileged information.⁸ The underlying principles that inform the Department's position are longstanding across administrations. Here, the subpoena issued by the Committee prohibits the attendance of agency counsel at an appearance where the Committee has indicated it will ask questions regarding information Mr. Morgan learned within the scope of his official duties, including potentially privileged information.⁹ On the basis of 2019 Office of Legal Counsel opinions, the Department has determined that the exclusion of agency counsel means that the subpoena is invalid and lacks legal effect.¹⁰ It therefore cannot constitutionally be enforced by civil or criminal means or through any inherent contempt power of Congress.¹¹ Accordingly, the Department has determined that Mr. Morgan cannot be subject to criminal prosecution for declining to appear or to answer questions pursuant to this subpoena.¹²

Furthermore, having carefully considered the relevant facts and authority (including developments since November 2, 2023), Department and Executive Branch precedents and longstanding principles; and the Department's determination that not appearing would be lawful because this subpoena lacks legal effect, I recommended to the Deputy Assistant Attorney General serving as the Head of the Tax Division and to the Attorney General that Mr. Morgan be directed not to appear before the Committee pursuant to the February 22, 2024 subpoena. The Attorney General and the Head of the Tax Division approved my recommendation. Accordingly, the Department directs Mr. Morgan not to appear before the Committee pursuant to the subpoena.

This directive is consistent with longstanding principles of the Justice Department regarding congressional requests for information, as well as the Department's respect for Congress's authority to conduct legitimate oversight of the Executive Branch and our mutual obligations under the constitutionally mandated accommodation process. Department witnesses are expected to abide by their obligations under the law and Department policy, including the Justice Manual, to refrain from disclosing information that has not been authorized for public release. This includes information about ongoing investigations and prosecutions, sensitive law enforcement information, and Executive Branch deliberative processes, such as those that underlie investigative and prosecutorial decisions. The presence of agency counsel during congressional interviews is essential to ensure, among other things, that Department witnesses fully understand and abide by their obligations and that the Department has the ability to raise objections or assert privileges or other Executive Branch confidentiality interests. Under the

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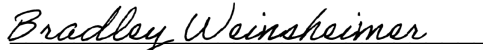
¹² See *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. __, at *14; *Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. O.L.C. __, at *4-*5.

circumstances here, such as the specific requests to your client for information learned within the scope of his official duties, including information that is potentially privileged, following the Department's directive not to appear would protect the confidentiality interests of the Executive Branch and the separation of powers.

This directive is also consistent with our continuing commitment to good-faith negotiations with the Committee in response to its interest in this matter. The Department remains willing to discuss with the Committee appropriate requests for information and the circumstances under which the Department may be able to provide that information. Nothing in this directive shall be understood to waive or limit, on behalf of Mr. Morgan or of the Department, any potentially applicable privileges, objections, or confidentiality interests regarding this or other congressional requests for information.

Pursuant to 5 U.S.C § 2302(b)(13), the provisions of this letter are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are controlling.

Sincerely,


Bradley Weinsheimer

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit MM



Catherine S. Duval
PARTNER
Zuckerman Spaeder LLP
[REDACTED]@zuckerman.com
(202) [REDACTED]

February 29, 2024

By Email

The Honorable Jim Jordan
Chairman, Committee on the Judiciary
US House of Representatives
2138 Rayburn House Building
Washington, DC 20515

c/o Stephen Castor, General Counsel (by email at [REDACTED]@mail.house.gov)
Betsy Ferguson, Deputy General Counsel (by email at [REDACTED]@mail.house.gov)
Kiley Bidelman, Republican Chief Clerk (by email at [REDACTED]@mail.house.gov)

RE: AUSA Jack Morgan

Dear Chairman Jordan:

Thank you for the thorough explanation of the Committee's activities and rationale for seeking testimony from my client, Jack Morgan, as set forth in your letter of February 22. This letter re-confirms receipt of your letter and my acceptance of the Committee's subpoena on behalf of Mr. Morgan.

We understand the importance of your investigation and your Committee's critical investigative and oversight interest. We also appreciate the Committee's efforts to narrow the scope of the testimony it seeks. There is no doubt that Mr. Morgan appreciates the importance of a thorough investigation.

As I think you are aware, Mr. Morgan is a career civil servant of the Department of Justice. He was previously assigned to the Justice Department's Tax Division, but since September 2022 has served as an Assistant United States Attorney for the Eastern District of Virginia. As such, he is obligated to follow his employer's direction, including the provisions in the Department's Justice Manual, as well as the applicable ethics rules for attorneys.

The Committee's subpoena seeks to have Mr. Morgan testify about matters related to an ongoing Department investigation, including privileged information and confidential material regarding prosecutorial choices. Legally and ethically, Mr. Morgan must weigh heavily his employer's guidance in this situation. This afternoon the Department directed Mr. Morgan, via the enclosed letter, not to testify in response to the Committee's February 22 subpoena.

Mr. Morgan is therefore caught in an ongoing tug-of-war between two co-equal branches of our government, and he has no ability to resolve this dispute. Importantly, Mr. Morgan remains employed by the Department of Justice, and he must carefully consider the views and legal advice of his employer in responding to a subpoena seeking information about his work there.

As described in the attached letter, the Department's view is that your investigation may impinge the Department's prosecutorial discretion, as partisan questions (from either side) could result in extrajudicial discovery that may undermine an ongoing investigation. We also note that Mr. Morgan's testimony about prior tax prosecutions could implicate Fed. R. Crim. P. 6(e) (forbidding any disclosure of grand jury information), 26 U.S.C. § 6103 (forbidding disclosure of tax information except to certain entities), as well as the applicable rules of professional conduct.

Under the circumstances, we also respectfully suggest that compelling testimony from a line attorney to elicit testimony about the facts and deliberations surrounding an ongoing case would establish a dangerous precedent. We have advised Mr. Morgan to follow the directions of his employer, the Department of Justice. Accordingly, Mr. Morgan will not appear for testimony on March 1.

Sincerely,



Catherine S. Duval

cc: The Honorable Jerrold L. Nadler, Ranking Member
c/o [REDACTED], Minority Staff (by email at [REDACTED]@mail.house.gov)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit NN

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5 COMMITTEE ON THE JUDICIARY,

6 U.S. HOUSE OF REPRESENTATIVES,

7 WASHINGTON, D.C.

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13 DEPOSITION OF: MARK F. DALY

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18 Friday, March 1, 2024

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20 Washington, D.C.

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23 The deposition in the above matter was held in room 2237, Rayburn House Office

24 Building, commencing at 1:59 p.m.

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1 Appearances:

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5 For the COMMITTEE ON THE JUDICIARY:

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7 STEVE CASTOR, GENERAL COUNSEL

8 CAROLINE NABITY, CHIEF COUNSEL FOR OVERSIGHT

9 [REDACTED], MINORITY CHIEF OVERSIGHT COUNSEL

10 [REDACTED], MINORITY STAFF ASSISTANT

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1 Mr. Castor. Good afternoon.

2 This was supposed to be a deposition of Mark Daly of the Justice Department's Tax
3 Division. Chairman Jordan requested this deposition as part of the House's formal
4 impeachment inquiry into President Biden as well as the Judiciary Committee's oversight
5 responsibilities of the Department.

6 I'm going to mark a number of exhibits.

7 Mr. Daly is not here today. He received a letter from the Justice Department
8 instructing him not to appear.

9 This is not the first time we tried to have Mr. Daly in for a deposition. On
10 September 14, 2023, Chairman Jordan sent a subpoena for a deposition to Mark Daly.
11 That will be marked as exhibit 1.

12 Exhibit 2 is some email exchanged between the committee and the Justice
13 Department's Office of Legislative Affairs.

14 Exhibit 3 is a notice of deposition for the first deposition for Mr. Daly, noticed on
15 September 27, 2023. The original -- the first deposition was scheduled to be on
16 Thursday, October 26, 2023.

17 Exhibit 4 is a letter from his personal counsel, a former DOJ official, Robert
18 Driscoll, to Chairman Jordan dated October 24, 2023 -- that's exhibit 4 -- 2 days before the
19 October 26th deposition.

20 Exhibit 5 is a letter from the Justice Department's Bradley Weinsheimer to
21 Mr. Driscoll dated October 25, 2023, instructing Mr. Daly not to appear for the
22 October 26th deposition.

23 Exhibit No. 6 is a letter dated October 25, 2023, from the Justice Department to
24 Chairman Jordan about the Mark Daly deposition on October 26th advising the chairman
25 he's been instructed not to appear.

1 In the new year, we tried again, and on February 22nd Chairman Jordan issued a
2 new deposition subpoena to Mark Daly. We identified some of the topics that we're
3 interested in and some of the topics that we believe are not part of the ongoing
4 investigation -- specifically, the 2014 and 2015 tax years, which the Department
5 intentionally and willfully allowed to lapse. And this is as part of the investigation into
6 Hunter Biden.

7 That is exhibit 7, the subpoena and cover letter dated February 22, 2024.

8 Exhibit 8 is the committee's formal notice of the deposition, February 22, 2024,
9 notice of deposition for today, March 1, 2024, at 2:00 p.m.

10 Exhibit 9 is a letter from Mr. Daly's counsel, Robert Driscoll, dated February 24,
11 2024; this is last Saturday.

12 On February 29th, the Department wrote the committee -- and this is
13 yesterday -- advising the committee that Mr. Daly is not going to be -- he's going to be
14 instructed not to appear. The February 29th letter from the Department is marked as
15 exhibit 10.

16 Exhibit 11 is a letter from the Department to counsel for Mr. Daly, Robert Driscoll.
17 The letter comes from Bradley Weinsheimer, dated yesterday, February 29, 2024.

18 Finally, the last exhibit is a letter dated February 29, 2024, from Mr. Driscoll to the
19 committee, and we'll mark that as exhibit 12, again, dated yesterday.

20 [Daly Exhibits Nos. 1 through 12
21 were marked for identification.]

22 Mr. Castor. [REDACTED]?

23 [REDACTED]. Yeah. We just want to note for the record that we don't agree with
24 the characterization of the Justice Department having intentionally and willfully allowed
25 certain tax years to lapse. I think the evidence here has shown that all prosecutorial

1 decisions were made in accordance with applicable law, regulations, and policies.

2 As Assistant Attorney General Uriarte's February 29th letter notes, the testimony
3 has shown that Mr. Weiss had authority to determine where, when, and whether to bring
4 charges, that he was never blocked from bringing charges or taking any investigative
5 steps, and that he was never denied the request to be special counsel, which is really the
6 thrust of this investigation.

7 We also think that the evidence has shown that all prosecutorial decisions were
8 made in accordance with all applicable law, regulation, and policies.

9 I would also note that, in Mr. Driscoll's email dated February 29th, he notes that
10 Mr. Daly is not appearing in accordance with the instruction of the -- in accordance with
11 the instruction from Mr. Weinsheimer.

12 Mr. Castor. Okay. I should note, exhibit 12 is an email, as [REDACTED] points out,
13 from Mr. Driscoll to committee staff.

14 I want to flag a couple other issues.

15 We offered the Department the ability to sit outside the room, either at a table
16 immediately outside the room or provide them, you know, some office space where they
17 could confer with Mr. Driscoll and Mr. Daly should the need arise. If a question was
18 propounded that the witness really didn't know how to respond, given the Department's
19 interests, we offered that accommodation.

20 Mr. Driscoll is a former DOJ official and experienced lawyer in this area, so we
21 believe that Mr. Daly certainly is well-served from a counsel perspective.

22 I would note one other item. The Department's logic in not providing us
23 Mr. Daly and also his former Tax Division colleague, Mr. Morgan, follows what we
24 consider to be a little bit of circular logic. You know, they argue that, you know, the
25 relevance of these types of witnesses -- you know, that we are unable to establish from

1 facts collected to date that these witnesses are necessary. And, in fact, the committee
2 has uncovered substantial irregularities in the investigation and prosecution of the
3 President's son.

4 DOJ's position, that because interviews with certain witnesses that they have
5 allowed to come and testify only about topics that they have allowed these witnesses to
6 testify about hasn't, you know, uncovered any evidence directly implicating the President,
7 doesn't mean the committee's investigation of the matter should end, and it doesn't
8 mean that the committee's investigation should be foreclosed from witnesses with
9 relevant information.

10 The alleged mismatch between interviewing Mr. Daly and Mr. Morgan and the
11 scope of the impeachment inquiry doesn't make any sense, the Department's arguments,
12 in our opinion. Mr. Daly and Mr. Morgan were directly involved in the irregularities that
13 are under scrutiny. They were directly involved in the facts testified to by the Ways and
14 Means whistleblowers, Supervisory Special Agent Gary Shapley and Special Agent Ziegler.

15 And while no one expects that they would've directly spoken with the President,
16 their testimony -- that is, Mr. Daly and Mr. Morgan -- regarding these irregularities is
17 quite relevant to the committee's inquiry. They could provide explanations for these
18 irregularities that might be exculpatory for the Department and for the President, or they
19 could give testimony regarding political causes for these irregularities that would be
20 inculpatory.

21 So this is why we take the depositions; this is why we ask the witnesses to come in
22 and ask the questions.

23 And, with that --

24 [REDACTED]: Could I respond to that real fast?

25 Mr. Castor. Yes.

1 [REDACTED]. Again, we don't -- the minority does not agree that the evidence has
2 shown irregularities in this case.

3 I would also note that the Department has expressed concern -- has made Stuart
4 Goldberg, who is the supervisor of both individuals, available to testify. I think he
5 testified for 6 hours at the end of last year.

6 And the Department has also expressed concern that these witnesses would be
7 questioned about matters involving an ongoing prosecution. There is, obviously,
8 longstanding Department policy protecting ongoing matters.

9 So I just want to make the note that that is all included in Mr. Uriarte's letter
10 dated February 29th.

11 Mr. Castor. Okay.

12 With that, we'll go off the record.

13 [Whereupon, at 2:09 p.m., the deposition was concluded.]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
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Plaintiff,

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MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit OO

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5 COMMITTEE ON THE JUDICIARY,

6 U.S. HOUSE OF REPRESENTATIVES,

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13 DEPOSITION OF: JACK MORGAN

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18 Friday, March 1, 2024

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20 Washington, D.C.

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24 Building, commencing at 10:01 a.m.

1 Appearances:

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4 For the COMMITTEE ON THE JUDICIARY:

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6 STEVE CASTOR, GENERAL COUNSEL

7 BETSY FERGUSON, DEPUTY GENERAL COUNSEL

8 CAROLINE NABITY, CHIEF COUNSEL FOR OVERSIGHT

9 [REDACTED], MINORITY CHIEF OVERSIGHT COUNSEL

10 [REDACTED], MINORITY STAFF ASSISTANT

11 [REDACTED], MINORITY OVERSIGHT COUNSEL

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

2 Good morning. This was supposed to be a deposition of Mr. Jack Morgan from
3 the Justice Department, formerly of the Tax Division. Chairman Jordan requested this
4 deposition as part of the House's formal impeachment inquiry into the President Biden,
5 as well as the committee's oversight jurisdiction of the Justice Department.

6 Mr. Morgan is not here today after receiving a letter from his employer not to
7 appear.

8 We're going to mark a number of exhibits for the record.

9 Exhibit No. 1 is a letter from Chairman Jordan to Jack Morgan with a subpoena,
10 dated September 14, 2023.

11 Exhibit 2 is a September 2023 email exchange between the committee and the
12 Justice Department about the scheduling of Mr. Morgan's deposition.

13 Exhibit 3 is an October 25, 2023, letter from the Justice Department about the first
14 Jack Morgan deposition subpoena.

15 Exhibit 4 is a letter, dated November 1, 2023, from Mr. Jordan to Jack Morgan
16 enclosing a new subpoena, a second subpoena.

17 Exhibit 5 is a notice of deposition that we put out for the first Jack Morgan
18 deposition.

19 Exhibit No. 6 is a letter from the Justice Department, dated November 2, 2023,
20 directing Mr. Morgan not to appear for the first deposition.

21 On February 22, Mr. Jordan issued a new subpoena. We narrowed the topics,
22 and we tried to set up a scenario where DOJ would permit Mr. Morgan to attend. So
23 exhibit 7 is a cover letter from Mr. Jordan with a new subpoena, dated February 22, 2024.

24 Exhibit No. 8 is the notice of deposition that the committee put out noticing
25 today's deposition for February 29, 2024 -- I'm sorry -- March 1, 2024.

1 Exhibit 9 is a letter from yesterday, February 29, from the Department to Mr.
2 Jordan advising us that the witnesses have been instructed not to appear, including Mr.
3 Morgan, Mr. Daly.

4 Exhibit 10 is a letter, dated yesterday, February 29, from DOJ, from Mr.
5 Weinsheimer, to counsel for Mr. Morgan, Kate Duval.

6 And exhibit 11 is a letter from counsel of Mr. Morgan, Kate Duval, to Chairman
7 Jordan, dated yesterday, February 29, 2024.

8 We offered the Department, Mr. Morgan an accommodation. We offered to
9 have Department lawyers stationed outside the room or at a different committee office
10 to be able to consult with Mr. Morgan and his counsel, Ms. Duval, in the likelihood a
11 question was raised that they needed to consult with the Department. We believe that
12 was an accommodation that would allow today to proceed. Ms. Duval is a very
13 experienced lawyer in these matters, and so she certainly is competent and capable to
14 work with DOJ and Mr. Morgan in advance of today to understand DOJ's positions on
15 some of the topics we intended to ask Mr. Morgan about. So the idea that the Justice
16 Department has to be in the room to facilitate today is something the committee does
17 not agree with.

18 And we would note, in response to yesterday's letter from DOJ -- we would just
19 put this on the record -- that their arguments about the relevance of the witnesses to the
20 impeachment inquiry are -- their arguments are a little bit circular. The committee has
21 uncovered substantial irregularities in the investigation and prosecution of the President's
22 son, Hunter Biden, of which Mr. Morgan was directly involved as a lawyer in the Tax
23 Division.

24 DOJ's position is that, because interviews with certain witnesses they have chosen
25 to make available, where those witnesses answered only certain questions DOJ allowed

1 them to answer, hasn't uncovered, you know, any evidence that they claim implicates the
2 President. You know, because of that, DOJ's position is the committee's investigation
3 should end and no more witnesses should be interviewed. That, of course, doesn't work
4 for Congress, a coequal branch of government.

5 The alleged mismatch between interviewing Mr. Morgan and the scope of the
6 impeachment inquiry is nonsense. Mr. Morgan was directly involved in the irregularities
7 that are under scrutiny, and we have questions that only he can answer, not his
8 supervisors.

9 [Morgan Exhibit Nos. 1 to 11
10 were marked for identification.]

11 Mr. Castor. With that, I would like to offer the minority an opportunity to --

12 ██████████. Thank you.

13 I think, just to make the record clear, the minority does not agree that the
14 investigation has uncovered substantial irregularities or, in fact, any irregularities in the
15 handling of this criminal matter. I think, to the contrary, the evidence has shown that it
16 was handled by the book in accordance with Justice manual principles, applicable statutes
17 and regulations.

18 I think the contention that the witnesses were only permitted to only answer
19 certain questions, I think the counsels in those interviews made it clear that the questions
20 that were not answered pertained to the ongoing matter, and there were concerns about
21 compromising that ongoing matter, among other things.

22 The statement was just made that there might have been some -- that there might
23 have been some evidence that maybe implicated the President, something I think the
24 minority doesn't agree that we've seen anything along those lines.

25 And then I would just note for the record, in the February 29, 2024, letter from

1 Carlos Uriarte at the Department of Justice to Chairman Jordan, the Department noted
2 correctly that every witness who's appeared to date has confirmed that Special Counsel
3 Weiss had authority to determine where, when, and whether to bring charges, that he
4 was never blocked from bringing charges or taking any investigative step, that he was
5 never blocked from bringing charges or taking any investigative steps -- I'm sorry -- by
6 either the Criminal Division, the Tax Division, the U.S. Attorneys of the District of
7 Columbia or the Southern District of California, and that he first requested to be
8 appointed special counsel in August of 2023. He never requested or was denied special
9 counsel status before then. When he requested special counsel status, he was promptly
10 appointed. Those questions were all addressed I think in full by the witnesses who have
11 appeared.

12 I would note that the Department in that letter also offered to answer written
13 questions, which their position is that that's an accommodation. I think the discussions
14 on that are still ongoing.

15 And then I would note, from the letter dated February 29, 2024, from Ms. Duval,
16 that she does note that Mr. Morgan is a career civil servant who's been called to testify
17 about matters related to an ongoing Department investigation, including privileged
18 information and confidential information. As she notes, legally and ethically, Mr.
19 Morgan must weigh heavily his employer's guidance in the situation, that guidance in this
20 case being not to appear.

21 She continues that Mr. Morgan is, therefore, caught in an ongoing tug of war
22 between two coequal branches of our government and has no ability to resolve this
23 dispute.

24 So I would just note for the record that, to the extent there is a dispute, it's
25 between the chairman and the Department and not Mr. Morgan.

1 Thank you.

2 Mr. Castor. Okay. And we would just note that, in our cover letter, Mr.
3 Jordan's cover letter for today's subpoena, we identified topics related to the 2014 and
4 2015 tax years which the Department intentionally and willfully allowed to lapse, and so
5 there could be no prosecution about the 2014 and 2015 tax years. And we have
6 questions for Mr. Morgan about that that can't possibly interfere with an ongoing
7 investigation of those two tax years.

8 [REDACTED]. And I would just note in response to that that I believe we did receive
9 testimony from Matthew Graves, the U.S. Attorney for the District of Columbia, that
10 strongly suggested that there would have been serious issues with trying to prosecute
11 those tax years.

12 Mr. Castor. And, with that, I think we are good to go off the record.

13 [REDACTED]. Thank you.

14 [Whereupon, at 10:11 a.m., the deposition was concluded.]

15

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit PP



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Jordan:

The Department of Justice (Department) writes in response to your letters and four subpoenas of February 22, 2024, seeking testimony regarding the ongoing investigation and prosecutions overseen by Special Counsel David Weiss.¹ All the letters indicate the House Committee on the Judiciary (Committee) issued the subpoenas in support of the House of Representatives' impeachment inquiry into whether the President "abuse[d] his power as President to impede, obstruct, or otherwise hinder investigations (including Congressional investigations) or the prosecution of Hunter Biden."²

The Department has already taken extraordinary steps that address your interest in this matter, including by authorizing testimony by six senior Department officials. One of those individuals was Special Counsel Weiss, who testified he was responsible for deciding whether and when to bring charges and resolved the Committee's questions about improper interference. Even so, we remain open to continued good-faith engagement with the Committee and are willing to assess whether the Department can provide additional information in response to

¹ See Letter from the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, to the Hon. Matthew M. Graves, U.S. Att'y for D.C. (Feb. 22, 2024); Letter from the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Jack Morgan (Feb. 22, 2024); Letter from the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark Daly (Feb. 22, 2024); Letter from the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Lesley Wolf (Feb. 22, 2024). The Department's position on the Committee's previous requests and subpoenas for testimony from these same individuals is set forth in prior correspondence, which the Department incorporates by reference here. See Letter from the Hon. Carlos F. Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, (Oct. 25, 2023); Letter from the Hon. Carlos F. Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (Sept. 22, 2023); Letter from the Hon. Carlos F. Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (Aug. 29, 2023); Letter from the Hon. Carlos F. Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 24, 2023).

² Memorandum from the Hon. James Comer, Chairman, H. Comm. on Oversight and Accountability, the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, and the Hon. Jason Smith, Chairman, H. Comm. on Ways and Means, to Members of the H. Comm. on Oversight and Accountability, H. Comm. on Judiciary, and H. Comm. on Ways and Means (Sept. 27, 2023), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/impeachment-inquiry-scoping-memo-final.pdf>.

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written questions, consistent with our obligation to protect the integrity of Special Counsel Weiss's ongoing work.

The Department's efforts to address the Committee's interest have been extraordinary, not least because this matter is ongoing: it is currently the subject of three public indictments and prosecutions, and Special Counsel Weiss has made clear his investigation continues. Nevertheless, the Department concluded it was in the public interest to address misrepresentations and misunderstandings that could unduly harm public confidence in the evenhanded administration of justice.³ Although the witnesses' testimony was necessarily scoped to protect the ongoing investigation and prosecutions, they were able to address the central issue in these subpoenas and the impeachment resolution: whether there was any political interference in Special Counsel Weiss's investigation, including by President Biden. Each witness said they were unaware of any such interference. Indeed, the Committee has identified no reason to believe that any evidence exists of improper interference by President Biden in the Department's work, including as described in the impeachment resolution, much less evidence that would justify the additional testimony you seek in these subpoenas.

This was already clear from the significant information the Department produced to the Committee over the course of months prior to the passage of House Resolution 918, through correspondence, documents, and authorized testimony by multiple senior officials, including Special Counsel Weiss himself. Indeed, the factual record the Committee developed in its own investigation demonstrated that this matter has been handled without political interference.⁴ For example, in extraordinary testimony authorized by the Department months ago, Special Counsel Weiss testified to this Committee: "I am, and have been, the decision-maker on this case."⁵ He further testified: "Throughout this investigation, the career prosecutors on my team and I have made decisions based on the facts and the law. Political considerations played no part in our decision-making."⁶

In addition to Special Counsel Weiss, the Department has made five senior officials available for transcribed interviews to address the Committee's interest in the scope of Mr. Weiss's authority to decide where, whether, and when to bring charges. Each Department witness who was asked indicated they had witnessed no political interference in Special Counsel Weiss's investigation. The witnesses also confirmed:

³ See Letter from the Hon. Carlos F. Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 24, 2023).

⁴ As discussed below, the Department has not been provided with copies of the transcripts of testimony received by the Committee. However, the Department is aware of the testimony for which it was present and the limited testimony that has been made public. None of it supports the premise that the President or the White House has interfered with the investigation or prosecution, or the Department's responses to Congress on this matter. See, e.g., *Transcribed Interview of former FBI Supervisory Special Agent Before the H. Comm. on Oversight and Accountability*, 118th Cong. (July 17, 2023) at 49–50, 57–58, <https://oversight.house.gov/wp-content/uploads/2023/08/FBI-SSA-Transcribed-Interview-Transcript.pdf>; *Transcribed Interview of former Assistant U.S. Att'y Before the H. Comm. on Judiciary*, 118th Cong. (Dec. 14, 2023), opening statement ("I can convey that as far as I am aware, any narrative that suggests, much less insists that political influence played a role in any matter I handled, is a false one.").

⁵ *Transcribed Interview of Special Counsel David Weiss Before the H. Comm. on Judiciary*, 118th Cong. (Nov. 7, 2023), opening statement.

⁶ *Id.*

The Honorable Jim Jordan

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- David Weiss had authority to determine where, when, and whether to bring charges.
- David Weiss was never blocked from bringing charges or taking any investigative steps by the U.S. Attorneys for the District of Columbia or the Central District of California, whose approval or partnership he did not require to pursue charges in districts outside of Delaware.
- Nor was David Weiss ever blocked from bringing charges or taking any investigative step by the Tax Division, whose assistance and expert input on tax charges he welcomed.
- David Weiss first requested to be appointed Special Counsel in August 2023. He never requested, nor was he denied, Special Counsel status before then. When he requested Special Counsel status, he was promptly appointed.

This is the record developed by the Committee’s own investigation to date.⁷ As to these four subpoenas, the Committee’s letters identify no evidence of any efforts by President Biden or the White House to interfere with the ongoing investigation or prosecution, or with the Department’s responses to congressional requests about this matter. That is consistent with what the Attorney General has made clear repeatedly, including in testimony to this Committee, when committing that this matter would be handled independently and without improper interference.⁸

Moreover, other information the Committee is requesting, including through repeat testimony from some of the same individuals the Committee has already spoken to, simply is not pertinent to the impeachment inquiry. Many of the Committee’s questions appear to focus on events from 2020, before President Biden took office, or on decisions the Committee has already learned, repeatedly, were made free from interference. And even if there were anything in the record to support—rather than rebut—allegations of improper interference with the Department’s work, the Committee has not explained how the line tax attorneys and prosecutors it has requested as witnesses would have any relevant personal knowledge of such conduct by President Biden or the White House. Further, none of the four individuals the Committee now seeks to depose has responsibility for the Department’s responses to congressional inquiries, including on this matter. Put simply, there is a mismatch between the information demanded and the asserted purpose and scope of the Committee’s investigation, including as described in the impeachment resolution.⁹

In addition, the Committee’s letters make clear it intends to question witnesses about information relating to the ongoing investigation and prosecutions and investigative steps and prosecutorial decisions made during the matter. The Committee’s theory that certain aspects of the matter are closed because statutes of limitation have run on specific criminal charges is

⁷ Although the Supreme Court has acknowledged that “[t]he very nature of the investigative function—like any research—is that it takes the searchers up some ‘blind alleys’ and into nonproductive enterprises,” that does not mean the Committee must keep going. See *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 509 (1975).

⁸ See *Oversight of the U.S. Dep’t of Just.: Hearing Before the H. Comm. on the Judiciary*, 118th Cong. (Sept. 20, 2023) (testimony of the Hon. Merrick B. Garland, Att’y Gen., U.S. Dep’t of Just.).

⁹ Cf. *United States v. Rumely*, 345 U.S. 41, 44-45 (1953).

The Honorable Jim Jordan

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simply not correct. The Department does not concede the Committee's assertion with respect to the application of the statute of limitations and whether certain charges were foregone for that reason. Statutes of limitations relate only to specific criminal charges. Evidence of conduct or activities may be admissible and highly relevant to other charges even if the conduct or activity occurred in years prior to the indicted charges. In fact, Special Counsel Weiss specifically addressed this point when he spoke to the Committee months ago. He testified that witnesses and evidence related to conduct that could be relevant to charges from tax years whose statutes of limitation have lapsed may still pertain to his ongoing tax prosecution. In our justice system, these are judgments to be made by prosecutors, based on the law and the facts.

The Department has repeatedly explained its duty to protect the public interest in the integrity of law enforcement work, and why congressional requests for this kind of information—particularly while an investigation is open and judicial proceedings are ongoing—create serious risks to the integrity of that investigation and the fairness of those proceedings, in addition to risking dangerous chilling effects, statutory violations, and constitutional concerns.¹⁰ Disclosing nonpublic information about ongoing investigations could violate statutory requirements or court orders; reveal road maps of our investigations including to defendants and targets; and interfere with the Department's ability to gather facts, interview witnesses, and bring successful criminal prosecutions where warranted.¹¹

As the Department has made clear in this matter and across administrations, the Department speaks through its filings and its work. As Special Counsel Weiss has repeatedly indicated, he anticipates addressing the topics of interest to the Committee in a report at the end of his investigation. Under the Department's regulations, his report will include an explanation of his prosecution and declination decisions—the very topics you are interested in. The Attorney General has committed to making as much of that report public as possible, consistent with the law and Department policy.

That said, in continuation of the Department's good-faith efforts to work with the Committee, the Department is willing to receive written questions from the Committee to assess whether additional information can be provided at this time. The Department would require additional information from the Committee, including copies of the transcripts of the testimony

¹⁰ See, e.g., Letter from the Hon. Carlos F. Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., U.S. Dep't of Just., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (Oct. 25, 2023); Letter from the Hon. Carlos F. Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., U.S. Dep't of Just., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (Sept. 22, 2023); Letter from the Hon. Carlos F. Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., U.S. Dep't of Just., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (Aug. 29, 2023); Letter from the Hon. Carlos F. Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., U.S. Dep't of Just., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 24, 2023); Letter from the Hon. Carlos F. Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., U.S. Dep't of Just., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 13, 2023).

¹¹ See generally, e.g., Letter from the Hon. Carlos F. Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., U.S. Dep't of Just., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (Oct. 25, 2023); Letter from the Hon. Robert Raben, Assistant Att'y Gen., Off. of Legis. Aff., U.S. Dep't of Just., to the Hon. John Linder, U.S. H. at 3–5 (Jan. 27, 2000). See also the Hon. Robert Jackson, Att'y Gen., U.S. Dep't of Just., 40 Op. Atty. Gen. 45, 46 (1941) (“Counsel for a defendant or a prospective defendant could have no greater help than to know how much or how little information the Government has, and what witnesses or sources of information it can rely upon.”); Fed. R. Crim. P. 6(e).

The Honorable Jim Jordan
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in this matter.¹² Months have passed since the Committee first received testimony from these individuals. During that time, the Committee has not expressed urgency or attempted follow up for information it was still seeking. It is not in keeping with comity for a co-equal branch of government for the Committee to insist that the Department compress into days what could have been done over the prior weeks and months.

Accordingly, we ask the Committee to send written questions and transcripts to the Department at its earliest convenience and to extend additional time for the Department to respond. We also request that the Committee defer any attempts to enforce the subpoenas, which at the very least would be premature. In any event, on the basis of 2019 Office of Legal Counsel opinions, the Department has determined that the exclusion of agency counsel means the subpoenas lack legal effect and cannot constitutionally be enforced.¹³

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

CARLOS
URIARTE

Digitally signed by
CARLOS URIARTE
Date: 2024.02.29
09:40:36 -05'00'

Carlos Felipe Uriarte
Assistant Attorney General

cc:

The Honorable Jerrold L. Nadler
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

¹² We understand from media reporting that transcripts of Department witnesses in this matter have been distributed to media outlets but not to the Department or Department witnesses.

¹³ See *Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. O.L.C. ___ (Nov. 1, 2019); *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. ___ (May 23, 2019).

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit QQ

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

March 7, 2024

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Garland:

We are in receipt of the Department's letter dated February 29, 2024, concerning the Committee's subpoenas to four current or former Department employees for testimony in furtherance of the House's ongoing impeachment inquiry of the President and the Committee's legislative oversight of the Department.¹ We are disappointed that the Department has directed two of these employees, Mark Daly and Jack Morgan, to disregard the Committee's lawfully authorized and issued subpoenas.² The Department's reasons for these directives lack merit and are unpersuasive.

As an initial matter, the February 29 letter fundamentally misstates the factual record and the Committee's findings to date.³ With the Committee on Oversight and Accountability and the Committee on Ways and Means, we released a report detailing how the Department deviated from its standard practices to provide President Biden's son, Hunter Biden, with special treatment.⁴ The report detailed how the Department slow-walked the Hunter Biden investigation, prevented line investigators from taking ordinary investigative steps, and allowed the statute of limitations to lapse on the most serious charges.⁵ The report also explained, contrary to the Department's assertion, how testimony showed that U.S. Attorney David Weiss did not have "ultimate authority" over the Hunter Biden investigation, and instead how he had to seek

¹ Letter from Carlos Uriarte, Assistant Att'y Gen., U.S. Dep't of Just., to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Feb. 29, 2024) [hereinafter "February 29 letter"].

² See Letter from Bradley Weinsheimer, Associate Deputy Att'y Gen., U.S. Dep't of Just., to Robert Driscoll (Feb. 29, 2024); Letter from Bradley Weinsheimer, Associate Deputy Att'y Gen., U.S. Dep't of Just., to Catherine Duval (Feb. 29, 2024).

³ February 29 letter, *supra* note 1.

⁴ See generally H. COMM. ON THE JUDICIARY ET AL., 118TH CONG., THE JUSTICE DEPARTMENT'S DEVIATIONS FROM STANDARD PROCESSES IN ITS INVESTIGATION OF HUNTER BIDEN (2023) [hereinafter "Hunter Biden Report"].

⁵ *Id.*

The Honorable Merrick B. Garland

March 7, 2024

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agreement and approval from other Department officials.⁶

But while the Committee has been able to document numerous irregularities in the Department's handling of its investigation into the President's son, the Department has obstructed the Committee's effort to uncover the cause of those irregularities. The fact of the matter is that no Department witness has provided the Committee with any explanation for the deviations identified in the Hunter Biden Report. Thus, the Committee must engage in additional fact-gathering.

The facts that the Committee has been able to uncover so far, despite the Department's unilateral and arbitrary scoping limitations on witness testimony at voluntary transcribed interviews and its refusal to make Daly and Morgan available at all,⁷ do not provide the Department with an excuse to continue to deny further information to the Committee. In fact, the Committee was forced to issue subpoenas to the four witnesses precisely *because* the Department prevented the witnesses from answering certain questions previously or, in the case of Daly and Morgan, withheld them from the Committee entirely.⁸ As the Committee explained to each of these witnesses, they have information that is directly relevant to the House's impeachment inquiry and that will inform potential legislation.⁹

The Department's position with respect to the Committee's subpoenas seems to be that because voluntary transcribed interviews with the Department's approved witnesses—who were subject to the Department's unilateral and arbitrary scoping limitations—did not meet the Department's self-selected threshold for wrongdoing, the Committee is not entitled to obtain any additional testimony. Such a position is not only absurd on its face, but it ignores Congress's “broad and indispensable” power to conduct legislative oversight¹⁰ and federal courts' emphasis that Congress must possess all pertinent evidence when conducting an impeachment inquiry.¹¹

Simply put, the Committee has demonstrated that it has a legitimate need to know why the Department gave the President's son preferential treatment, and it is not sufficient for: (1) the Committee to hear only from the Department's approved witnesses; (2) those witnesses to

⁶ *Id.*

⁷ *Id.* at 74-75.

⁸ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Matthew Graves, U.S. Att'y, D.C. (Feb. 22, 2024); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark Daly, Senior Litig. Counsel, U.S. Dep't of Just., Tax Div. (Feb. 22, 2024); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Jack Morgan, Trial Att'y, U.S. Dep't of Just., Tax Div. (Feb. 22, 2024); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Lesley Wolf, former Assistant U.S. Att'y, Dist. of Del. (Feb. 22, 2024).

⁹ *Id.*

¹⁰ *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020) (internal quotation marks omitted).

¹¹ See *In re Application of Comm. on Judiciary*, 414 F. Supp. 3d 129, 176 (D.D.C. 2019) (“Impeachment based on anything less than all relevant evidence would compromise the public's faith in the process.”), *aff'd*, 951 F.3d 589 (D.C. Cir. 2020), *vacated and remanded sub nom. on other grounds DOJ v. House Comm. on the Judiciary*, 142 S. Ct. 46 (2021); *In re Request for Access to Grand Jury Materials*, 833 F.2d 1438, 1445 (11th Cir. 1987) (“Public confidence in a procedure as political and public as impeachment is an important consideration justifying disclosure.”); *In re Report and Recommendation of June 5, 1972 Grand Jury*, 370 F. Supp. 1219, 1230 (D.D.C. 1974) (“It would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair [impeachment] inquiry based on all the pertinent information.”).

The Honorable Merrick B. Garland

March 7, 2024

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answer questions only that the Department approves; and (3) those witnesses to issue only blanket denials of political interference without providing any alternative explanation for the irregularities in the investigation of the President's son. The Department would not accept analogous restrictions on its own criminal investigations, and the Committee will not accept such restrictions on its investigation here.

The Department also alleges there is a “mismatch between the information demanded and the asserted purpose and scope of the Committee’s investigation.”¹² This assertion, too, is wrong. Each of the witnesses to whom the Committee has issued a subpoena has personal and direct involvement in the irregularities that are under scrutiny.¹³ For example, the Hunter Biden prosecution team, which included Daly, Morgan, and Wolf, initially decided to recommend charges against Hunter Biden for tax offenses stemming from the 2014 and 2015 tax years, before changing course just a few months later after Daly and Morgan gave a presentation that argued the exact opposite.¹⁴ Those charges eventually lapsed notwithstanding the willingness of Hunter Biden’s defense team to toll the statute of limitations.¹⁵ Moreover, Daly was directly involved in unsuccessful efforts for the prosecution team to partner with the U.S. Attorney’s Offices for the District of Columbia (headed by Graves) and the Central District of California to bring charges against Hunter Biden in those districts, and Wolf was involved in the negotiations over the highly unusual plea deal with Hunter Biden that blew up under judicial scrutiny.

The Committee seeks to speak to these witnesses about these irregularities because they are in a prime position to know why these irregularities occurred, and their testimony will shed light on whether impermissible political pressure that could be traced to President Biden played a part in these decisions, or whether the irregularities occurred for other reasons. Thus, the witnesses’ testimony about those irregularities is unquestionably relevant to the Committee’s impeachment inquiry.

In addition, the Department’s February 29 letter made several arguments that we have addressed in previous correspondence.¹⁶ The Department claims that the witnesses cannot provide information about topics under examination by the Committee because they implicate an ongoing criminal investigation and prosecution.¹⁷ The Department broadly and generically claims that doing so could risk chilling effects, statutory violations, and constitutional

¹² February 29 letter, *supra* note 1.

¹³ See Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Matthew Graves, U.S. Att’y, D.C. (Feb. 22, 2024); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark Daly, Senior Litig. Counsel, U.S. Dep’t of Just., Tax Div. (Feb. 22, 2024); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Jack Morgan, Trial Att’y, U.S. Dep’t of Just., Tax Div. (Feb. 22, 2024); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Lesley Wolf, former Assistant U.S. Att’y, Dist. of Del. (Feb. 22, 2024).

¹⁴ Hunter Biden Report, *supra* note 4, at 32-34.

¹⁵ *Id.*

¹⁶ See Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al., to Merrick Garland, Att’y Gen., U.S. Dep’t of Just. (July 21, 2023).

¹⁷ February 29 letter, *supra* note 1. In support of its position, the Department cites, in part, a nonbinding, twenty-four year old letter to a House subcommittee chairman. Letter from Robert Raben, Assistant Att’y Gen., U.S. Dep’t of Just., to Rep. John Linder, Chairman, Subcomm. on Rules & Orgs. of the H. Comm. on Rules (Jan. 27, 2000).

The Honorable Merrick B. Garland

March 7, 2024

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concerns.¹⁸ But, not only has the Department failed to specify exactly how its investigation in this case will be jeopardized by the Committee’s depositions, there is no “ongoing investigation” privilege in statutory or common law,¹⁹ and there is no legal basis to withhold information from the Committee on the basis of an “ongoing” investigation, especially in the context of an impeachment inquiry.²⁰ The Department’s position “rests on no constitutional privilege or case law authority,” but rather on self-serving opinions issued unilaterally.²¹ The Supreme Court has noted, contrary to the Department’s position, that “a congressional committee . . . engaged in legitimate legislative investigation need not grind to a halt” in the face of an ongoing criminal investigation.²² Moreover, none of the Department’s stated concerns excuses the wholesale failure to provide witnesses duly subpoenaed by the Committee, as in the case of Daly and Morgan, especially in light of the fact that the Department has not provided any *particular* concern with the Committee’s investigation.

The Department also asserted, without citation to any statute, regulation, or decision of any court, that the witnesses cannot provide information about topics for which the statute of limitations has expired—and thus criminal charges may not be brought—because “[e]vidence of conduct or activities may be admissible and highly relevant to other charges” at some undefined date in the future.²³ The Department’s position lacks any legal basis, is impractical, and taken to its extreme, would be a basis to deny Congress *any* information for an indefinite amount of time if a prosecutor believes it could be relevant to some uncharged crime. The Committee rejects the assertion that the Department may also deny the Committee information about topics for which criminal prosecution is statutorily barred.

The Department asks the Committee to wait for Special Counsel Weiss’s report to be published to have the answers it is currently seeking. There is no authority the Department can cite for the proposition that the House’s solemn and unique power of impeachment must wait for the conclusion of another investigation. Indeed, when it comes to impeachment, “the Framers

¹⁸ *Id.*

¹⁹ See Christopher R. Smith, *I Fought the Law and the Law Lost: The Case for Congressional Oversight Over Systemic DOJ Discovery Abuse in Criminal Cases*, 9 CARDOZO PUB. L. POL’Y & ETHICS J. 85, 107 (2010) (“To preclude Congress from investigating prosecutorial misconduct because of open investigations would completely undermine Congress’s constitutional duty to investigate government misconduct, an important legislative branch check on the executive branch.”); see also William McGurn, *The ‘Ongoing Investigation’ Dodge on Hunter Biden*, WALL ST. J. (July 10, 2023) (quoting former Assistant U.S. Attorney Andrew McCarthy as stating, “The executive branch response of ‘ongoing investigation’ is really a political objection, rather than a legal one. There is no ‘ongoing investigation’ privilege.”).

²⁰ See *In re Application of Comm. on Judiciary*, 414 F. Supp. 3d 129, 176 (D.D.C. 2019) (“[D]enying [the House Judiciary Committee] evidence relevant to an impeachment inquiry could pose constitutional problems.”); *In re Request for Access to Grand Jury Materials*, 833 F.2d 1438, 1445 (11th Cir. 1987) (concluding that “limit[ing] the investigatory power of the House in impeachment proceedings . . . would clearly violate separation of powers principles.”).

²¹ *Obstruction of Justice: Does the Justice Department Have to Respond to Lawfully Issued and Valid Congressional Subpoenas: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 112th Cong. (2011) (statement of Morton Rosenberg, Fellow, Const. Project).

²² *Hutcheson v. United States*, 369 U.S. 599, 618 (1962).

²³ February 29 letter, *supra* note 1.

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themselves” recognized “the public interest in *immediately* removing a sitting President.”²⁴ The Committee’s impeachment inquiry cannot depend on the timeline set by the branch of government that is headed by the individual who is the subject of Committee’s investigation.

In lieu of the Committee proceeding with the depositions, the Department insists that the Committee propound interrogatories to the witnesses.²⁵ The Committee cannot accept the Department’s eleventh-hour demand. A live interview is a type of fact-finding that is materially unique from written questions and answers, and interrogatories have well-documented limitations: “The flexibility and the potency of oral depositions are in large part lacking in written interrogatories. . . . [I]nterrogatories can readily be misused or employed in such a rote manner as almost to ensure unhelpful answers for any but the most basic or simple questions.”²⁶ In addition, the Department has demanded that the Committee send the questions to the Department—instead of to the witnesses—suggesting that the Department intends to exert a degree of influence or control over the substance of the witnesses’ answers.

The Department has also demanded the transcripts from the Committee’s previous interviews on this matter.²⁷ There is no legitimate basis for the Department to obtain these transcripts as a condition precedent to allowing its employees to provide additional testimony. Witnesses do not need to review the testimony of others to provide truthful information about their own knowledge of the matters at issue. Moreover, consistent with the Committee’s practice, witnesses (and/or their attorneys) have been able to review the transcripts of their *own* interviews for accuracy. Accordingly, the Committee will not provide any transcripts to the Department. Here, again, the Department is insisting on a condition that it would not accept in its own investigations.

Finally, the Committee rejects the Department’s assertion that the Committee’s subpoenas “lack legal effect and cannot constitutionally be enforced.”²⁸ The Department’s assertion rests on two opinions unilaterally issued by the Department’s own Office of Legal Counsel, which are neither binding nor persuasive authority on how a committee of Congress carries out its Constitutional oversight duties. In any case, the OLC opinions do not properly account for how the House adopted its rule on excluding agency counsel from depositions pursuant to its constitutionally delegated power to “determine the Rules of its Proceedings,”²⁹ or

²⁴ *In re Application of Comm. on Judiciary*, 414 F. Supp. 3d at 5 (emphasis added).

²⁵ February 29 letter, *supra* note 1.

²⁶ 8B CHARLES A. WRIGHT ET AL., *FEDERAL PRACTICE & PROCEDURE: CIVIL* § 2163 (3d ed. 2023); *see also id.* at n.6 (“[S]ince answers are drafted by the opposing lawyer after careful reflection instead of by the other party spontaneously, the answers will give the sender as little information and advantage as possible.”); *Porter v. City of Chicago*, 2005 WL 991995, at *5 (N.D. Ill. Apr. 15, 2005) (“[D]epositions . . . allow greater flexibility than interrogatories for plaintiffs to frame questions and follow-up on the answers.”); Adrian P. Schoone & Edward L. Miner, *The Effective Use of Interrogatories*, 60 MARQUETTE L. REV. 29, 31 (1976) (“[T]he greatest limitation upon the effective use of written interrogatories is the ability of attorneys to avoid providing any information which they feel will be damaging to the interests of their clients. . . . The result is[,] . . . inevitably, delay and expense.”).

²⁷ February 29 letter, *supra* note 1.

²⁸ *Id.*

²⁹ U.S. Const. art. 1, § 5, cl.

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March 7, 2024

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how this House rule excuses the subpoenaed witnesses from their “unremitting obligation to respond to subpoenas.”³⁰

The Committee has already offered extraordinary accommodations to address the Department’s concerns. In particular, the Committee is willing to allow agency counsel to remain physically present just outside the Committee room in which the deposition will occur and will permit a recess at any time for the witness and/or his or her personal counsel to consult with agency counsel about any matters that may arise during the deposition. The Department’s February 29 letter does not even address the Committee’s good-faith offer, much less explain why it would not safeguard the Department’s purported interests.

* * *

The Department’s obstruction in this matter has delayed the Committee’s investigation for months, and the Committee must gather all necessary information to determine whether to draft articles of impeachment against President Biden and/or develop legislative reforms. As such, and in light of the above discussion, the Committee will proceed with the depositions as scheduled. We ask that you reverse the Department’s directive to the witnesses that they not comply with the Committee’s lawfully authorized and issued subpoenas.

Sincerely,


Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

³⁰ *Watkins v. United States*, 354 U.S. 178, 187–88 (1957).

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit RR

100TH CONGRESS
1ST SESSION

H. RES. 12

Creating a Select Committee to Investigate Covert Arms Transactions with Iran.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1987

Mr. FOLEY (for himself, Mr. MICHEL, Mr. HAMILTON, and Mr. CHENEY)
submitted the following resolution; which was referred to the Committee on Rules

JANUARY 7, 1987

The Committee on Rules discharged; considered and agreed to

RESOLUTION

Creating a Select Committee to Investigate Covert Arms
Transactions with Iran.

1 *Resolved*, That (1) There is hereby created a Select
2 Committee to Investigate Covert Arms Transactions with
3 Iran, to be composed of fifteen Members of the House to be
4 appointed by the Speaker, one of whom he shall designate as
5 chairman, and one of whom he shall designate as vice chair-
6 man. Any vacancy occurring in the membership of the select
7 committee shall be filled in the same manner in which the
8 original appointment was made. The select committee is au-
9 thorized and directed to conduct a full and complete investi-

1 gation and study, and to make such findings and recommen-
2 dations to the House as the select committee deems appropri-
3 ate, including those concerning the amendment of existing
4 legislation or the enactment of new legislation, regarding the
5 following matters:

6 (a) Direct or indirect sale or transfer of arms, tech-
7 nology or intelligence information to Iran or Iraq in-
8 volving United States Government officers, employees,
9 consultants, agents, or persons acting in concert with
10 them, or occurring with their approval, condonation,
11 acquiescence, or knowledge; the relation of such sale
12 or transfer to efforts to obtain the release of hostages
13 and to United States policy regarding dealings with na-
14 tions supporting terrorism; the United States' relation-
15 ship with the Iran-Iraq war, including the impact of
16 such sale or transfer; and such sale or transfer either
17 made to any other country for which such action is
18 against the expressed policy of the United States, or
19 generating proceeds used or disposed of apart from de-
20 posit in the Treasury.

21 (b) Diversion or intended diversion of the funds real-
22 ized in connection with the sale or transfer in para-
23 graph (a), for financing assistance to anti-Government
24 forces in Nicaragua or any other disposition apart from
25 deposit in the Treasury; and other assistance to such

1 forces from any sources when, in the judgment of the
2 select committee, information about such other assist-
3 ance may aid in understanding the nature, mechanisms,
4 extent, legality, and significance of assistance financed
5 or intended to be financed by such sale or transfer;
6 "assistance" includes provision of supplies, soliciting of
7 third-party funds, training, advising, planning, procur-
8 ing, or encouraging, or by the United States Govern-
9 ment providing diplomatic, military, paramilitary,
10 covert, or intelligence support or monitoring.

11 (c) In connection with the matters described in this
12 section, the violation of any law, agreement, promise
13 or understanding regarding reporting to, and informing
14 of, the Congress, or the circumvention or violation of
15 any Act of Congress or administrative order, regula-
16 tion, or procedure, including those governing covert ac-
17 tions, restricting arms sales, regulating appropriations,
18 withholding authority from departments and agencies,
19 and protecting the United States from conspiracy to
20 violate the laws, unauthorized disposition of things of
21 value, fraud, false statements, and obstruction of pro-
22 ceedings.

23 (d) Operational activities and the conduct of foreign
24 and national security policy by the staff of the National
25 Security Council or other White House personnel, in-

1 cluding the involvement of such staff or other executive
2 branch personnel or persons acting in concert with
3 them, or the use of any funds under the control of such
4 staff or persons, in political advocacy or campaigns or
5 efforts to influence public opinion or legislation relating
6 to the subjects described in this section including as-
7 sistance to anti-Government forces in Nicaragua; and
8 the participation, coordination, and awareness, or lack
9 thereof, regarding such activities and conduct by the
10 Departments of State and Defense, the Department of
11 Justice in both its advisory and law enforcement func-
12 tions, the intelligence community, and other govern-
13 mental entities.

14 (e) Authorization and supervision or lack thereof of
15 the matters in this section by the President and other
16 White House personnel.

17 (f) The role of individuals and entities outside the
18 government, including foreign countries, entities, and
19 persons, in connection with the matters in this section,
20 including their own assistance, their parallel activities,
21 United States efforts to encourage or to prevent such
22 parallel activities, and the use of domestic and foreign
23 financial or other entities as intermediaries in the mat-
24 ters in this section.

(g) Inquiries regarding the matters in this section, including actions based on those inquiries, by the Attorney General, the Departments of Justice, State, and Defense, the intelligence community, the White House, and other governmental entities; actions of individuals in destroying, concealing, or failing to provide any evidence or information of possible value to those inquiries; and the timing, adequacy, and any conflicts of interest in those inquiries.

(h) The impact of the matters in this section on public and international confidence in the United States Government and on United States policy objectives, both internationally and domestically, and the adequacy of the steps taken to reduce such impact.

(i) All matters relating directly or indirectly to the foregoing.

(2) One-third of the members of the select committee shall constitute a quorum for the transaction of business other than the reporting of a matter, which shall require a majority of the committee to be actually present, except that the select committee may designate a lesser number, but not less than two, as a quorum for the purpose of holding hearings to take testimony. When a quorum for any particular purpose is present, general proxies may be counted for that purpose. The select committee may sit while the House is reading a

1 measure for amendment under the five-minute rule. The rules
2 of the House shall govern the select committee where not
3 inconsistent with this resolution. The select committee ~~shall~~
4 adopt additional written rules, which shall be public, to
5 govern its procedures, which shall not be inconsistent with
6 this resolution or the rules of the House. Such rules may
7 govern the conduct of the depositions, interviews, and hear-
8 ings of the select committee, including the persons present.

9 (3) The select committee is authorized to sit and act
10 during the present Congress at such times and places within
11 the United States, including any Commonwealth or posses-
12 sion thereof, or in any other country, whether the House is in
13 session, has recessed, or has adjourned; to require, by sub-
14 poena or otherwise, the attendance and testimony of such
15 witnesses, the furnishing of information by interrogatory, and
16 the production of such books, records, correspondence,
17 memoranda, papers, documents, calendars, recordings, data
18 compilations from which information can be obtained, tangi-
19 ble objects, and other things and information of any kind as it
20 deems necessary, including all intelligence materials however
21 classified, White House materials, and materials pertaining
22 to unvouchered expenditures or concerning communications
23 interceptions or surveillance; and to obtain evidence in other
24 appropriate countries with the cooperation of their govern-
25 ments. Unless otherwise determined by the select committee

1 the chairman, upon consultation with the ranking minority
2 member, or the select committee, shall authorize and issue
3 subpoenas. Subpoenas shall be issued under the seal of the
4 House and attested by the Clerk, and may be served by any
5 persons designated by the chairman or any member. Provi-
6 sions may be included in the rules and process of the select
7 committee to prevent the disclosure of committee demands
8 for information. The select committee may request investiga-
9 tions, reports, and other assistance from any agency of the
10 executive, legislative, and judicial branches of the Federal
11 Government.

12 (4) The chairman, or in his absence the vice chairman,
13 or in their absence a member designated by the chairman,
14 shall preside at all meetings and hearings of the select com-
15 mittee. All meetings and hearings of the committee shall be
16 conducted in open session, unless a majority of members of
17 the select committee voting, there being in attendance the
18 requisite number required for the purpose of hearings to take
19 testimony, vote to close a meeting or hearing. Pursuant to
20 rule XI(3)(f)(2), coverage of testimony of subpoenaed wit-
21 nesses will be limited at their request, unless a majority of
22 members of the select committee voting, there being in at-
23 tendance the requisite number required for the conduct of
24 business, vote otherwise.

1 (5) The chairman, upon consultation with the ranking
2 minority member, may employ and fix the compensation of
3 such clerks, experts, consultants, technicians, attorneys, in-
4 vestigators, and clerical and stenographic assistants as it con-
5 siderers necessary to carry out the purposes of this resolution.
6 No more than three such staff may receive compensation cor-
7 responding to Executive Level IV. The select committee
8 shall be deemed a committee of the House for all purposes of
9 law, including rule XI(2)(n), and sections 6005, 1505, and
10 1621 of title 18, section 192 of title 2, 1754(b)(1)(B)(ii) of
11 title 22, and section 734(a) of title 31, United States Code.
12 The select committee may reimburse the members of its staff
13 for travel, subsistence, and other necessary expenses incurred
14 by them in the performance of the duties vested in the select
15 committee, other than expenses in connection with meetings
16 of the select committee held in the District of Columbia. Staff
17 of the House or joint committees, at the direction of their
18 Members, committee chairmen, or the Speaker, as appropri-
19 ate, and upon request of the select committee, may serve as
20 associate staff to the select committee for designated pur-
21 poses. Associate staff shall be deemed staff of the select com-
22 mittee to the extent necessary for those designated purposes.

23 (6) Unless otherwise determined by the select committee
24 the chairman, upon consultation with the ranking minority
25 member, or the select committee, may authorize the taking of

1 affidavits, and of depositions pursuant to notice or subpoena,
2 by a Member or by designated staff, under oath administered
3 by a Member or a person otherwise authorized by law to
4 administer oaths. Deposition and affidavit testimony shall be
5 deemed to have been taken in Washington, DC, before the
6 select committee once filed there with the clerk of the com-
7 mittee for the committee's use. Unless otherwise directed by
8 the committee, all depositions, affidavits, and other materials
9 received in the investigation shall be considered nonpublic
10 until received by the select committee, except that all such
11 material shall, unless otherwise directed by the committee, be
12 available for use by the Members of the select committee in
13 open session.

14 (7) Pursuant to sections 6103(f)(3) and 6104(a)(2) of title
15 26, United States Code, for the purpose of investigating the
16 subjects set forth in this resolution and since information nec-
17 essary for this investigation cannot reasonably be obtained
18 from any other source, the select committee shall be specially
19 authorized to inspect and receive for the tax years 1980-
20 1986 any tax return, return information, or other tax-related
21 material, held by the Secretary of the Treasury, related to
22 individuals and entities named by the select committee as
23 possible participants, beneficiaries, or intermediaries in the
24 transactions under investigation. As specified by section

1 6103(f)(3) of title 26, United States Code, such materials and
2 information shall be furnished in closed executive session.

3 (8) The select committee shall be authorized to respond
4 to any judicial or other process, or to make any applications
5 to court, upon consultation with the Speaker consistent with
6 rule L.

7 (9) The select committee may submit to standing com-
8 mittees, including the Permanent Select Committee on Intel-
9 ligence, specific matters within their jurisdiction, and may
10 request that such committees pursue such matters further.
11 Committees pursuing such requested inquiries may, in turn,
12 receive the continuing assistance, consistent with the select
13 committee's own jurisdiction, of the select committee's legal
14 process, personnel, and records. Committees which pursue or
15 have pursued inquiries, during the previous or current Con-
16 gress, within the subjects of the select committee investiga-
17 tion shall furnish the select committee with copies of all testi-
18 mony and documents.

19 (10) The select committee shall provide other commit-
20 tees and Members of the House with access to information
21 and proceedings, consistent with rule XLVIII(7)(c)(2): *Pro-*
22 *vided*, That the select committee may direct that particular
23 matters or classes of matter shall not be made available to
24 any person by its members, staff, or others, or may impose
25 any other restriction. The select committee may require its

1 staff to enter nondisclosure agreements, and its chairman, in
2 consultation with the ranking minority member, may require
3 others, such as counsel for witnesses, to do so. The Commit-
4 tee on Standards of Official Conduct may investigate any un-
5 authorized disclosure of such classified information by a
6 Member, officer, or employee of the House or other covered
7 person upon request of the select committee. If, at the con-
8 clusion of its investigation, the Committee on Standards of
9 Official Conduct determines that there has been a significant
10 unauthorized disclosure, it shall report its findings to the
11 House and recommend appropriate sanctions for the Member,
12 officer, employee, or other covered person consistent with
13 rule XLVIII(7)(e) and any committee restriction, including
14 nondisclosure agreements.

15 (11) Authorized expenses of the select committee for in-
16 vestigations and studies, including for the procurement of the
17 services of individual consultants or organizations thereof,
18 and for training of staff, shall be paid from the contingent
19 fund of the House upon vouchers signed by the chairman and
20 approved by the Speaker.

21 (12) The select committee shall report to the House the
22 final results of its investigation and study, together with such
23 recommendations for legislation or other matters as it deems
24 advisable, as soon as practicable during the present Con-
25 gress, and in no event later than October 30, 1987, unless

1 the House directs otherwise. Following the filing of its final
2 report, it shall have one month before the authority herein
3 shall expire in order to close its affairs, including provision of
4 assistance to committees pursuing remaining inquiries, trans-
5 mittal of records to other committees, and storage of its re-
6 maining records by the Clerk of the House, who may, as
7 directed by the select committee, store records in secure fa-
8 cilities of the intelligence community pursuant to agreement
9 retaining control of access by the House.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit SS

House Calendar No. 81

102D CONGRESS
1ST SESSION

H. RES. 258

[Report No. 102-296, Parts I and II]

Creating a Task Force of Members of the Foreign Affairs Committee To Investigate Certain Allegations Concerning the Holding of Americans as Hostages by Iran in 1980.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 23, 1991

Mr. HAMILTON (for himself, Mr. GEPHARDT, Mr. FASCELL, and Mr. DERRICK) submitted the following resolution; which was referred to the Committee on Rules

NOVEMBER 8, 1991

Reported from the Committee on Rules with an amendment and referred to the Committee on House Administration for a period ending not later than November 15, 1991, for consideration of such provisions of the resolution and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k) of rule X.

[Strike out all after the resolving clause and insert the part printed in italic]

NOVEMBER 15, 1991

Referral to the Committee on House Administration extended for a period ending not later than November 19, 1991

NOVEMBER 19, 1991

Reported from the Committee on House Administration with an amendment, referred to the House Calendar, and ordered to be printed

[Omit the part in black brackets and insert the part printed in boldface roman]

[For text of introduced resolution, see copy of resolution as introduced on October 23, 1991]

RESOLUTION

Creating a Task Force of Members of the Foreign Affairs Committee To Investigate Certain Allegations Concerning the Holding of Americans as Hostages by Iran in 1980.

1 *Resolved, That (1) There is hereby created a Task*
2 *Force of Members of the House Committee on Foreign Af-*
3 *fairs to Investigate Certain Allegations Concerning the*
4 *Holding of Americans as Hostages by Iran in 1980, to be*
5 *composed of thirteen Members of the House Committee on*
6 *Foreign Affairs to be appointed by the Speaker, one of*
7 *whom he shall designate as chairman. The Speaker shall,*
8 *with respect to the Republican Members of the Task Force,*
9 *make such appointments upon consultation with the Repub-*
10 *lican Leader. Any vacancy occurring in the membership of*
11 *the Task Force shall be filled in the same manner in which*
12 *the original appointment was made. The Task Force is,*
13 *with respect to the matters described below, authorized and*
14 *directed to conduct a full and complete investigation and*
15 *study, and to make such findings as are warranted, includ-*
16 *ing, where appropriate, a finding that no credible evidence*
17 *can be found to support particular allegations. The Task*
18 *Force is further authorized and directed to make such rec-*
19 *ommendations to the Committee on Foreign Affairs as the*
20 *Task Force deems appropriate, including those concerning*
21 *the amendment of existing legislation or the enactment of*

1 new legislation. The Task Force shall fulfill these functions
2 with respect to the following matters:

3 (a) Communications by or on behalf of the 1980
4 Reagan Presidential Campaign, or individuals rep-
5 resenting or associated with that campaign, with any
6 person or persons representing or associated with the
7 Iranian Government or those persons with Iran hold-
8 ing Americans as Hostages during 1979 and 1980;

9 (b) Any attempt or proposal to attempt, by the
10 1980 Reagan Presidential Campaign or persons rep-
11 resenting or associated with that campaign, to delay
12 the release of the Americans held as hostages in Iran;

13 (c) Any activity by the 1980 Reagan Presi-
14 dential Campaign to acquire or disseminate any in-
15 formation relating to actions being taken or consid-
16 ered by the United States Government in an effort to
17 obtain the release of the Americans being held as hos-
18 tages in Iran;

19 (d) Any sale or other transmittal of arms, spare
20 parts or other assistance to Iran, in 1980 or there-
21 after, by any person or nation, intended to delay the
22 release of the American held as Hostages by Iran, and
23 any approval, acquiescence or knowledge of such sales
24 or transmittals by the 1980 Reagan Presidential

1 Campaign or persons representing or associated with
2 that campaign; and

3 (e) Any actions taken to keep any communica-
4 tions or actions as described above, if any such com-
5 munications or actions took place, from being re-
6 vealed to the Government of the United States or the
7 American people.

8 (2) One-third of the members of the Task Force shall
9 constitute a quorum for the transaction of business other
10 than the reporting of a matter, which shall require a major-
11 ity of the Task Force to be actually present, except that the
12 Task Force may designate a lesser number, but not less than
13 two, as a quorum for the purpose of holding hearings to
14 take testimony. When a quorum for any particular purpose
15 is present, general proxies may be counted for that purpose.
16 The Task Force may sit while the House is reading a meas-
17 ure for amendment under the five-minute rule. The rules
18 of the House shall govern the Task Force where not incon-
19 sistent with this resolution. The Task Force shall adopt ad-
20 ditional written rules, which shall be public, to govern its
21 procedures, which shall not be inconsistent with this resolu-
22 tion or the rules of the House. Such rules may govern the
23 conduct of the depositions, interviews, and hearings of the
24 Task Force, including the persons present. Such rules shall

1 provide for the protection of classified information from un-
2 authorized disclosure.

3 (3) The Task Force is authorized to sit and act during
4 the present Congress at such times and places within the
5 United States, including any Commonwealth or possession
6 thereof, or in any other country, whether the House is in
7 session, or has adjourned; to require, by subpoena or other-
8 wise, the attendance and testimony of such witnesses, the
9 furnishing of information by interrogatory, and the produc-
10 tion of such books, records, correspondence, memoranda, pa-
11 pers, documents, calendars, recordings, data compilations
12 from which information can be obtained, tangible objects,
13 and other things and information of any kind as it deems
14 necessary, including all intelligence materials however clas-
15 sified, White House materials, campaign materials, mate-
16 rials of present and former government officials and mate-
17 rials pertaining to unvouchered expenditures or concerning
18 communications interceptions or surveillance; and to obtain
19 evidence in other appropriate countries with the coopera-
20 tion of their governments and by letters rogatory, commis-
21 sions, field depositions and other appropriate mechanisms.
22 Unless otherwise determined by the Task Force the chair-
23 man, upon consultation with the ranking Republican mem-
24 ber, on the Task Force, shall authorize and issue subpoenas.
25 Subpoenas shall be issued under the seal of the House and

1 attested by the Clerk, and may be served by any person des-
2 ignated by the chairman or any member. The Task Force
3 may request investigations, reports, and other assistance
4 from any agency of the executive, legislative, and judicial
5 branches of the Federal Government.

6 (4) The chairman, or in his absence a member des-
7 ignated by the chairman, shall preside at all meetings and
8 hearings of the Task Force. All meetings and hearings of
9 the Task Force shall be conducted in open session, unless
10 a majority of members of the Task Force voting, there being
11 in attendance the requisite number required for the purpose
12 of hearings to take testimony, vote to close a meeting or
13 hearing.

14 (5) The Chairman, upon consultation with the ranking
15 Republican member, may employ and fix the compensation
16 of such clerks, experts, consultants, technicians, attorneys,
17 investigators, and clerical and stenographic assistants as
18 it considers necessary to carry out the purposes of this reso-
19 lution. The Task Force shall be deemed a committee of the
20 House for all purposes of law, including House Rule XI
21 (2)(n), and sections 6005, 1505, and 1621 of title 18, section
22 192 of title 2, 1754(b)(1)(B)(ii) of title 22, and section
23 734(a) of title 31, United States Code. The Task Force may
24 reimburse the members of its staff for travel, subsistence,
25 and other necessary expenses incurred by them in the per-

1 *formance of the duties vested in the Task Force, other than*
2 *expenses in connection with meetings of the Task Force held*
3 *in the District of Columbia.*

4 (6) *Unless otherwise determined by the Task Force the*
5 *chairman, upon consultation with the ranking Republican*
6 *member, or the Task Force, may authorize the taking of*
7 *affidavits, and of depositions pursuant to notice or sub-*
8 *poena, by a Member or by designated staff, under oath ad-*
9 *ministered by a Member or a person otherwise authorized*
10 *by law to administer oaths. Disposition and affidavit testi-*
11 *mony shall be deemed to have been taken in Washington,*
12 *DC, before the Task Force once filed there with the clerk*
13 *of the Task Force for the Task Force's use. Depositions shall*
14 *be deemed to be taken in Executive Session.*

15 (7) *The Task Force shall be authorized to respond to*
16 *any judicial or other process, or to make any applications*
17 *to court, upon consultation with the Speaker consistent with*
18 *rule L.*

19 (8) *The Task Force shall provide other committees and*
20 *Members of the House with access to information and pro-*
21 *ceedings, consistent with rule XLVIII(7)(c): Provided, That*
22 *the Task Force may direct that particular matters or classes*
23 *of matter shall not be made available to any person by its*
24 *members, staff, or others, or may impose any other restric-*
25 *tion. The Task Force may require its staff to enter*

1 *nondisclosure agreements and its chairman, in consultation*
2 *with the ranking Republican member, may require others,*
3 *such as counsel for witnesses, to do so: Provided further,*
4 *That the Task Force shall, as appropriate, provide access*
5 *to information and proceedings to the Speaker, the Majority*
6 *Leader, the Republican Leader, and their appropriately*
7 *cleared and designated staff.*

8 (9) *Authorized expenses of the Task Force for investiga-*
9 *tions and studies, including for the procurement of the serv-*
10 *ices of individual consultants or organizations thereof, and*
11 *for training of staff, shall be paid from the contingent fund*
12 *of the House upon vouchers signed by the chairman and*
13 *approved by the [Speaker] **Chairman of the Com-***
14 ***mittee on House Administration.***

15 (10) *By July 1, 1992, the Task Force shall report to*
16 *the House the status of its investigation. With respect to*
17 *this and any other report of the Task Force, including its*
18 *final report, the report shall be accompanied by supple-*
19 *mental or additional minority views.*

20 (11) *At the conclusion of the existence of the Task Force*
21 *all records of the Task Force shall become the records of*
22 *the Committee on Foreign Affairs except for those records*
23 *relating to intelligence matters which shall, upon the Task*
24 *Force's designation, become the records of the House Perma-*
25 *nent Select Committee on Intelligence.*

House Calendar No. 81

102D CONGRESS
1ST SESSION

H. RES. 258

[Report No. 102-296, Parts I and II]

RESOLUTION

Creating a Task Force of Members of the Foreign
Affairs Committee To Investigate Certain Allega-
tions Concerning the Holding of Americans as
Hostages by Iran in 1980.

NOVEMBER 19, 1991

Reported from the Committee on House Administration
with an amendment, referred to the House Calendar,
and ordered to be printed

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit TT

100th Congress
1st Session

COMMITTEE PRINT

R U L E S
of the
**SELECT COMMITTEE TO INVESTIGATE
COVERT ARMS TRANSACTIONS
WITH IRAN**

Adopted January 21, 1987 as amended April 29, 1987



Printed for the use of the Select Committee to Investigate Covert Arms
Transactions with Iran

U.S. GOVERNMENT PRINTING OFFICE

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WASHINGTON : 1987

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U.S. Government Printing Office, Washington, DC 20402

H962-8

**SELECT COMMITTEE TO INVESTIGATE COVERT ARMS TRANSACTIONS
WITH IRAN**

LEE H. HAMILTON, Indiana, *Chairman*
DANTE B. FASCELL, Florida, *Vice Chairman*

THOMAS S. FOLEY, Washington
PETER W. RODINO, Jr., New Jersey
JACK BROOKS, Texas
LOUIS STOKES, Ohio
LES ASPIN, Wisconsin
EDWARD P. BOLAND, Massachusetts
ED JENKINS, Georgia

DICK CHENEY, Wyoming
WM. S. BROOMFIELD, Michigan
HENRY J. HYDE, Illinois
JIM COURTER, New Jersey
BILL McCOLLUM, Florida
MICHAEL DeWINE, Ohio

(11)

RULES OF PROCEDURE OF THE HOUSE SELECT COMMITTEE TO INVESTIGATE COVERT ARMS TRANSACTIONS WITH IRAN

RULE 1. RULES

1.1 The provisions of House Resolution 12, 100th Congress, 1st Session, establishing this committee, and the Rules of the House of Representatives where not inconsistent therewith, are the rules of the committee, together with these Rules.

1.2 These Rules may be modified, amended, or repealed by the committee, provided that a notice in writing of the proposed changes has been given to each member at least 48 hours prior to the meeting at which action thereon is to be taken. Notwithstanding the provisions of Rule 8, proxies may not be used in any vote to modify, amend, adopt, or repeal any rule of the committee. The changes shall become effective immediately and shall be published in the Congressional Record.

RULE 2. CONVENING OF MEETINGS

2.1 The committee may schedule a regular day and hour to meet.

2.2 The chairman shall have authority, upon proper notice, to call such additional meetings of the committee as he may deem necessary, and to dispense with regular meetings when, in his judgment, there is no need therefor, and may delegate such authority to the vice chairman or to any other member of the committee.

2.3 A majority of the members of the committee may call a special meeting for a specific matter pursuant to the procedures specified in House Rule XI(2)(c)(2).

2.4 In the case of any meeting of the committee, other than a regularly scheduled meeting, the clerk of the committee shall notify every member of the committee of the time and place of the meeting and shall give reasonable notice which, except in extraordinary circumstances, shall be at least 24 hours in advance of any meeting held in Washington, D.C., and at least 48 hours in the case of any meeting held outside Washington, D.C.

RULE 8. MEETING PROCEDURES

8.1 Five members of the select committee shall constitute a quorum for the transaction of business other than the reporting of a matter, which shall require a majority of the committee to be actually present, except that two members shall constitute a quorum for the purpose of hearings to take testimony.

8.2 All meetings or hearings of the committee shall be conducted in open session, unless a majority of members of the select com-

mittee voting, there being in attendance at least two members of the committee, vote to close a meeting or hearing.

3.3 When a quorum for any particular purpose is present, general proxies may be counted for that purpose. Proxies may be general or may be limited to specific matters. A vote by any member of the committee with respect to any matter being considered may be cast by proxy if the proxy authorization is in writing, asserts that the member is absent on official business or is otherwise unable to be present, and designates the member or alternate member who is to execute the proxy authorization. Each proxy to be effective shall be signed by the member assigning his vote and shall contain the date and time that the proxy is signed. Proxies shall be effective at the session for which they are provided, or if that session is rescheduled, at the rescheduled session. Proxies shall not reduce the quorum required for reporting contempt matters and will not be counted towards the two-thirds minimum requirement pursuant to 18 U.S.C. § 6005 needed to seek an immunity order.

3.4 It shall be the duty of a staff officer designated by the chairman to keep or cause to be kept a stenographic record of all committee proceedings. All transcripts, affidavits, and depositions, *and copies and extracts thereof*, shall be the property of the select committee, and not of the witnesses.

3.5 The chairman, or in his absence the vice chairman, or in their absence a member designated by the chairman, shall preside over all meetings and hearings of the committee.

RULE 4. SUBPOENAS

4.1 Unless otherwise determined by the select committee the chairman, upon consultation with the ranking minority member, shall authorize and issue subpoenas. In addition, the select committee may itself vote to authorize and issue subpoenas. Subpoenas shall be issued under the seal of the House and attested by the Clerk, and may be served by any persons designated by the chairman or any member. Subpoenas shall be issued upon the chairman's signature or that of a member designated by him or by the committee.

4.2 Orders for the furnishing of information by interrogatory, the inspecting of locations and systems of records upon notice except in exigent circumstances, the obtaining of evidence in other countries by means of letters rogatory or otherwise, and the other process for obtaining information available to the committee, shall be authorized and issued by the chairman, upon consultation with the ranking minority member, or by the select committee. Requests for investigations, reports, and other assistance from any agency of the executive, legislative, and judicial branches of the federal government, shall be made by the chairman, upon consultation with the ranking minority member, or by the committee.

4.3 Provisions may be included in the process of the committee to prevent the disclosure of committee demands for information, when deemed necessary for the security of information or the progress of the investigation by the chairman or member designated by him or the committee, such as requiring that companies re-

ceiving subpoenas for financial or toll records make no disclosure to customers regarding the subpoena for ninety days or prohibiting the revelation by witnesses and their counsel of committee inquiries.

4.4 A subpoena duces tecum may be issued whose return shall occur at a time and place other than that of a regularly scheduled meeting. Upon the return of such a subpoena, the chairman or vice chairman, or in their absence the ranking member of the majority party who is present, on two hours' telephonic notice to all other committee members, may convene a hearing for the sole purpose of elucidating further information about the return on the subpoena and deciding any objections to the subpoena.

RULE 5. BROADCASTING, TELEVISION, AND PHOTOGRAPHY

5.1 Whenever any hearing or meeting conducted by the committee is open to the public, the committee may permit that hearing or meeting to be covered, in whole or in part, by television broadcast, radio broadcast, and still photography, or by any of such methods of coverage, under the following rules:

(1) If the television or radio coverage of the hearing or meeting is to be presented to the public as live coverage, that coverage shall be conducted and presented without commercial sponsorship.

(2) Broadcast and photographic coverage of testimony of subpoenaed witnesses will, at their request, not be permitted, unless a majority of members of the committee voting, there being in attendance the requisite number required for the conduct of business, vote otherwise.

(3) The chairman may set limits on the number of television cameras, all operating from fixed positions, that shall be permitted in a hearing room. The allocation among the television media of the positions of the number of television cameras permitted in a hearing room shall be in accordance with fair and equitable procedures devised by the Executive Committee of the Radio and Television Correspondents' Galleries.

(4) Television cameras shall be placed so as not to obstruct in any way the space between any witness giving evidence or testimony and any member of the committee, or the visibility of that witness and that member to each other.

(5) Television cameras shall not be placed in positions which obstruct unnecessarily the coverage of the hearing or meeting by the other media.

(6) Equipment necessary for coverage by the television and radio media shall not be installed in, or removed from the hearing room while the committee is in session.

(7) Floodlights, spotlights, and flashguns shall not be used in providing any method of coverage of the hearing or meeting, except that the television media may install additional lighting in the hearing room, without cost to the Government, in order to raise the ambient lighting level in the hearing room to the lowest level necessary to provide adequate television coverage of the hearing at the current state of the art of television coverage.

(8) The chairman may set limits on the number of press photographers permitted to cover a hearing or meeting by still photography. In the selection of these photographers, preference shall be given to photographers from Associated Press Photos and United Press International Newspictures. If request is made by more than the limit set by the chairman for coverage of the hearing by still photography, that coverage shall be made on the basis of a fair and equitable pool arrangement devised by the Standing Committee of Press Photographers.

(9) Photographers shall not position themselves, at any time during the course of the hearing or meeting, between the witness table and the committee members.

(10) Photographers shall not place themselves in positions which obstruct unnecessarily the coverage of the hearing or meeting by the other media.

(11) Personnel providing coverage by the television and radio media shall be then currently accredited to the Press Photographers' Gallery.

(12) Personnel providing coverage by still photography shall be then currently accredited to the Press Photographers' Gallery.

(13) Personnel providing coverage by the television and radio media and by still photography shall conduct themselves and their coverage activities in an orderly and unobtrusive manner.

RULE 6. TAKING OF TESTIMONY AT HEARINGS

6.1 Witnesses required to appear before the committee shall be given, absent extraordinary circumstances, at least forty-eight hours' notice and all witnesses shall be furnished with a copy of these rules.

6.2 All witnesses at public or executive hearings who testify to matters of fact shall be sworn unless the committee provides otherwise.

6.3 Members of the committee who so desire shall have not to exceed five minutes to interrogate each witness until such time as each member has had an opportunity to interrogate such witness. The presiding member, in consultation with the ranking minority member present, may establish a format for additional or sustained questioning of any witness by the chair or otherwise.

6.4 Personal counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing, and to advise such witness while he is testifying on his legal rights. The presiding member may require that the witness not be accompanied by anyone except such personal counsel.

6.5 The chairman, upon consultation with the ranking minority member, if he deems it necessary to maintain the security of classified subjects being discussed at closed hearings, may require that any personal counsel be qualified by having appropriate clearance, and that the witness or counsel, or both, execute nondisclosure agreements with the committee.

6.6 A witness who is unable to obtain counsel, or to obtain counsel with requisite clearance, may inform the committee of such fact, and if, consistent with the notice given under section 6.1 hereof the committee is so informed at least 24 hours prior to the witness' appearance, the committee shall then endeavor to obtain voluntary counsel for the witness. Such counsel shall act solely for the witness and not the committee. Failure to obtain qualified counsel will not excuse the witness from appearing and testifying.

6.7 Counsel shall conduct themselves in an ethical and professional manner. The presiding member may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings, and the committee may cite the offender to the House for contempt. If counsel is excluded, the provisions of Rule 6.6 hereof for a witness who is unable to obtain qualified counsel shall apply.

6.8 Any witness desiring to make an introductory statement in executive or public hearings shall file a copy of such statement with the chairman or clerk of the committee 48 hours in advance of the hearings at which the statement is to be presented unless the presiding member waives this requirement. The presiding member shall reduce the 48 hours proportionately for witnesses who receive less than 72 hours' notice of the hearing. The presiding member shall determine whether such statement may be read or placed in the record of the hearing.

6.9 An accurate stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. A witness may obtain a transcript copy of his testimony given at a public session. If the witness testified at an executive session, the record of his testimony shall be made available for inspection by the witness and his counsel, and the chairman may authorize provision of a copy to the witness or his counsel if such testimony does not include classified information.

6.10 Whenever it is asserted that the evidence or testimony at any investigatory hearings may tend to defame, degrade, or incriminate any person, the committee shall afford such person an opportunity voluntarily to appear as a witness, and receive and dispose of requests from such person to subpoena additional witnesses. Otherwise, the chairman shall receive and the committee shall dispose of requests to subpoena additional witnesses. In the case of persons so mentioned or identified at public sessions, a request to appear personally or to subpoena additional witnesses before the committee shall be considered untimely if it is not received by the chairman in writing on or before fifteen days subsequent to the day on which said person's name was mentioned or otherwise specifically identified during a public hearing held before the committee, unless the chairman waives this requirement.

6.11 No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee, which shall require a vote, counting proxy votes, of a majority of the members of the committee.

6.12 In the presiding member's discretion, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The presiding member may condition the filing of such a sworn statement upon the offeror's agreeing to appear

personally before the committee and to testify concerning the matters contained in his sworn statement, as well as any other matters related to the subject of the investigation before the committee.

RULE 7. AFFIDAVITS AND DEPOSITIONS

7.1 Unless otherwise determined by the select committee the chairman, upon consultation with the ranking minority member, or the select committee, may authorize the taking of affidavits, and of depositions pursuant to notice or subpoena. Such authorization may occur on a case-by-case basis, or by instructions to take a series of affidavits or depositions. The chairman may either issue the deposition notices himself, or direct the chief counsel to do so. Notices for the taking of depositions shall specify a time and place for examination. Affidavits and depositions shall be taken under oath administered by a member or a person otherwise authorized by law to administer oaths.

7.2 The committee shall not initiate procedures leading to contempt proceedings in the event a witness fails to appear at a deposition unless the deposition notice was accompanied by a committee subpoena authorized and issued by the chairman or the committee pursuant to Rule 4 hereof regarding subpoenas.

7.3 Witnesses may be accompanied at a deposition by personal counsel to advise them of their rights, subject to the provisions of Rules 6.4, 6.5, 6.6 and 6.7 hereof. Absent special permission or instructions from the chairman, no one may be present in depositions except members, staff designated by the chairman, an official reporter, the witness and any personal counsel; observers or counsel for other persons or for the agencies under investigation may not attend.

7.4 Witnesses shall be examined in depositions by a member or members or by staff designated by the chairman. Objections by the witness as to the form of questions shall be noted for the record. If a witness objects to a question and refuses to answer, the members or staff may proceed with the deposition, or may obtain, at that time or at a subsequent time, a ruling on the objection by telephone or otherwise from the chairman or his designee. The committee shall not initiate procedures leading to contempt for refusals to answer questions at a deposition unless the witness refuses to testify after his objection has been overruled and after he has been ordered and directed to answer by the chairman or his designee upon consultation with the ranking minority member or his designee.

7.5 The committee staff shall insure that the testimony is either transcribed or electronically recorded, or both. If a witness' testimony is transcribed, he shall be furnished with an opportunity to review a copy. No later than five days thereafter, the staff shall enter the changes, if any, requested by the witness, with a statement of the witness' reasons for the changes, and the witness shall be instructed to sign the transcript. The individual administering the oath, if other than a Member, shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall be filed, together with any electronic recording,

with the clerk of the committee in Washington, D.C. Affidavits and depositions shall be deemed to have been taken in Washington, D.C. once filed there with the clerk of the committee for the committee's use.

7.6 Unless otherwise directed by the committee, all depositions, affidavits, and other materials received in the investigation shall be considered nonpublic until received by the select committee. Once received by the select committee, use of such materials shall be governed by the select committee rules. All such material shall, unless otherwise directed by the committee, be available for use by the members of the select committee in open session; provided, that classified information or material shall not be used in open session except as permitted by the committee, which shall require a vote, counting proxy votes, of a majority of the members of the committee.

RULE 8. PROCEDURES FOR HANDLING OF CLASSIFIED OR SENSITIVE MATERIALS

8.1 Committee staff offices shall operate under strict security precautions. The chairman shall request the Permanent Select Committee on Intelligence and the Clerk and Sergeant at Arms to provide assistance necessary to insure strict security. Sensitive or classified documents and material shall be segregated and stored in an appropriately secure storage area. They may be examined only at secure reading facilities. Copying, duplicating, or removal from the committee offices of such documents and other materials are prohibited except as is necessary for authorized use in, or preparation for, interviews, depositions, or committee meetings or hearings.

8.2 Each member of the committee shall at all times have access to all papers and other materials received from any source. The chief counsel or staff director, as designated by the chairman, shall be responsible for the control, under appropriate security procedures, of all classified papers and other classified materials in the possession of the committee, and for the maintenance, under such procedures, of a registry which will number and identify all such materials. Such registry shall be available to any member of the committee.

8.3 Access by staff to classified information supplied to the committee shall be limited on a need-to-know basis, pursuant to instructions of the chairman, acting in consultation with the ranking minority member, either on a case-by-case basis or by general instructions to the chief counsel or staff director. All staff with such access shall be required to have appropriate security clearance. The chief counsel or staff director shall maintain a list of those staff, including associate staff, who may attend executive sessions and have access to classified materials. The names of such associate staff shall be entered by the chief counsel or staff director on the list only after the committee member has designated the staff members in writing, and the staff members have been determined by the chairman, in consultation with the ranking minority member, to have an appropriate security clearance.

8.4 The chairman, in consultation with the ranking minority member, may limit staff attendance at certain executive sessions, and staff access to certain categories of classified materials, which involve matters of particularly high sensitivity.

8.5 Members who are not members of the committee shall be granted access to such hearings, records, data, charts and files of the committee and shall be admitted on a nonparticipatory basis to hearings of the committee which involve classified material, apart from material otherwise restricted by the committee, on the basis of the following provisions:

(1) Members who desire to examine materials in the possession of the committee or to attend committee hearings on a nonparticipatory basis should notify the clerk of the committee in writing.

(2) Each such request by a member must be considered by the committee, a quorum for the reporting of a matter being present, at the earliest practicable opportunity. The committee must determine by record vote whatever action it deems necessary in light of all the circumstances of each individual request. The committee shall take into account in its deliberations, such considerations as the sensitivity of the information sought to the national defense or the confidential conduct of the foreign relations of the United States, the likelihood of its being directly or indirectly disclosed, the jurisdictional interest of the member making the request and such other concerns—constitutional or otherwise—as affect the public interest of the United States. Such actions as the committee may take include, but are not limited to: (i) approving the request, in whole or part; (ii) denying the request; (iii) providing in different form than requested information or material which is the subject of the request.

(3) In matters touching on such requests, the committee may, in its discretion, consult the Director of Central Intelligence and such other officials as it may deem necessary.

(4) In the event that the member making the request in question does not accede to the determination or any part thereof of the committee as regards the request, that member should notify the committee in writing of the grounds for such disagreement. The committee shall subsequently consider the matter and decide, by record vote, what further action or recommendation, if any, it will take.

(5) Members examining material pursuant to this rule shall be prohibited to disclose the material further, and every member shall be furnished a copy of this rule prior to examining such material.

8.6 The committee may direct that particular matters or classes of matter shall not be made available to any person by its members, staff, or others, or may impose any other restriction. Classified information or classified material possessed or controlled by the committee, or information deemed sensitive by the committee shall not be made available to any person by its members or staff except by vote of the committee, which shall require a vote, counting proxy votes, of a majority of the members of the committee.

8.7 The chairman and ranking minority member shall be authorized to insure that the Speaker and Minority Leader are fully informed regarding the investigation, any other provisions of these rules notwithstanding.

RULE 9. STAFF, DETAILEES, AND CONSULTANTS

9.1 All staff of the committee shall be appointed by the chairman, either by hiring, contracting, detailing, or pursuant to Rule 9.4. Upon termination of employment by the committee, each member of the staff, or consultant, shall surrender all classified and other material relating to the work of the committee which came into his possession while in the employ of the committee.

9.2 In the event of an unauthorized release of information or other violation the chairman or the committee may refer the matter to the House Committee on Standards of Official Conduct. Nothing in these rules shall be construed to abridge the right of a Member to make or transmit a complaint to the Committee on the Standards of Official Conduct, or shall be construed to expand the authority of that committee, over matters related to the conduct of this committee's investigation pursuant to House Resolution 12, beyond what that resolution provides. The employment of any member of the staff or consultant who fails to conform to any of these Rules may be immediately terminated.

9.3 The chairman shall have the authority to utilize the services, information, facilities, and personnel of the departments and agencies of the government, including personnel of the General Accounting Office pursuant to section 784(a) of Title 81, United States Code. Requests by the chairman may specify by name, or describe otherwise, the personnel to be detailed.

9.4 Upon request of the chairman, staff of the House, or of House or joint committees, at the direction of their members, committee chairmen, or the Speaker, as appropriate, may serve as associate staff to the select committee for designated purposes starting with their appointment by the chairman.

9.5 All travel, including foreign travel, shall be approved by the chairman.

9.6 The chairman shall have the authority to procure the temporary or intermittent services of experts or consultants or organizations thereof to make studies or assist or advise the subcommittee with respect to any matter under investigation. Associate staff, government personnel detailed to the subcommittee, and consultants, shall be deemed staff of the select committee to the extent necessary for the purposes of their designated association, detail, or consultancy, including the purposes of interrogation of witnesses and security of information under Rules 5, 6, 7, 8 and 9 hereof.

9.7 The chairman, upon consultation with the ranking minority member, may establish such additional personnel, physical, communications, and document security procedures, not inconsistent with these rules, as he deems necessary to safeguard classified information or materials possessed or controlled by the select committee.

9.8 No member of the committee staff shall be employed by or detailed or otherwise assigned to the committee unless and until he

agrees in writing, as a condition of employment, with regard to any classified information which comes into such person's possession either while a member of the committee staff or by virtue of such position:

(a) not to disclose such information either while a member of the committee staff or at any time thereafter;

(b) in response to any request for testimony about such information, to provide notice to, and not to disclose such information

except as directed by the committee in accordance with these rules, or after the committee's termination, in such manner as may be determined by the House.

RULE 10. JOINT HEARINGS

10.1 The Select Committee may conduct hearings jointly with the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition.

10.2 Rules 1.3, 2, and 5 of the Senate Select Committee, to the extent that they are inconsistent with the rules of this Committee, shall govern hearings conducted jointly by the two Committees, when such hearings are held in facilities provided by the Senate.

10.3 Notwithstanding Rule 10.2, all such joint hearings shall for all purposes be considered hearings of the House Select Committee.



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit UU

102^D CONGRESS
2^d Session

TASK FORCE PRINT

U.S. HOUSE OF REPRESENTATIVES

RULES

OF THE

**TASK FORCE TO INVESTIGATE CERTAIN
ALLEGATIONS CONCERNING THE
HOLDING OF AMERICAN HOSTAGES BY
IRAN IN 1980
("OCTOBER SURPRISE TASK FORCE")**



ADOPTED MARCH 11, 1992

Printed for the use of the October Surprise Task Force

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**TASK FORCE TO INVESTIGATE CERTAIN ALLEGATIONS CONCERNING
THE HOLDING OF AMERICAN HOSTAGES BY IRAN IN 1980 ("OCTOBER
SURPRISE TASK FORCE")**

LEE H. HAMILTON, Indiana, *Chairman*

HENRY J. HYDE, Illinois, *Ranking Republican Member*

STEPHEN J. SOLARZ, New York

JIM LEACH, Iowa

SAM GEJDENSON, Connecticut

OLYMPIA J. SNOWE, Maine

MERVYN M. DYMALLY, California

DOUG BEREUTER, Nebraska

ROBERT G. TORRICELLI, New Jersey

PORTER J. GOSS, Florida

HOWARD L. BERMAN, California

EDWARD F. FEIGHAN, Ohio

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RICHARD J. LEON, *Chief Minority Counsel*

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House Calendar No. 81

102D CONGRESS
1ST SESSION

H. RES. 258

[Report No. 102-296, Parts I and II]

Creating a Task Force of Members of the Foreign Affairs Committee To Investigate Certain Allegations Concerning the Holding of Americans as Hostages by Iran in 1980.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 23, 1991

Mr. HAMILTON (for himself, Mr. GEPHARDT, Mr. FASCELL, and Mr. DERRICK) submitted the following resolution, which was referred to the Committee on Rules

NOVEMBER 8, 1991

Reported from the Committee on Rules with an amendment and referred to the Committee on House Administration for a period ending not later than November 15, 1991, for consideration of such provisions of the resolution and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k) of rule X.

[Strike out all after the resolving clause and insert the part printed in *italics*]

NOVEMBER 15, 1991

Referral to the Committee on House Administration extended for a period ending not later than November 19, 1991

NOVEMBER 19, 1991

Reported from the Committee on House Administration with an amendment, referred to the House Calendar, and ordered to be printed

[Omit the part in black brackets and insert the part printed in boldface roman]

[For text of introduced resolution, see copy of resolution as introduced on October 23, 1991]

RESOLUTION

Creating a Task Force of Members of the Foreign Affairs Committee To Investigate Certain Allegations Concerning the Holding of Americans as Hostages by Iran in 1980.

1 *Resolved, That (1) There is hereby created a Task*
2 *Force of Members of the House Committee on Foreign Af-*
3 *fairs to Investigate Certain Allegations Concerning the*
4 *Holding of Americans as Hostages by Iran in 1980, to be*
5 *composed of thirteen Members of the House Committee on*
6 *Foreign Affairs to be appointed by the Speaker, one of*
7 *whom he shall designate as chairman. The Speaker shall,*
8 *with respect to the Republican Members of the Task Force,*
9 *make such appointments upon consultation with the Repub-*
10 *lican Leader. Any vacancy occurring in the membership of*
11 *the Task Force shall be filled in the same manner in which*
12 *the original appointment was made. The Task Force is,*
13 *with respect to the matters described below, authorized and*
14 *directed to conduct a full and complete investigation and*
15 *study, and to make such findings as are warranted, includ-*
16 *ing, where appropriate, a finding that no credible evidence*
17 *can be found to support particular allegations. The Task*
18 *Force is further authorized and directed to make such rec-*
19 *ommendations to the Committee on Foreign Affairs as the*
20 *Task Force deems appropriate, including those concerning*
21 *the amendment of existing legislation or the enactment of*

1 *new legislation. The Task Force shall fulfill these functions*
2 *with respect to the following matters:*

3 (a) *Communications by or on behalf of the 1980*
4 *Reagan Presidential Campaign, or individuals rep-*
5 *resenting or associated with that campaign, with any*
6 *person or persons representing or associated with the*
7 *Iranian Government or those persons with Iran hold-*
8 *ing Americans as Hostages during 1979 and 1980;*

9 (b) *Any attempt or proposal to attempt, by the*
10 *1980 Reagan Presidential Campaign or persons rep-*
11 *resenting or associated with that campaign, to delay*
12 *the release of the Americans held as hostages in Iran;*

13 (c) *Any activity by the 1980 Reagan Presi-*
14 *dential Campaign to acquire or disseminate any in-*
15 *formation relating to actions being taken or consid-*
16 *ered by the United States Government in an effort to*
17 *obtain the release of the Americans being held as hos-*
18 *tages in Iran;*

19 (d) *Any sale or other transmittal of arms, spare*
20 *parts or other assistance to Iran, in 1980 or there-*
21 *after, by any person or nation, intended to delay the*
22 *release of the American held as Hostages by Iran, and*
23 *any approval, acquiescence or knowledge of such sales*
24 *or transmittals by the 1980 Reagan Presidential*

1 *Campaign or persons representing or associated with*
2 *that campaign; and*

3 *(e) Any actions taken to keep any communica-*
4 *tions or actions as described above, if any such com-*
5 *munications or actions took place, from being re-*
6 *vealed to the Government of the United States or the*
7 *American people.*

8 *(2) One-third of the members of the Task Force shall*
9 *constitute a quorum for the transaction of business other*
10 *than the reporting of a matter, which shall require a major-*
11 *ity of the Task Force to be actually present, except that the*
12 *Task Force may designate a lesser number, but not less than*
13 *two, as a quorum for the purpose of holding hearings to*
14 *take testimony. When a quorum for any particular purpose*
15 *is present, general proxies may be counted for that purpose.*
16 *The Task Force may sit while the House is reading a meas-*
17 *ure for amendment under the five-minute rule. The rules*
18 *of the House shall govern the Task Force where not incon-*
19 *sistent with this resolution. The Task Force shall adopt ad-*
20 *ditional written rules, which shall be public, to govern its*
21 *procedures, which shall not be inconsistent with this resolu-*
22 *tion or the rules of the House. Such rules may govern the*
23 *conduct of the depositions, interviews, and hearings of the*
24 *Task Force, including the persons present. Such rules shall*

5

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1 provide for the protection of classified information from un-
2 authorized disclosure.

3 (3) *The Task Force is authorized to sit and act during*
4 *the present Congress at such times and places within the*
5 *United States, including any Commonwealth or possession*
6 *thereof, or in any other country, whether the House is in*
7 *session, or has adjourned; to require, by subpoena or other-*
8 *wise, the attendance and testimony of such witnesses, the*
9 *furnishing of information by interrogatory, and the produc-*
10 *tion of such books, records, correspondence, memoranda, pa-*
11 *pers, documents, calendars, recordings, data compilations*
12 *from which information can be obtained, tangible objects,*
13 *and other things and information of any kind as it deems*
14 *necessary, including all intelligence materials however clas-*
15 *sified, White House materials, campaign materials, mate-*
16 *rials of present and former government officials and mate-*
17 *rials pertaining to unvouchered expenditures or concerning*
18 *communications interceptions or surveillance; and to obtain*
19 *evidence in other appropriate countries with the coopera-*
20 *tion of their governments and by letters rogatory, commis-*
21 *sions, field depositions and other appropriate mechanisms.*
22 *Unless otherwise determined by the Task Force the chair-*
23 *man, upon consultation with the ranking Republican mem-*
24 *ber, on the Task Force, shall authorize and issue subpoenas.*
25 *Subpoenas shall be issued under the seal of the House and*

1 attested by the Clerk, and may be served by any person des-
2 igned by the chairman or any member. The Task Force
3 may request investigations, reports, and other assistance
4 from any agency of the executive, legislative, and judicial
5 branches of the Federal Government.

6 (4) The chairman, or in his absence a member des-
7 igned by the chairman, shall preside at all meetings and
8 hearings of the Task Force. All meetings and hearings of
9 the Task Force shall be conducted in open session, unless
10 a majority of members of the Task Force voting, there being
11 in attendance the requisite number required for the purpose
12 of hearings to take testimony, vote to close a meeting or
13 hearing.

14 (5) The Chairman, upon consultation with the ranking
15 Republican member, may employ and fix the compensation
16 of such clerks, experts, consultants, technicians, attorneys,
17 investigators, and clerical and stenographic assistants as
18 it considers necessary to carry out the purposes of this reso-
19 lution. The Task Force shall be deemed a committee of the
20 House for all purposes of law, including House Rule XI
21 (2)(n), and sections 6005, 1505, and 1621 of title 18, section
22 192 of title 2, 1754(b)(1)(B)(ii) of title 22, and section
23 734(a) of title 31, United States Code. The Task Force may
24 reimburse the members of its staff for travel, subsistence,
25 and other necessary expenses incurred by them in the per-

1 *formance of the duties vested in the Task Force, other than*
2 *expenses in connection with meetings of the Task Force held*
3 *in the District of Columbia.*

4 (6) *Unless otherwise determined by the Task Force the*
5 *chairman, upon consultation with the ranking Republican*
6 *member, or the Task Force, may authorize the taking of*
7 *affidavits, and of depositions pursuant to notice or sub-*
8 *poena, by a Member or by designated staff, under oath ad-*
9 *ministered by a Member or a person otherwise authorized*
10 *by law to administer oaths. Disposition and affidavit testi-*
11 *mony shall be deemed to have been taken in Washington,*
12 *DC, before the Task Force once filed there with the clerk*
13 *of the Task Force for the Task Force's use. Depositions shall*
14 *be deemed to be taken in Executive Session.*

15 (7) *The Task Force shall be authorized to respond to*
16 *any judicial or other process, or to make any applications*
17 *to court, upon consultation with the Speaker consistent with*
18 *rule L.*

19 (8) *The Task Force shall provide other committees and*
20 *Members of the House with access to information and pro-*
21 *ceedings, consistent with rule XLVIII(7)(c): Provided, That*
22 *the Task Force may direct that particular matters or classes*
23 *of matter shall not be made available to any person by its*
24 *members, staff, or others, or may impose any other restric-*
25 *tion. The Task Force may require its staff to enter*

1 *nondisclosure agreements and its chairman, in consultation*
2 *with the ranking Republican member, may require others,*
3 *such as counsel for witnesses, to do so: Provided further,*
4 *That the Task Force shall, as appropriate, provide access*
5 *to information and proceedings to the Speaker, the Majority*
6 *Leader, the Republican Leader, and their appropriately*
7 *cleared and designated staff.*

8 (9) *Authorized expenses of the Task Force for investiga-*
9 *tions and studies, including for the procurement of the serv-*
10 *ices of individual consultants or organizations thereof, and*
11 *for training of staff, shall be paid from the contingent fund*
12 *of the House upon vouchers signed by the chairman and*
13 *approved by the [Speaker] **Chairman of the Com-***
14 ***mittee on House Administration.***

15 (10) *By July 1, 1992, the Task Force shall report to*
16 *the House the status of its investigation. With respect to*
17 *this and any other report of the Task Force, including its*
18 *final report, the report shall be accompanied by supple-*
19 *mental or additional minority views.*

20 (11) *At the conclusion of the existence of the Task Force*
21 *all records of the Task Force shall become the records of*
22 *the Committee on Foreign Affairs except for those records*
23 *relating to intelligence matters which shall, upon the Task*
24 *Force's designation, become the records of the House Perma-*
25 *nent Select Committee on Intelligence.*

PART 2—RULES OF PROCEDURE OF THE TASK FORCE OF MEMBERS OF THE HOUSE COMMITTEE ON FOREIGN AFFAIRS TO INVESTIGATE CERTAIN ALLEGATIONS CONCERNING THE HOLDING OF AMERICANS AS HOSTAGES BY IRAN IN 1980

[“October Surprise Task Force”]

Rule 1. Rules

1.1 The provisions of House Resolution 258, 102nd Congress, 2nd Session, establishing this Task Force, and the Rules of the House of Representatives where not inconsistent therewith, are the rules of the Task Force, together with these Rules.

1.2 These Rules may be modified, amended, or repealed by the Task Force, provided that a notice in writing of the proposed changes has been given to each member at least 48 hours prior to the meeting at which action thereon is to be taken. Notwithstanding the provisions of Rule 3, proxies may not be used in any vote to modify, amend, adopt, or repeal any rule of the Task Force. The changes shall become effective immediately and shall be published in the Congressional Record.

Rule 2. Convening of Meetings

2.1 The Task Force may schedule a regular day and hour to meet.

2.2 The chairman shall have authority, upon proper notice, to call such additional meetings of the Task Force as he may deem necessary, and to dispense with regular meetings when, in his judgment, there is no need therefore, and may delegate such authority to any other member of the Task Force.

2.3 A majority of the members of the Task Force may call a special meeting for a specific matter pursuant to the procedures specified in House Rule XI(2)(c)(2).

2.4 In the case of any meeting of the Task Force, other than a regularly scheduled meeting, the clerk of the Task Force shall notify each member of the Task Force of the time and place of the meeting and shall give reasonable notice which, except in extraordinary circumstances, shall be at least 24 hours in advance of any meeting held in Washington, D.C., and at least 48 hours in the case of any meeting held outside Washington, D.C.

Rule 3. Meeting Procedures

3.1 One-third of the members of the Task Force shall constitute a quorum for the transaction of business other than the reporting of a matter, which shall require a majority of the Task Force, except that two members shall constitute a quorum for hearing testimony.

3.2 All meetings or hearings of the Task Force shall be conducted in open session, unless a majority of members of the Task Force voting, there being in attendance at least two members of the Task Force, vote to close a meeting or hearing.

3.3 When a quorum for any particular purpose is present, general proxies may be counted for that purpose. Proxies may be general or may be limited to specific matters. A vote by any member of the Task Force with respect to any matter being considered may be cast by proxy if the proxy authorization is in writing, asserts that the member is absent on official business or is otherwise unable to be present, and designates the member or alternate member who is to execute the proxy authorization. Each proxy to be effective shall be signed by the member assigning his vote and shall contain the date and time that the proxy is signed. Proxies shall be effective at the session for which they are provided, or if that session is rescheduled, at the rescheduled session. Proxies shall not reduce the quorum required for reporting contempt matters and will not be counted towards the two-thirds minimum requirement pursuant to 18 U.S.C. § 6005 needed to seek an immunity order.

3.4 It shall be the duty of a staff officer designated by the chairman to keep or cause to be kept a stenographic record of all Task Force proceedings. All transcripts, affidavits, and depositions, *and copies and extracts thereof*, shall be the property of the Task Force, and not of the witnesses, unless the Task Force determines otherwise.

3.5 The Chairman, or in his absence a member designated by the chairman, shall preside over all meetings and hearings of the Task Force.

Rule 4. Subpoenas

4.1 The chairman, upon consultation with the ranking Republican member, shall authorize and issue subpoenas. In addition, the Task Force may itself vote to authorize and issue subpoenas. Subpoenas shall be issued under the seal of the House and attested by the Clerk, and may be served by any persons designated by the chairman. Subpoenas shall be issued upon the chairman's signature or that of a member designated by him or by the Task Force.

4.2 Orders for the furnishing of information by interrogatory, the inspecting of locations and systems of records upon notice except in exigent circumstances, the obtaining of evidence in other countries by means of letters rogatory or otherwise, and other processes for obtaining information available to the Task Force, shall be authorized and issued by the chairman, upon consultation with the ranking Republican member, or by the Task Force. In addition to the procedures provided for in Rule 4.1 and 4.4, requests for investigations, reports, and other assistance from any agency of the executive, legislative, and judicial branches of the federal government, may be made by the chairman, upon consultation with the ranking Republican member, or by the Task Force.

4.3 Provisions may be included in the process of the Task Force to prevent the disclosure of Task Force demands for information, when deemed necessary for the security of information or the progress of the investigation by the chairman or member designat-

ed by him or the Task Force, such as requiring that companies receiving subpoenas for financial or toll records make no disclosure to customers regarding the subpoena for ninety days or prohibiting the revelation by witnesses and their counsel of Task Force inquiries.

4.4 A subpoena duces tecum for documents may be issued whose return shall occur at a deposition or at another time and place other than at a hearing or meeting. When a return on such a subpoena or order is incomplete or accompanied by an objection, the chairman, upon consultation with the ranking Republican member or, if unavailable, the senior Republican member, may convene a meeting or hearing on shortened notice to determine the adequacy of the return and to rule on the objection or may refer the issues raised by the return for decision by poll of the Task Force. At a meeting or hearing for testimony on such a return, two members shall constitute a quorum.

Rule 5. Broadcasting, Television, and Photography

5.1 Whenever any hearing or meeting conducted by the Task Force is open to the public, the Task Force may permit that hearing or meeting to be covered, in whole or in part, by television broadcast, radio broadcast, and still photography, or by any of such methods of coverage, under the following rules:

(1) If the television or radio coverage of the hearing or meeting is to be presented to the public as live coverage, that coverage shall be conducted and presented without commercial sponsorship.

(2) The chairman may set limits on the number of television cameras, all operating from fixed positions, that shall be permitted in a hearing room. The allocation among the television media of the positions of the number of television cameras permitted in a hearing room shall be in accordance with fair and equitable procedures devised by the Executive Committee of the Radio and Television Correspondents' Galleries.

(3) Television cameras shall be placed so as not to obstruct in any way the space between any witness giving evidence or testimony and any member of the committee, or the visibility of that witness and that member to each other.

(4) Television cameras shall not be placed in positions which obstruct unnecessarily the coverage of the hearing or meeting by the other media.

(5) Equipment necessary for coverage by the television and radio media shall not be installed in, or removed from the hearing room while the Task Force is in session.

(6) Floodlights, spotlights, and flashguns shall not be used in providing any method of coverage of the hearing or meeting, except that the television media may install additional lighting in the hearing room, without cost to the Government, in order to raise the ambient lighting level in the hearing room to the lowest level necessary to provide adequate television coverage of the hearing at the current state of the art of television coverage.

(7) The chairman may set limits on the number of press photographers permitted to cover a hearing or meeting by still photography. In the selection of these photographers, preference shall be given to photographers from Associated Press Photos and United Press International Newspictures. If request is made by more than the limit set by the chairman for coverage of the hearing by still photography, that coverage shall be made on the basis of a fair and equitable pool arrangement devised by the Standing Committee of Press Photographers.

(8) Photographers shall not position themselves, at any time during the course of the hearing or meeting, between the witness table and the Task Force members.

(9) Photographers shall not place themselves in positions which obstruct unnecessarily the coverage of the hearing or meeting by the other media.

(10) Personnel providing coverage by the television and radio media shall be then currently accredited to the Press Photographers' Gallery.

(11) Personnel providing coverage by still photography shall be then currently accredited to the Press Photographers' Gallery.

(12) Personnel providing coverage by the television and radio media and by still photography shall conduct themselves and their coverage activities in an orderly and unobtrusive manner.

Rule 6. Taking of Testimony at Hearings

6.1 Witnesses required to appear before the Task Force shall be given, absent extraordinary circumstances, at least forty-eight hours' notice and all witnesses shall be furnished with a copy of these rules, House Rules X and XI and H. Res. 258.

6.2 All witnesses at public or executive hearings who testify to matters of fact shall be sworn unless the chairman authorizes waiver of the oath.

6.3 Members of the Task Force who so desire shall have not to exceed five minutes to interrogate each witness until such time as each member has had an opportunity to interrogate such witness. The presiding member, in consultation with the ranking Republican member present, may establish a format for additional or sustained questioning of any witness by the chair or by another member.

6.4 Counsel representing any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing, and to advise such witness while he is testifying on his legal rights; provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, or represented by counsel representing other witnesses, the chairman of the Task Force, upon consultation with the ranking Republican member, may rule that such representation creates a conflict of interest, and that the witness shall be represented by other counsel without

such conflict. Counsel shall not be permitted to make a statement, unless authorized to do so by the chairman.

6.5 The chairman, upon consultation with the ranking Republican member, if he deems it necessary to maintain the security of classified subjects being discussed at closed hearings, may require that any personal counsel be qualified by having appropriate clearance, and that the witness or counsel, or both, execute nondisclosure agreements with the Task Force.

6.6 A witness who is unable to obtain counsel, or to obtain counsel with requisite clearance, may inform the Task Force of such fact, and if, consistent with the notice given under section 6.1 hereof the Task Force is so informed at least 24 hours prior to the witness' appearance, the Task Force shall then endeavor to obtain voluntary counsel for the witness. Such counsel shall act solely for the witness and not the Task Force. Failure to obtain qualified counsel will not excuse the witness from appearing and testifying.

6.7 Counsel shall conduct themselves in an ethical and professional manner. The presiding member may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearing, and the Task Force may cite the offender to the House for contempt. If counsel is excluded, the provisions of Rule 6.6 hereof for a witness who is unable to obtain qualified counsel shall apply.

6.8 Any witness desiring to make an introductory statement in executive or public hearings shall file a copy of such statement with the chairman or clerk of the Task Force 48 hours in advance of the hearings at which the statement is to be presented unless the Task Force by majority vote waives this requirement. The presiding member shall reduce the 48 hours proportionately for witnesses who receive less than 72 hours' notice of the hearing. The presiding member shall determine whether such statement may be read or placed in the record of the hearing. Unless the Task Force determines otherwise, a witness who appears before the Task Force under a grant of immunity shall not be permitted to make a statement or testify except to respond directly to questions posed by members or staff.

6.9 An accurate stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. A witness may obtain a transcript copy of his testimony given at a public session. If the witness testified at an executive session, the record of his testimony shall be made available for inspection by the witness and his counsel, and the chairman may authorize provision of a copy to the witness or his counsel if such testimony does not include classified information.

6.10 No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Task Force.

6.11 In the presiding member's discretion, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The presiding member may condition the filing of such a sworn statement upon the offeror's agreeing to appear personally before the Task Force and to testify concerning the matters contained in his sworn statement, as well as any other matters related to the subject of the investigation before the Task Force.

Rule 7. Affidavits and Depositions

7.1 The chairman, upon consultation with the ranking Republican member, or the Task Force, may authorize the taking of affidavits, and of depositions pursuant to notice or subpoena. Such authorization may occur on a case-by-case basis, or by instructions to take a series of affidavits or depositions. The chairman may either issue the deposition notices himself, or direct the chief counsel to do so. Notices for the taking of depositions shall specify a time and place for examination. Affidavits and depositions shall be taken under oath administered by a member or a person otherwise authorized by law to administer oaths. Such depositions may, if deemed necessary by the chairman in consultation with the ranking Republican member, be taken by telephone.

7.2 The Task Force shall not initiate procedures leading to contempt proceedings in the event a witness fails to appear at a deposition unless the deposition notice was accompanied by a Task Force subpoena authorized and issued by the chairman or the Task Force pursuant to Rule 4 hereof regarding subpoenas.

7.3 Witnesses may be accompanied at a deposition by counsel representing the witness to advise them of their rights, subject to the provisions of Rules 6.4, 6.5, 6.6 and 6.7 hereof. Absent special permission or instructions from the chairman, no one may be present in depositions except members, chief counsel, chief minority counsel, staff designated by the chief counsel and chief minority counsel, an official reporter, the witness and counsel representing the witness; observers or counsel for other persons or for agencies may not attend.

7.4 Witnesses shall be examined in depositions by a member or members or by the chief counsel, chief minority counsel or staff designated by the chairman. Objections by the witness as to the form of questions shall be noted for the record. If a witness objects to a question and refuses to answer, the members or staff may proceed with the deposition, or may obtain, at the time or at a subsequent time, a ruling on the objection by telephone or otherwise from the chairman or his designee. The Task Force shall not initiate procedures leading to contempt for refusals to answer questions at a deposition unless the witness refuses to testify after his objection has been overruled and after he has been ordered and directed to answer by the chairman or a member designated by the chairman, upon consultation with the ranking Republican member or his member designee.

7.5 The staff shall insure that the testimony is either transcribed or electronically recorded, or both. If a witness' testimony is transcribed, he shall be furnished with an opportunity to review a copy. No later than five days thereafter, the staff shall enter the changes, if any, requested by the witness, with a statement of the witness' reasons for the changes, and the witness shall be instructed to sign the transcript. The individual administering the oath, if other than a Member, shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall be filed, together with any electronic recording, with the clerk of the Task Force in Washington, D.C. Affidavits and

depositions shall be deemed to have been taken in Washington, D.C. once filed there with the clerk of the Task Force for the Task Force's use.

7.6 All depositions, affidavits, and other materials received in the investigation shall be considered nonpublic until received by the Task Force. Once received by the Task Force, use of such materials shall be governed by the Task Force rules. Classified information or material shall not be used in open session except as permitted by the Task Force, which shall require a vote of a majority of the members of the Task Force.

7.7 Written interrogatories and requests for admission may be authorized and issued by the Task Force or chairman, in consultation with the ranking Republican member, and shall specify a date for filing an answer with the chief clerk. Written interrogatories and requests for admissions shall be answered under oath.

Rule 8. Procedures for Handling of Classified or Sensitive Materials

8.1 Staff offices shall operate under strict security precautions. The chairman may request the Clerk and Sergeant at Arms to provide assistance necessary to insure strict security. Sensitive or classified documents and material shall be segregated and stored in an appropriately secure storage area. They may be examined only at secure reading facilities. Copying, duplicating, or removal from the offices of such documents and other materials are prohibited except as is necessary for authorized use in, or preparation for, interviews, depositions, or meetings or hearings.

8.2 The Task Force may direct that particular matters or classes of matter shall not be made available to any person by its members, staff, or others, or may impose any other restriction. Classified information or classified material possessed or controlled by the Task Force, or information deemed sensitive by the Task Force, shall not be made available to any person by its members or staff or anyone who has access to the material except by vote of the Task Force, which shall require a vote of the majority of the members of the Task Force.

8.3 Each member of the Task Force shall at all times have access to all papers and other materials received from any source. The chief counsel, as designated by the chairman, shall be responsible for the control, under appropriate security procedures, of all classified papers and other classified materials in the possession of the Task Force, and for the maintenance, under such procedures, of a registry which will number and identify all such classified materials. Such registry shall be available to any member of the Task Force.

8.4 Access by staff to classified information shall be limited on a need-to-know basis, pursuant to instructions of the chairman, acting in consultation with the ranking Republican member, either on a case-by-case basis or by general instructions to the chief counsel and chief minority counsel. All staff with such access shall be required to have appropriate security clearance. The chief counsel shall maintain a list, available to chief minority counsel, of those

staff who may attend executive sessions and have access to classified materials.

8.5 The chairman, in consultation with the ranking Republican member, may limit staff attendance at certain executive sessions, and staff access to certain categories of classified materials, which involve matters of particularly high sensitivity.

8.6 Members who are not members of the Task Force shall be granted access to such hearings, records, data, charts and files of the Task Force and shall be admitted on a nonparticipatory basis to hearings of the Task Force, as the chairman deems appropriate, which involve classified material, apart from material otherwise restricted by the Task Force, on the basis of the following provisions:

(1) Members who desire to examine materials in the possession of the Task Force or to attend Task Force hearings on a nonparticipatory basis should notify the clerk of the Task Force in Writing.

(2) Each such request by a member must be considered by the Task Force, a quorum for the reporting of matter being present, at the earliest practicable opportunity. The Task Force must determine by record vote whatever action it deems necessary in light of all the circumstances of each individual request. The Task Force shall take into account in its deliberations, such considerations as the sensitivity of the information sought to the national defense or the confidential conduct of the foreign relations of the United States, the likelihood of its being directly or indirectly disclosed, the jurisdictional interest of the member making the request and such other concerns—constitutional or otherwise—as affect the public interest of the United States. Such actions as the Task Force may take include, but are not limited to: (i) approving the request, in whole or part; (ii) denying the request; (iii) providing in different form than requested information or material which is the subject of the request.

(3) In matters touching on such requests, the Task Force may, in its discretion, consult the Director of Central Intelligence and such other officials as it may deem necessary.

(4) In the event that the member making the request in question does not accede to the determination or any part thereof of the Task Force as regards the request, that member should notify the Task Force in writing of the grounds for such disagreement. The Task Force shall subsequently consider the matter and decide, by record vote, what further action or recommendation, if any, it will take.

(5) Members examining material pursuant to this rule are prohibited to disclose the material further, and every member shall be furnished a copy of this rule prior to examining such material.

8.7 Other than as provided for in rule 8.8 and 6.10, no member of the Task Force or its staff shall disclose, in whole or in part or by way of summary, to any person, governmental agency or official, outside the Task Force and its staff, for any purpose or in connection with any proceeding, judicial or otherwise, any testimony taken, including the identity of witnesses who have testified or will testify, or material presented or discussions had, in depositions or

at meetings and hearings held in executive session, or other materials or information designated as sensitive by the chairman, unless otherwise authorized by Task Force or the chairman. All members of the Task Force and its staff shall agree in writing to abide by the conditions of a non-disclosure oath promulgated by the Task Force consistent with that used by the House Permanent Select Committee on Intelligence.

8.8 The chairman and ranking Republican member shall be authorized to insure that the Speaker and Republican Leader are fully informed regarding the investigation, any other provisions of these rules notwithstanding.

Rule 9. Staff, Detailees, and Consultants

9.1 The chairman, upon consultation with the ranking Republican member, may employ and fix the compensation of such clerks, experts, consultants, technicians, attorneys, investigators and clerical and stenographic assistants as are considered necessary to carry out the purposes of the Resolution. In addition, the chairman, upon consultation with the ranking Republican member, may designate various staff of the Congress, at the written recommendation of members of the Task Force, as associate staff to the Task Force. Upon termination of employment by the Task Force, each member of the staff, or consultant, shall surrender all classified and other material relating to the work of the Task Force which came into his possession while in the employ of the Task Force.

9.2 In the event of an unauthorized release of information or other violation, the chairman or the Task Force may refer the matter to the House Committee on Standards of Official Conduct. Nothing in these rules shall be construed to abridge the right of a Member to make or transmit a complaint to the Committee on the Standards of Official Conduct, or shall be construed to expand the authority of that committee, over matters related to the conduct of this Task Force's investigation pursuant to House Resolution 258, beyond what that resolution provides. The employment of any member of the staff or consultant who fails to conform to any of these Rules may be immediately terminated by the chairman upon consultation with the ranking Republican member.

9.3 The chairman, upon consultation with the ranking Republican member, shall have the authority to utilize the services, information, facilities, and personnel of the departments and agencies of the government. Requests by the chairman may specify by name, or describe otherwise, the personnel to be detailed.

9.4 For purposes of these Rules, Task Force staff shall include all employees hired pursuant to rule 9.1, all associate staff designated pursuant to Rule 9.1, and all staff of the Speaker, Majority Leader and the Republican Leader who are appropriately cleared and designated in writing.

9.5 The chairman, upon consultation with the ranking Republican member, shall have the authority to procure the temporary or intermittent services of experts or consultants or organizations thereof to make studies or assist or advise the Task Force with respect to any matter under investigation. Government personnel detailed to the Task Force, and consultants, shall be deemed staff of

the Task Force to the extent necessary for the purposes of their designated association, detail, or consultancy, including the purposes of interrogation of witnesses and security of information under Rules 5, 6, 7, 8 and 9 hereof.

9.6 The chairman, upon consultation with the ranking Republican member, may establish such additional personnel, physical, communications, and document security procedures, not inconsistent with these rules, as he deems necessary to safeguard classified information or materials possessed or controlled by the Task Force.

PART 3—SELECTED RULES OF THE HOUSE OF REPRESENTATIVES

Following are selected Rules of the House of Representatives which are also a part of the Task Force rules and which affect its organization, administration, and operation. The Rules cited are not exclusive of other Rules of the House of Representatives applicable to the Task Force.

Rule X. Establishment and Jurisdiction of Standing Committees

The Committees and Their Jurisdiction

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned to it by this clause and clauses 2, 3, and 4; and all bills, resolutions, and other matters relating to subjects within the jurisdiction of any standing committee as listed in this clause shall (in accordance with and subject to clause 5) be referred to such committees, as follows:

(a) Committee on Agriculture.

(1) Adulteration of seeds, insect pests, and protection of birds and animals in forest reserves.

(2) Agriculture generally.

(3) Agricultural and industrial chemistry.

(4) Agricultural colleges and experiment stations.

(5) Agricultural economics and research.

(6) Agricultural education extension services.

(7) Agricultural production and marketing and stabilization of prices of agricultural products, and commodities (not including distribution outside of the United States).

(8) Animal industry and diseases of animals.

(9) Crop insurance and soil conservation.

(10) Dairy industry.

(11) Entomology and plant quarantine.

(12) Extension of farm credit and farm security.

(13) Forestry in general, and forest reserves other than those created from the public domain.

(14) Human nutrition and home economics.

(15) Inspection of livestock and meat products.

(16) Plant industry, soils, and agricultural engineering.

(17) Rural electrification.

(18) Commodities exchanges.

(19) Rural development.

(b) Committee on Appropriations.

(1) Appropriation of the revenue for the support of the Government.

(2) Rescissions of appropriations contained in appropriation Acts.

(3) Transfers of unexpended balances.

(4) The amount of new spending authority (as described in the Congressional Budget Act of 1974) which is to be effective for a fiscal year, including bills and resolutions (reported by other committees) which provide new spending authority and are referred to the committee under clause 4(a).

The committee shall include separate headings for "Rescissions" and "Transfers of Unexpended Balances" in any bill or resolution as reported from the committee under its jurisdiction specified in subparagraph (2) or (3), with all proposed rescissions and proposed transfers listed therein; and shall include a separate section with respect to such rescissions or transfers in the accompanying committee report. In addition to its jurisdiction under the preceding provisions of this paragraph, the committee shall have the fiscal oversight function provided for in clause 2(b)(3) and the budget hearing function provided for in clause 4(a).

(c) Committee on Armed Services.

(1) Common defense generally.

(2) The Department of Defense generally, including the Departments of the Army, Navy, and Air Force generally.

(3) Ammunition depots; forts; arsenals; Army, Navy, and Air Force reservations and establishments.

(4) Conservation, development, and use of naval petroleum and oil shale reserves.

(5) Pay, promotion, retirement, and other benefits and privileges of members of the armed forces.

(6) Scientific research and development in support of the armed services.

(7) Selective service.

(8) Size and composition of the Army, Navy, and Air Force.

(9) Soldiers' and sailors' homes.

(10) Strategic and critical materials necessary for the common defense.

(11) Military applications of nuclear energy.

In addition to its legislative jurisdiction under the preceding provisions of this paragraph (and its general oversight function under clause 2(b)(1)), the committee shall have the special oversight function provided for in clause 3(a) with respect to international arms control and disarmament, and military dependents education.

(d) Committee on Banking, Finance and Urban Affairs.

(1) Banks and banking, including deposit insurance and Federal monetary policy.

(2) Money and credit, including currency and the issuance of notes and redemption thereof; gold and silver, including the coinage thereof; valuation and revaluation of the dollar.

(3) Urban development.

(4) Public and private housing.

(5) Economic stabilization, defense production, renegotiation, and control of the price of commodities, rents, and services.

(6) International finance.

(7) Financial aid to commerce and industry (other than transportation).

(8) International Financial and Monetary organizations.

(e)(1) **Committee on the Budget**, consisting of the following Members:

(A) Members who are members of other standing committees, including five Members who are members of the Committee on Appropriations, and five Members who are members of the Committee on Ways and Means;

(B) one Member from the leadership of the majority party; and

(C) one Member from the leadership of the minority party.

No Member other than the representative from the leadership of the majority party and the representative from the leadership of the minority party, shall serve as a member of the Committee on the Budget during more than three Congresses in any period of five successive Congresses (disregarding for this purpose any service performed as a member of such committee for less than a full session in any Congress), except that an incumbent chairman having served on the committee for three Congresses and having served as chairman of the committee for not more than one Congress shall be eligible for reelection to the committee as chairman for one additional Congress. Previous service on the Committee before the One Hundred Second Congress shall be disregarded, for the purposes of this prohibition during the One Hundred Second Congress, for the ranking minority member of the Committee (who is not the Member designated as the Member from the leadership of the minority party). A minority Member having served on the committee for three Congresses and having served as the ranking minority member in the last such Congress shall be eligible for reelection to the committee as ranking minority Member for one additional Congress. All selections of Members to serve on the committee shall be made without regard to seniority.

(2) All concurrent resolutions on the budget (as defined in section 3 of the Congressional Budget Act of 1974) and other matters required to be referred to the committee under titles III and IV of that Act.

(3) The committee shall have the duty—

(A) to report the matters required to be reported by it under titles III and IV of the Congressional Budget Act of 1974;

(B) to make continuing studies of the effect on budget outlays of relevant existing and proposed legislation and to report the results of such studies to the House on a recurring basis;

(C) to request and evaluate continuing studies of tax expenditures, to devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and to report the results of such studies to the House on a recurring basis; and

(D) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties.

(f) **Committee on the District of Columbia**.

(1) All measures relating to the municipal affairs of the District of Columbia in general, other than appropriations therefor, including—

(2) Adulteration of foods and drugs.

- (3) Incorporation and organization of societies.
- (4) Insurance, executors, administrators, wills, and divorce.
- (5) Municipal code and amendments to the criminal and corporation laws.
- (6) Municipal and juvenile courts.
- (7) Public health and safety, sanitation, and quarantine regulations.
- (8) Regulation of sale of intoxicating liquors.
- (9) Taxes and tax sales.
- (10) St. Elizabeths hospital.
- (g) Committee on Education and Labor.**
- (1) Measures relating to education or labor generally.
- (2) Child labor.
- (3) Columbia Institution for the Deaf, Dumb, and Blind; Howard University; Freedmen's Hospital.
- (4) Convict labor and the entry of goods made by convicts into interstate commerce.
- (5) Labor standards.
- (6) Labor statistics.
- (7) Mediation and arbitration of labor disputes.
- (8) Regulation or prevention of importation of foreign laborers under contract.
- (9) Food programs for children in schools.
- (10) United States Employees' Compensation Commission.
- (11) Vocational rehabilitation.
- (12) Wages and hours of labor.
- (13) Welfare of miners.
- (14) Work incentive programs.

In addition to its legislative jurisdiction under the preceding provisions of this paragraph (and its general oversight function under clause 2(b)(1)), the committee shall have the special oversight function provided for in clause 3(c) with respect to domestic educational programs and institutions, and programs of student assistance, which are within the jurisdiction of other committees.

(h) Committee on Energy and Commerce.

- (1) Interstate and foreign commerce generally.
- (2) National energy policy generally.
- (3) Measures relating to the exploration, production, storage, supply, marketing, pricing, and regulation of energy resources, including all fossil fuels, solar energy, and other unconventional or renewable energy resources.
- (4) Measures relating to the conservation of energy resources.
- (5) Measures relating to the commercial application of energy technology.
- (6) Measures relating to energy information generally.
- (7) Measures relating to (A) the generation and marketing of power (except by federally chartered or Federal regional power marketing authorities), (B) the reliability and interstate transmission of, and ratemaking for, all power, and (C) the siting of generation facilities; except the installation of interconnections between Government waterpower projects.
- (8) Interstate energy compacts.

(9) Measures relating to general management of the Department of Energy, and the management and all functions of the Federal Energy Regulatory Commission.

(10) Inland waterways.

(11) Railroads, including railroad labor, railroad retirement and unemployment, except revenue measures related thereto.

(12) Regulation of interstate and foreign communications.

(13) Securities and exchanges.

(14) Consumer affairs and consumer protection.

(15) Travel and tourism.

(16) Public health and quarantine.

(17) Health and health facilities, except health care supported by payroll deductions.

(18) Biomedical research and development.

Such committee shall have the same jurisdiction with respect to regulation of nuclear facilities and of use of nuclear energy as it has with respect to regulation of nonnuclear facilities and of use of nonnuclear energy. In addition to its legislative jurisdiction under the preceding provisions of this paragraph (and its general oversight functions under clause 2(b)(1)), such committee shall have the special oversight functions provided for in clause (3)(h) with respect to all laws, programs, and Government activities affecting nuclear and other energy.

(i) Committee on Foreign Affairs.

(1) Relations of the United States with foreign nations generally.

(2) Acquisition of land and buildings for embassies and legations in foreign countries.

(3) Establishment of boundary lines between the United States and foreign nations.

(4) Foreign loans.

(5) International conferences and congresses.

(6) Intervention abroad and declarations of war.

(7) Measures relating to the diplomatic service.

(8) Measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad.

(9) Neutrality.

(10) Protection of American citizens abroad and expatriation.

(11) The American National Red Cross.

(12) United Nations Organizations.

(13) Measures relating to international economic policy.

(14) Export controls, including nonproliferation of nuclear technology and nuclear hardware.

(15) International commodity agreements (other than those involving sugar), including all agreements for cooperation in the export of nuclear technology and nuclear hardware.

(16) Trading with the enemy.

(17) International education.

In addition to its legislative jurisdiction under the preceding provisions of this paragraph (and its general oversight function under clause 2(b)(1)), the committee shall have the special oversight functions provided for in clause 3(d) with respect to customs administration, intelligence activities relating to foreign policy, international financial and monetary organizations, and international fishing agreements.

(j) Committee on Government Operations.

- (1) Budget and accounting measures, other than appropriations.
- (2) The overall economy and efficiency of Government operations and activities, including Federal procurement.
- (3) Reorganizations in the executive branch of the Government.
- (4) Intergovernmental relationships between the United States and the States and municipalities, and general revenue sharing.
- (5) National archives.
- (6) Measures providing for off-budget treatment of Federal agencies or programs.
- (7) Measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

In addition to its legislative jurisdiction under the preceding provisions of this paragraph (and its oversight functions under clause 2(b) (1) and (2)), the committee shall have the function of performing the activities and conducting the studies which are provided for in clause 4(c).

(k) Committee on House Administration.

- (1) Appropriations from the contingent fund.
- (2) Auditing and settling of all accounts which may be charged to the contingent fund.
- (3) Employment of persons by the House, including clerks for Members and committees, and reporters of debates.
- (4) Except as provided in clause 1(p)(4), matters relating to the Library of Congress and the House Library; statuary and pictures; acceptance or purchase of works of art for the Capitol; the Botanic Gardens; management of the Library of Congress, purchase of books and manuscripts; erection of monuments to the memory of individuals.
- (5) Except as provided in clause 1(p)(4), matters relating to the Smithsonian Institution and the incorporation of similar institutions.
- (6) Expenditure of contingent fund of the House.
- (7) Matters relating to printing and correction of the Congressional Record.
- (8) Measures relating to accounts of the House generally.
- (9) Measures relating to assignment of office space for Members and committees.
- (10) Measures relating to the disposition of useless executive papers.
- (11) Measures relating to the election of the President, Vice President, or Members of Congress; corrupt practices; contested elections; credentials and qualifications; and Federal elections generally.
- (12) Measures relating to services to the House, including the House Restaurant, parking facilities and administration of the House Office Buildings and of the House wing of the Capitol.
- (13) Measures relating to the travel of Members of the House.
- (14) Measures relating to the raising, reporting and use of campaign contributions for candidates for office of Representative in the House of Representatives and of Resident Commissioner to the United States from Puerto Rico.

(15) Measures relating to the compensation, retirement and other benefits of the Members, officers, and employees of the Congress. In addition to its legislative jurisdiction under the preceding provisions of this paragraph (and its general oversight function under clause 2(b)(1)), the committee shall have the function of performing the duties which are provided for in clause 4(d).

(l) Committee on Interior and Insular Affairs.

(1) Forest reserves and national parks created from the public domain.

(2) Forfeiture of land grants and alien ownership, including alien ownership of mineral lands.

(3) Geological Survey.

(4) Interstate compacts relating to apportionment of waters for irrigation purposes.

(5) Irrigation and reclamation, including water supply for reclamation projects, and easements of public lands for irrigation projects, and acquisition of private lands when necessary to complete irrigation projects.

(6) Measures relating to the care and management of Indians, including the care and allotment of Indian lands and general and special measures relating to claims which are paid out of Indian funds.

(7) Measures relating generally to the insular possessions of the United States, except those affecting the revenue and appropriations.

(8) Military parks and battlefields; national cemeteries administered by the Secretary of the Interior, and parks within the District of Columbia.

(9) Mineral land laws and claims and entries thereunder.

(10) Mineral resources of the public lands.

(11) Mining interests generally.

(12) Mining schools and experimental stations.

(13) Petroleum conservation on the public lands and conservation of the radium supply in the United States.

(14) Preservation of prehistoric ruins and objects of interest on the public domain.

(15) Public lands generally, including entry, easements, and grazing thereon.

(16) Relations of the United States with the Indians and the Indian tribes.

(17) Regulation of the domestic nuclear energy industry, including regulation of research and development reactors and nuclear regulatory research.

In addition to its legislative jurisdiction under the preceding provisions of this paragraph (and its general oversight function under clause 2(b)(1)), the committee shall have the special oversight functions provided for in clause 3(e) with respect to all programs affecting Indians and nonmilitary nuclear energy and research and development including the disposal of nuclear waste.

(m) Committee on the Judiciary.

(1) Judicial proceedings, civil and criminal generally.

(2) Apportionment of Representatives.

(3) Bankruptcy, mutiny, espionage, and counterfeiting.

(4) Civil liberties.

- (5) Constitutional amendments.
- (6) Federal courts and judges.
- (7) Immigration and naturalization.
- (8) Interstate compacts generally.
- (9) Local courts in the Territories and possessions.
- (10) Measures relating to claims against the United States.
- (11) Meetings of Congress, attendance of Members and their acceptance of incompatible offices.
- (12) National penitentiaries.
- (13) Patent Office.
- (14) Patents, copyrights, and trademarks.
- (15) Presidential succession.
- (16) Protection of trade and commerce against unlawful restraints and monopolies.
- (17) Revision and codification of the Statutes of the United States.
- (18) State and territorial boundary lines.
- (19) Communist and other subversive activities affecting the internal security of the United States.
- (n) Committee on Merchant Marine and Fisheries.**
 - (1) Merchant marine generally.
 - (2) Oceanography and Marine Affairs, including coastal zone management.
 - (3) Coast Guard, including lifesaving service, lighthouses, lightships, and ocean derelicts.
 - (4) Fisheries and wildlife, including research, restoration, refuges, and conservation.
 - (5) Measures relating to the regulation of common carriers by water (except matters subject to the jurisdiction of the Interstate Commerce Commission) and to the inspection of merchant marine vessels, lights and signals, lifesaving equipment, and fire protection on such vessels.
 - (6) Merchant marine officers and seamen.
 - (7) Navigation and the laws relating thereto, including pilotage.
 - (8) Panama Canal and the maintenance and operation of the Panama Canal, including the administration, sanitation, and government of the Canal Zone; and interoceanic canals generally.
 - (9) Registering and licensing of vessels and small boats.
 - (10) Rules and international arrangements to prevent collisions at sea.
 - (11) United States Coast Guard and Merchant Marine Academies, and State Maritime Academies.
 - (12) International fishing agreements.
- (o) Committee on Post Office and Civil Service.**
 - (1) Census and the collection of statistics generally.
 - (2) All Federal Civil Service, including intergovernmental personnel.
 - (3) Postal-savings banks.
 - (4) Postal service generally, including the railway mail service, and measures relating to ocean mail and pneumatic-tube service; but excluding post roads.
 - (5) Status of officers and employees of the United States, including their compensation, classification, and retirement.
 - (6) Hatch Act.

(7) Holidays and celebrations.

(8) Population and demography.

(p) Committee on Public Works and Transportation.

(1) Flood control and improvement of rivers and harbors.

(2) Measures relating to the Capitol Building and the Senate and House Office Buildings.

(3) Measures relating to the construction or maintenance of roads and post roads, other than appropriations therefor; but it shall not be in order for any bill providing general legislation in relation to roads to contain any provision for any specific road, nor for any bill in relation to a specific road to embrace a provision in relation to any other specific road.

(4) Measures relating to the construction or reconstruction, maintenance, and care of the buildings and grounds of the Botanic Gardens, the Library of Congress, and the Smithsonian Institution.

(5) Measures relating to the purchase of sites and construction of post offices, customhouses, Federal courthouses, and Government buildings within the District of Columbia.

(6) Oil and other pollution of navigable waters.

(7) Public buildings and occupied or improved grounds of the United States generally.

(8) Public works for the benefit of navigation, including bridges and dams (other than international bridges and dams).

(9) Water power.

(10) Transportation, including civil aviation except railroads, railroad labor and pensions.

(11) Roads and the safety thereof.

(12) Water transportation subject to the jurisdiction of the Interstate Commerce Commission.

(13) Related transportation regulatory agencies, except (A) the Interstate Commerce Commission as it relates to railroads; (B) Federal Railroad Administration; and (C) Amtrak.

(q) Committee on Rules.

(1) The rules and joint rules (other than rules or joint rules relating to the Code of Official Conduct), and order of business of the House.

(2) Recesses and final adjournments of Congress.

(3) The Committee on Rules is authorized to sit and act whether or not the House is in session.

(r) Committee on Science, Space, and Technology.

(1) Astronautical research and development, including resources, personnel, equipment, and facilities.

(2) Bureau of Standards, standardization of weights and measures and the metric system.

(3) National Aeronautics and Space Administration.

(4) National Aeronautics and Space Council.

(5) National Science Foundation.

(6) Outer space, including exploration and control thereof.

(7) Science Scholarships.

(8) Scientific research, development, and demonstration, and projects therefor, and all federally owned or operated nonmilitary energy laboratories.

(9) Civil aviation research and development.

(10) Environmental research and development.

(11) All energy research, development, and demonstration, and projects therefor, and all federally owned or operated nonmilitary energy laboratories.

(12) National Weather Service.

In addition to its legislative jurisdiction under the preceding provisions of this paragraph (and its general oversight function under clause 2(b)(1)), the committee shall have the special oversight function provided for in clause 3(f) with respect to all nonmilitary research and development.

(s) **Committee on Small Business.**

(1) Assistance to and protection of small business, including financial aid.

(2) Participation of small-business enterprises in Federal procurement and Government contracts.

In addition to its legislative jurisdiction under the preceding provisions of this paragraph and (its general oversight function under clause 2(b)(1)), the committee shall have the special oversight function provided for in clause 3(g) with respect to the problems of small business.

(t) **Committee on Standards of Official Conduct.**

(1) Measures relating to the Code of Official Conduct.

In addition to its legislative jurisdiction under the preceding provision of this paragraph (and its general oversight function under clause 2(b)(1)), the committee shall have the functions with respect to recommendations, studies, investigations, and reports which are provided for in clause 4(e), and the functions designated in titles I and V of the Ethics in Government Act of 1978 and sections 7342, 7351, and 7353 of title 5, United States Code.

(u) **Committee on Veterans' Affairs.**

(1) Veterans' measures generally.

(2) Cemeteries of the United States in which veterans of any war or conflict are or may be buried, whether in the United States or abroad, except cemeteries administered by the Secretary of the Interior.

(3) Compensation, vocational rehabilitation, and education of veterans.

(4) Life insurance issued by the Government on account of service in the Armed Forces.

(5) Pensions of all the wars of the United States, general and special.

(6) Readjustment of servicemen to civil life.

(7) Soldiers' and sailors' civil relief.

(8) Veterans' hospitals, medical care, and treatment of veterans.

(v) **Committee on Ways and Means.**

(1) Customs, collection districts, and ports of entry and delivery.

(2) Reciprocal trade agreements.

(3) Revenue measures generally.

(4) Revenue measures relating to the insular possessions.

(5) The bonded debt of the United States (subject to the last sentence of clause 4(g) of this rule).

(6) The deposit of public moneys.

(7) Transportation of dutiable goods.

(8) Tax exempt foundations and charitable trusts.

(9) National social security, except (A) health care and facilities programs that are supported from general revenues as opposed to payroll deductions and (B) work incentive programs.

General Oversight Responsibilities

2. (a) In order to assist the House in—

(1) its analysis, appraisal, and evaluation of (A) the application, administration, execution, and effectiveness of the laws enacted by the Congress, or (B) conditions and circumstances which may indicate the necessity or desirability of enacting new or additional legislation, and

(2) its formulation, consideration, and enactment of such modifications of or changes in those laws, and of such additional legislation, as may be necessary or appropriate, the various standing committees shall have oversight responsibilities as provided in paragraph (b).

(b)(1) Each standing committee (other than the Committee on Appropriations and the Committee on the Budget) shall review and study, on a continuing basis, the application, administration, execution, and effectiveness of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee and the organization and operation of the Federal agencies and entities having responsibilities in or for the administration and execution thereof, in order to determine whether such laws and the programs thereunder are being implemented and carried out in accordance with the intent of the Congress and whether such programs should be continued, curtailed, or eliminated. In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee (whether or not any bill or resolution has been introduced with respect thereto), and shall on a continuing basis undertake future research and forecasting on matters within the jurisdiction of that committee. Each such committee having more than twenty members shall establish an oversight subcommittee, or require its subcommittees, if any, to conduct oversight in the area of their respective jurisdiction, to assist in carrying out its responsibilities under this subparagraph. The establishment of oversight subcommittees shall in no way limit the responsibility of the subcommittees with legislative jurisdiction from carrying out their oversight responsibilities.

(2) The Committee on Government Operations shall review and study, on a continuing basis, the operation of Government activities at all levels with a view to determining their economy and efficiency.

(3) The Committee on Appropriations shall conduct such studies and examinations of the organization and operation of executive departments and other executive agencies (including any agency the majority of the stock of which is owned by the Government of the United States) as it may deem necessary to assist it in the determination of matters within its jurisdiction.

(c) Each standing committee of the House shall have the function of reviewing and studying on a continuing basis the impact or prob-

able impact of tax policies affecting subjects within its jurisdiction as described in clauses 1 and 3.

Special Oversight Functions

3. (a) The Committee on Armed Services shall have the function of reviewing and studying, on a continuing basis, all laws, programs, and Government activities dealing with or involving international arms control and disarmament and the education of military dependents in schools.

(b) The Committee on the Budget shall have the function of—

(1) making continuing studies of the effect on budget outlays of relevant existing and proposed legislation, and reporting the results of such studies to the House on a recurring basis; and

(2) requesting and evaluating continuing studies of tax expenditures, devising methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and reporting the results of such studies to the House on a recurring basis.

(c) The Committee on Education and Labor shall have the function of reviewing, studying, and coordinating, on a continuing basis, all laws, programs, and Government activities dealing with or involving domestic educational programs and institutions, and programs of student assistance, which are within the jurisdiction of other committees.

(d) The Committee on Foreign Affairs shall have the function of reviewing and studying, on a continuing basis, all laws, programs, and Government activities dealing with or involving customs administration, intelligence activities relating to foreign policy, international financial and monetary organizations, and international fishing agreements.

(e) The Committee on Interior and Insular Affairs shall have the function of reviewing and studying, on a continuing basis, all laws, programs, and Government activities dealing with Indians and nonmilitary nuclear energy and research and development including the disposal of nuclear waste.

(f) The Committee on Science, Space, and Technology shall have the function of reviewing and studying, on a continuing basis, all laws, programs, and Government activities dealing with or involving nonmilitary research and development.

(g) The Committee on Small Business shall have the function of studying and investigating, on a continuing basis, the problems of all types of small business.

(h) The Committee on Energy and Commerce shall have the function of reviewing and studying on a continuing basis, all laws, programs and Government activities relating to nuclear and other energy.

(i) The Committee on Rules shall have the function of reviewing and studying, on a continuing basis, the congressional budget process, and the committee shall, from time to time, report its findings and recommendations to the House.

Additional Functions of Committees

4. (a)(1)(A) The Committee on Appropriations shall, within 30 days after the transmittal of the Budget to the Congress each year, hold hearings on the Budget as a whole with particular reference to—

(i) the basic recommendations and budgetary policies of the President in the presentation of the Budget; and

(ii) the fiscal, financial, and economic assumptions used as bases in arriving at total estimated expenditures and receipts.

(B) In holding hearings pursuant to subdivision (A), the committee shall receive testimony from the Secretary of the Treasury, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and such other persons as the committee may desire.

(C) Hearings pursuant to subdivision (A), or any part thereof, shall be held in open session, except when the committee, in open session and with a quorum present, determines by roll call vote that the testimony to be taken at that hearing on that day may be related to a matter of national security: *Provided, however,* That the committee may by the same procedure close one subsequent day of hearing. A transcript of all such hearings shall be printed and a copy thereof furnished to each Member, Delegate, and the Resident Commissioner from Puerto Rico.

(D) Hearings pursuant to subdivision (A), or any part thereof, may be held before joint meetings of the committee and the Committee on Appropriations of the Senate in accordance with such procedures as the two committees jointly may determine.

(2) Whenever any bill or resolution which provides new spending authority described in section 401(c)(2)(C) of the Congressional Budget Act of 1974 is reported by a committee of the House and the amount of new budget authority which will be required for the fiscal year involved if such bill or resolution is enacted as so reported exceeds the appropriate allocation of new budget authority reported as described in clause 4(h) in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year, such bill or resolution shall then be referred to the Committee on Appropriations with instructions to report it, with the committee's recommendations and (if the committee deems it desirable) with an amendment limiting the total amount of new spending authority provided in the bill or resolution, within 15 calendar days (not counting any day on which the House is not in session) beginning with the day following the day on which it is so referred. If the Committee on Appropriations fails to report the bill or resolution within such 15-day period, the committee shall be automatically discharged from further consideration of the bill or resolution and the bill or resolution shall be placed on the appropriate calendar.

(3) In addition, the Committee on Appropriations shall study on a continuing basis those provisions of law which (on the first day of the first fiscal year for which the congressional budget process is effective) provide spending authority of permanent budget authority, and shall report to the House from time to time its recommendations for terminating or modifying such provisions.

(b) The Committee on the Budget shall have the duty—

(1) to review on a continuing basis the conduct by the Congressional Budget Office of its functions and duties;

(2) to hold hearings, and receive testimony from Members of Congress and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as it deems desirable, in developing the concurrent resolutions on the budget for each fiscal year;

(3) to make all reports required of it by the Congressional Budget Act of 1974, including the reporting of reconciliation bills and resolutions when so required;

(4) to study on a continuing basis those provisions of law which exempt Federal agencies or any of their activities or outlays from inclusion in the Budget of the United States Government, and to report to the House from time to time its recommendations for terminating or modifying such provisions; and

(5) to study on a continuing basis proposals designed to improve and facilitate methods of congressional budget-making, and to report to the House from time to time the results of such study together with its recommendations.

(c)(1) The Committee on Government Operations shall have the general function of—

(A) receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the House as it deems necessary or desirable in connection with the subject matter of such reports;

(B) evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

(C) studying intergovernmental relationships between the United States and the States and municipalities, and between the United States and international organizations of which the United States is a member.

(2) In addition to its duties under subparagraph (1), the Committee on Government Operations may at any time conduct investigations of any matter without regard to the provisions of clause 1, 2, or 3 (or this clause) conferring jurisdiction over such matter upon another standing committee. The committee's findings and recommendations in any such investigation shall be made available to the other standing committee or committees having jurisdiction over the matter involved (and included in the report of any such other committee when required by clause 2(1)(3) of Rule XI).

(d) The Committee on House Administration shall have the function of—

(1) examining all bills, amendments, and joint resolutions after passage by the House and, in cooperation with the Senate, examining all bills and joint resolutions which shall have passed both Houses to see that they are correctly enrolled, forthwith presenting those which originated in the House to the President of the United States in person after their signature by the Speaker of the House and the President of the Senate and reporting the fact and date of such presentation to the House;

(2) reporting to the Sergeant-at-Arms of the House concerning the travel of Members of the House; and

(3) providing, through the House Information Systems, a scheduling service which shall be used by all the committees and subcommittees of the House to eliminate, insofar as possible, any meeting and scheduling conflicts.

(e)(1) The Committee on Standards of Official Conduct is authorized: (A) to recommend to the House from time to time such administrative actions as it may deem appropriate to establish or enforce standards of official conduct for Members, officers, and employees of the House, and any letter of reproof or other administrative action of the committee pursuant to an investigation under subdivision (B) shall only be issued or implemented as a part of a report required by such subdivision; (B) to investigate, subject to subparagraph (2) of this paragraph, any alleged violation, by a Member, officer, or employee of the House, of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities, and after notice and hearing (unless the right to a hearing is waived by the Member, officer, or employee), shall report to the House its findings of fact and recommendations, if any, upon the final disposition of any such investigation, and such action as the committee may deem appropriate in the circumstances; (C) to report to the appropriate Federal or State authorities, with the approval of the House, any substantial evidence of a violation, by a Member, officer, or employee of the House, of any law applicable to the performance of his duties or the discharge of his responsibilities, which may have been disclosed in a committee investigation; (D) to give consideration to the request of any Member, officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, officer, or employee and, with appropriate deletions to assure the privacy of the individual concerned, to publish such opinion for the guidance of other Members, officers, and employees of the House; and (E) to give consideration to the request of any Member, officer, or employee of the House for a written waiver in exceptional circumstances with respect to clause 4 of rule XLIII.

(2)(A) No resolution, report, recommendation, or advisory opinion relating to the official conduct of a Member, officer, or employee of the House shall be made by the Committee on Standards of Official Conduct, and no investigation of such conduct shall be undertaken by such committee, unless approved by the affirmative vote of a majority of the members of the committee.

(B) Except in the case of an investigation undertaken by the committee on its own initiative, the committee may undertake an investigation relating to the official conduct of an individual Member, officer, or employee of the House of Representatives only—

(i) upon receipt of a complaint, in writing and under oath, made by or submitted to a Member of the House and transmitted to the committee by such Member, or

(ii) upon receipt of a complaint, in writing and under oath, directly from an individual not a Member of the House if the committee finds that such complaint has been submitted by such individual to not less than three Members of the House

who have refused, in writing, to transmit such complaint to the committee.

(C) No investigation shall be undertaken by the committee of any alleged violation of a law, rule, regulation, or standard of conduct not in effect at the time of the alleged violation; nor shall any investigation be undertaken by the committee of any alleged violation which occurred before the third previous Congress unless the committee determines that the alleged violation is directly related to any alleged violation which occurred in a more recent Congress.

(D) A member of the committee shall be ineligible to participate, as a member of the committee, in any committee proceeding relating to his or her official conduct. In any case in which a member of the committee is ineligible to act as a member of the committee under the preceding sentence, the Speaker of the House shall designate a Member of the House from the same political party as the ineligible member of the committee to act as a member of the committee in any committee proceeding relating to the official conduct of such ineligible member.

(E) A member of the committee may disqualify himself from participating in any investigation of the conduct of a Member, officer, or employee of the House upon the submission in writing and under oath of an affidavit of disqualification stating that he cannot render an impartial and unbiased decision in the case in which he seeks to disqualify himself. If the committee approves and accepts such affidavit of disqualification, the chairman shall so notify the Speaker and request the Speaker to designate a Member of the House from the same political party as the disqualifying member of the committee to act as a member of the committee in any committee proceeding relating to such investigation.

(F) No information or testimony received, or the contents of a complaint or the fact of its filing, shall be publicly disclosed by any committee or staff member unless specifically authorized in each instance by a vote of the full committee.

(f)(1) Each standing committee of the House shall, in its consideration of all bills and joint resolutions of a public character within its jurisdiction, insure that appropriations for continuing programs and activities of the Federal Government and the District of Columbia government will be made annually to the maximum extent feasible and consistent with the nature, requirements, and objectives of the programs and activities involved. For the purposes of this paragraph a Government agency includes the organizational units of government listed in clause 7(c) of Rule XIII.

(2) Each standing committee of the House shall review, from time to time, each continuing program within its jurisdiction for which appropriations are not made annually in order to ascertain whether such program could be modified so that appropriations therefor would be made annually.

(g) Each standing committee of the House shall, on or before February 25 of each year, submit to the Committee on the Budget (1) its views and estimates with respect to all matters to be set forth in the concurrent resolution on the budget for the ensuing fiscal year which are within its jurisdiction or functions, and (2) an estimate of the total amounts of new budget authority, and budget outlays resulting therefrom, to be provided or authorized in all bills

and resolutions within its jurisdiction which it intends to be effective during that fiscal year. The views and estimates submitted by the Committee on Ways and Means under the preceding sentence shall include a specific recommendation, made after holding public hearings, as to the appropriate level of the public debt which should be set forth in the concurrent resolution on the budget referred to in such sentence and serve as the basis for an increase or decrease in the statutory limit on such debt under the procedures provided by rule XLIX.

(h) As soon as practicable after a concurrent resolution on the budget for any fiscal year is agreed to, each standing committee of the House (after consulting with the appropriate committee or committees of the Senate) shall subdivide any allocations made to it in the joint explanatory statement accompanying the conference report on such resolution, and promptly report such subdivisions to the House, in the manner provided by section 302 or section 602 (in the case of fiscal years 1991 through 1995) of the Congressional Budget Act of 1974.

(i) Each standing committee of the House which is directed in a concurrent resolution on the budget to determine and recommend changes in laws, bills, or resolutions under the reconciliation process shall promptly make such determination and recommendations, and report a reconciliation bill or resolution (or both) to the House or submit such recommendations to the Committee on the Budget, in accordance with the Congressional Budget Act of 1974.

Referral of Bills, Resolutions, and Other Matters to Committees

5. (a) Each bill, resolution, or other matter which relates to a subject listed under any standing committee named in clause 1 shall be referred by the Speaker in accordance with the provisions of this clause.

(b) Every referral of any matter under paragraph (a) shall be made in such manner as to assure to the maximum extent feasible that each committee which has jurisdiction under clause 1 over the subject matter of any provision thereof will have responsibility for considering such provision and reporting to the House with respect thereto. Any precedents, rulings, and procedures in effect prior to the Ninety-Fourth Congress shall be applied with respect to referrals under this clause only to the extent that they will contribute to the achievement of the objectives of this clause.

(c) In carrying out paragraphs (a) and (b) with respect to any matter, the Speaker may refer the matter simultaneously to two or more committees for concurrent consideration or for consideration in sequence (subject to appropriate time limitations in the case of any committee), or divide the matter into two or more parts (reflecting different subjects and jurisdictions) and refer each such part to a different committee, or refer the matter to a special ad hoc committee appointed by the Speaker with the approval of the House (from the members of the committees having legislative jurisdiction) for the specific purpose of considering that matter and reporting to the House thereon, or make such other provision as may be considered appropriate.

**Election and Membership of Committees; Chairman; Vacancies;
Select and Conference Committees**

6. (a)(1) The standing committees specified in clause 1 shall be elected by the House within the seventh calendar day beginning after the commencement of each Congress, from nominations submitted by the respective party caucuses. It shall always be in order to consider resolutions recommended by the respective party caucuses to change the composition of standing committees.

(2) One-half of the members of the Committee on Standards of Official Conduct shall be from the majority party and one-half shall be from the minority party. No Member shall serve as a member of the Committee on Standards of Official Conduct during more than 3 Congresses in any period of 5 successive Congresses (disregarding for this purpose any service performed as a member of such committee for less than a full session in any Congress).

(b) Membership on standing committees during the course of a Congress shall be contingent on continuing membership in the party caucus or conference that nominated Members for election to such committees. Should a Member cease to be a member of a particular party caucus or conference, said Member shall automatically cease to be a member of a standing committee to which he was elected on the basis of nomination by that caucus or conference. The chairman of the relevant party caucus or conference shall notify the Speaker whenever a Member ceases to be a member of a party caucus or conference and the Speaker shall notify the chairman of each standing committee on which said Member serves, that in accord with this rule, the Member's election to such committee is automatically vacated.

(c) One of the members of each standing committee shall be elected by the House, from nominations submitted by the majority party caucus, at the commencement of each Congress, as chairman thereof. In the temporary absence of the chairman, the member next in rank in the order named in the election of the committee, and so on, as often as the case shall happen, shall act as chairman; and in case of a permanent vacancy in the chairmanship of any such committee the House shall elect another chairman.

(d) Each standing committee of the House of Representatives, except the Committee on the Budget, that has more than twenty members shall establish at least four subcommittees.

(e) All vacancies in standing committees shall be filled by election by the House from nominations, submitted by the respective party caucus or conference.

(f) The Speaker shall appoint all select and conference committees which shall be ordered by the House from time to time. In appointing members to conference committees the Speaker shall appoint no less than a majority of members who generally supported the House position as determined by the Speaker. The Speaker shall name Members who are primarily responsible for the legislation and shall, to the fullest extent feasible, include the principal proponents of the major provisions of the bill as it passed the House.

(g) Membership on select and joint committees during the course of a Congress shall be contingent on continuing membership in the

party caucus or conference the Member was a member of at the time of his appointment to a select or joint committee. Should a Member cease to be a member of that caucus or conference, said Member shall automatically cease to be a member of any select or joint committee to which he is assigned. The chairman of the relevant party caucus or conference shall notify the Speaker whenever a Member ceases to be a member of a party caucus or conference and the Speaker shall notify the chairman of each select or joint committee on which said Member serves, that in accord with this rule, the Member's appointment to such committee is automatically vacated.

(h) The Speaker may appoint the Resident Commissioner from Puerto Rico and Delegates to the House to any select committee and to any conference committee that is considering legislation reported from a committee on which they serve.

(i) There shall be in the House the permanent Select Committee on Aging, which shall not have legislative jurisdiction but which shall have jurisdiction—

(1) to conduct a continuing comprehensive study and review of the problems of the older American, including but not limited to income maintenance, housing, health (including medical research), welfare, employment, education, recreation, and participation in family and community life as self-respecting citizens;

(2) to study the use of all practicable means and methods of encouraging the development of public and private programs and policies which will assist the older American in taking a full part in national life and which will encourage the utilization of the knowledge, skills, special aptitudes, and abilities of older Americans to contribute to a better quality of life for all Americans;

(3) to develop policies that would encourage the coordination of both governmental and private programs designed to deal with problems of aging; and

(4) to review any recommendations made by the President or by the White House Conference on Aging relating to programs or policies affecting older Americans.

Rule XI. Rules of Procedure for Committees

In General

1. (a)(1) The Rules of the House are the rules of its committees and subcommittees so far as applicable, except that a motion to recess from day to day, and a motion to dispense with the first reading (in full) of a bill or resolution, if printed copies are available, are nondebatable motions of high privilege in committees and subcommittees.

(2) Each subcommittee of a committee is a part of that committee, and is subject to the authority and direction of that committee and to its rules so far as applicable.

(b) Each committee is authorized at any time to conduct such investigations and studies as it may consider necessary or appropriate in the exercise of its responsibilities under Rule X, and (subject

to the adoption of expense resolutions as required by clause 5) to incur expenses (including travel expenses) in connection therewith.

(c) Each committee is authorized to have printed and bound testimony and other data presented at hearings held by the committee. All costs of stenographic services and transcripts in connection with any meeting or hearing of a committee shall be paid from the contingent fund of the House.

(d) Each committee shall submit to the House, not later than January 2 of each odd-numbered year, a report on the activities of that committee under this rule and Rule X during the Congress ending at noon on January 3 of such year.

Committee Rules

Adoption of written rules

2. (a) Each standing committee of the House shall adopt written rules governing its procedure. Such rules—

(1) shall be adopted in a meeting which is open to the public unless the committee, in open session and with a quorum present, determined by roll call vote that all or part of the meeting on that day is to be closed to the public;

(2) shall be not inconsistent with the Rules of the House or with those provisions of law having the force and effect of Rules of the House; and

(3) shall in any event incorporate all of the succeeding provisions of this clause to the extent applicable.

Each committee's rules specifying its regular meeting days, and any other rules of a committee which are in addition to the provisions of this clause, shall be published in the Congressional Record not later than thirty days after the committee is elected in each odd-numbered year. Each select or joint committee shall comply with the provisions of this paragraph unless specifically prohibited by law.

Regular meeting days

(b) Each standing committee of the House shall adopt regular meeting days, which shall be not less frequent than monthly, for the conduct of its business. Each such committee shall meet, for the consideration of any bill or resolution pending before the committee or for the transaction of other committee business, on all regular meeting days fixed by the committee, unless otherwise provided by written rule adopted by the committee.

Additional and special meetings

(c)(1) The Chairman of each standing committee may call and convene, as he or she considers necessary, additional meetings of the committee for the consideration of any bill or resolution pending before the committee or for the conduct of other committee business. The committee shall meet for such purpose pursuant to that call of the chairman.

(2) If at least three members of any standing committee desire that a special meeting of the committee be called by the chairman, those members may file in the offices of the committee their written request to the chairman for that special meeting. Such request

shall specify the measure or matter to be considered. Immediately upon the filing of the request, the clerk of the committee shall notify the chairman of the filing of the request. If, within three calendar days after the filing of the request, the chairman does not call the requested special meeting, to be held within seven calendar days after the filing of the request, a majority of the members of the committee may file in the offices of the committee their written notice that a special meeting of the committee will be held, specifying the date and hour of, and the measure or matter to be considered at, that special meeting. The committee shall meet on that date and hour. Immediately upon the filing of the notice, the clerk of the committee shall notify all members of the committee that such special meeting will be held and inform them of its date and hour and the measure or matter to be considered; and only the measure or matter specified in that notice may be considered at that special meeting.

Vice chairman or ranking majority member to preside in absence of chairman

(d) The member of the majority party on any standing committee or subcommittee thereof ranking immediately after the chairman shall be vice chairman of the committee or subcommittee, as the case may be, and shall preside at any meeting during the temporary absence of the chairman. If the chairman and vice chairman of the committee or subcommittee are not present at any meeting of the committee or subcommittee, the ranking member of the majority party who is present shall preside at that meeting.

Committee records

(e)(1) Each committee shall keep a complete record of all committee action which shall include a record of the votes on any question on which a roll call vote is demanded. The result of each such roll call vote shall be made available by the committee for inspection by the public at reasonable times in the offices of the committee. Information so available for public inspection shall include a description of the amendment, motion, order, or other proposition and the name of each Member voting for and each Member voting against such amendment, motion, order, or proposition, and whether by proxy or in person, and the names of those Members present but not voting.

(2) All committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the Member serving as chairman of the committee; and such records shall be the property of the House and all Members of the House shall have access thereto, except that in the case of records in the Committee on Standards of Official Conduct respecting the conduct of any Member, officer, or employee of the House, no Member of the House (other than a member of such committee) shall have access thereto without the specific, prior approval of the committee.

(3) Each committee shall include in its rules standards for availability of records of the committee delivered to the Archivist of the United States under rule XXXVI. Such standards shall specify procedures for orders of the committee under clause 3(b)(3) and clause

4(b) of rule XXXVI, including a requirement that nonavailability of a record for a period longer than the period otherwise applicable under that rule shall be approved by vote of the committee.

Proxies

(f) No vote by any member of any committee or subcommittee with respect to any measure or matter may be cast by proxy unless such committee, by written rule adopted by the committee, permits voting by proxy and requires that the proxy authorization shall be in writing, shall assert that the member is absent on official business or is otherwise unable to be present at the meeting of the committee, shall designate the person who is to execute the proxy authorization, and shall be limited to a specific measure or matter and any amendments or motions pertaining thereto; except that a member may authorize a general proxy only for motions to recess, adjourn or other procedural matters. Each proxy to be effective shall be signed by the member assigning his or her vote and shall contain the date and time of day that the proxy is signed. Proxies may not be counted for a quorum.

Open meetings and hearings

(g)(1) Each meeting for the transaction of business, including the markup of legislation, of each standing committee or subcommittee thereof shall be open to the public except when the committee or subcommittee, in open session and with a majority present, determines by roll call vote that all or part of the remainder of the meeting on that day shall be closed to the public: *Provided, however,* That no person other than members of the committee and such congressional staff and such departmental representatives as they may authorize shall be present at any business or markup session which has been closed to the public. This paragraph does not apply to open committee hearings which are provided for by clause 4(a)(1) of Rule X or by subparagraph (2) of this paragraph, or to any meeting that relates solely to internal budget or personnel matters.

(2) Each hearing conducted by each committee or subcommittee thereof shall be open to the public except when the committee or subcommittee, in open session and with a majority present, determines by roll call vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger the national security or would violate any law or rule of the House of Representatives. Notwithstanding the requirements of the preceding sentence, a majority of those present, there being in attendance the requisite number required under the rules of the committee to be present for the purpose of taking testimony,

(A) may vote to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would endanger the national security or violate clause 2(k)(5) of Rule XI; or

(B) may vote to close the hearing, as provided in clause 2(k)(5) of Rule XI.

No Member may be excluded from nonparticipatory attendance at any hearing of any committee or subcommittee, with the exception of the Committee on Standards of Official Conduct, unless the House of Representatives shall by majority vote authorize a par-

ticular committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearings to Members by the same procedures designated in this subparagraph for closing hearings to the public: *Provided, however,* That the committee or subcommittee may by the same procedure vote to close one subsequent day of hearing except that the Committee on Appropriations, the Committee on Armed Services, and the Permanent Select Committee on Intelligence and the subcommittees therein may, by the same procedure, vote to close up to five additional consecutive days of hearings.

(3) Each committee of the House (except the Committee on Rules) shall make public announcement of the date, place and subject matter of any committee hearing at least one week before the commencement of the hearing. If the committee determines that there is good cause to begin the hearing sooner, it shall make the announcement at the earliest possible date. Any announcement made under this subparagraph shall be promptly published in the Daily Digest and promptly entered into the committee scheduling service of the House Information Systems.

(4) Each committee shall, insofar as is practicable, require each witness who is to appear before it to file with the committee (in advance of his or her appearance) a written statement of the proposed testimony and to limit the oral presentation at such appearance to a brief summary of his or her argument.

(5) No point of order shall lie with respect to any measure reported by any committee on the ground that hearings on such measure were not conducted in accordance with the provisions of this clause; except that a point of order on that ground may be made by any member of the committee which reported the measure if, in the committee, such point of order was (A) timely made and (B) improperly overruled or not properly considered.

(6) The preceding provisions of this paragraph do not apply to the committee hearings which are provided for by clause 4(a)(1) of Rule X.

Quorum for taking testimony and certain other action

(h)(1) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence which shall be not less than two.

(2) Each committee (except the Committee on Appropriations, the Committee on the Budget, and the Committee on Ways and Means) may fix the number of its members to constitute a quorum for taking any action other than the reporting of a measure or recommendation which shall be not less than one-third of the members.

Prohibition against committee meetings during five-minute rule and during joint sessions and joint meetings

(i)(1) No committee of the House (except the Committee on Appropriations, the Committee on the Budget, the Committee on House Administration, the Committee on Rules, the Committee on Standards of Official Conduct, and the Committee on Ways and Means) may sit, without special leave, while the House is reading a measure for amendment under the five-minute rule. For purposes

of this subparagraph special leave will be granted unless 10 or more Members object.

(2) No committee of the House may sit during a joint session of the House and Senate or during a recess when a joint meeting of the House and Senate is in progress.

Calling and interrogation of witnesses

(j)(1) Whenever any hearing is conducted by any committee upon any measure or matter, the minority party members on the committee shall be entitled, upon request to the chairman by a majority of them before the completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.

(2) Each committee shall apply the five-minute rule in the interrogation of witnesses in any hearing until such time as each member of the committee who so desires has had an opportunity to question each witness.

Investigative hearing procedures

(k)(1) The chairman at an investigative hearing shall announce in an opening statement the subject of the investigation.

(2) A copy of the committee rules and this clause shall be made available to each witness.

(3) Witnesses at investigative hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(4) The chairman may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

(5) Whenever it is asserted that the evidence or testimony at an investigatory hearing may tend to defame, degrade, or incriminate any person,

(A) such testimony or evidence shall be presented in executive session, notwithstanding the provisions of clause 2(g)(2) of this Rule, if by a majority of those present, there being in attendance the requisite number required under the rules of the committee to be present for the purpose of taking testimony, the committee determines that such evidence or testimony may tend to defame, degrade, or incriminate any person; and

(B) the committee shall proceed to receive such testimony in open session only if a majority of the members of the committee, a majority being present, determine that such evidence or testimony will not tend to defame, degrade, or incriminate any person.

In either case the committee shall afford such person an opportunity voluntarily to appear as a witness, and receive and dispose of requests from such person to subpoena additional witnesses.

(6) Except as provided in subparagraph (5), the chairman shall receive and the committee shall dispose of requests to subpoena additional witnesses.

(7) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee.

(8) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinency of testimony and evidence adduced at its hearing.

(9) A witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the committee.

Committee procedures for reporting bills and resolutions

(1)(1)(A) It shall be the duty of the chairman of each committee to report or cause to be reported promptly to the House any measure approved by the committee and to take or cause to be taken necessary steps to bring a matter to a vote.

(B) In any event, the report of any committee on a measure which has been approved by the committee shall be filed within seven calendar days (exclusive of days on which the House is not in session) after the day on which there has been filed with the clerk of the committee a written request, signed by a majority of the members of the committee, for the reporting of that measure. Upon the filing of any such request, the clerk of the committee shall transmit immediately to the chairman of the committee notice of the filing of that request. This subdivision does not apply to the reporting of a regular appropriation bill by the Committee on Appropriations prior to compliance with subdivision (C) and does not apply to a report of the Committee on Rules with respect to the rules, joint rules, or order of business of the House or to the reporting of a resolution of inquiry addressed to the head of an executive department.

(2)(A) No measure or recommendation shall be reported from any committee unless a majority of the committee was actually present.

(B) With respect to each roll call vote on a motion to report any bill or resolution of a public character, the total number of votes cast for, and the total number of votes cast against, the reporting of such bill or resolution shall be included in the committee report.

(3) The report of any committee on a measure which has been approved by the committee (A) shall include the oversight findings and recommendations required pursuant to clause 2(b)(1) of Rule X separately set out and clearly identified; (B) the statement required by section 308(a)(1) of the Congressional Budget Act of 1974, separately set out and clearly identified, if the measure provides new budget authority (other than continuing appropriations), new spending authority described in section 401(c)(2) of such Act, new credit authority, or an increase or decrease in revenues or tax expenditures; (C) the estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of such Act, separately set out and clearly identified, whenever the Director (if timely submitted prior to the filing of the report) has submitted such estimate and comparison to the committee; and (D) a summary of the oversight findings and recommendations made by the Committee on Government Operations under clause 4(c)(2) of Rule X separately set out and clearly identified whenever such findings and recommendations have been submitted to the legislative committee in a timely fashion to allow an opportunity to consider such

findings and recommendations during the committee's deliberations on the measure.

(4) Each report of a committee on each bill or joint resolution of a public character reported by such committee shall contain a detailed analytical statement as to whether the enactment of such bill or joint resolution into law may have an inflationary impact on prices and costs in the operation of the national economy.

(5) If, at the time of approval of any measure or matter by any committee, other than the Committee on Rules, any member of the committee gives notice of intention to file supplemental, minority, or additional views, that member shall be entitled to not less than three calendar days (excluding Saturdays, Sundays, and legal holidays) in which to file such views, in writing and signed by that member, with the clerk of the committee. All such views so filed by one or more members of the committee shall be included within, and shall be a part of, the report filed by the committee with respect to that measure or matter. The report of the committee upon that measure or matter shall be printed in a single volume which—

(A) shall include all supplemental, minority, or additional views which have been submitted by the time of the filing of the report, and

(B) shall bear upon its cover a recital that any such supplemental, minority, or additional views (and any material submitted under subdivisions (C) and (D) of subparagraph (3)) are included as part of the report.

This subparagraph does not preclude—

(i) the immediate filing or printing of a committee print unless timely request for the opportunity to file supplemental, minority, or additional views has been made as provided by this subparagraph; or

(ii) the filing by any such committee of any supplemental report upon any measure or matter which may be required for the correction of any technical error in a previous report made by that committee upon that measure or matter.

(6) A measure or matter reported by any committee (except the Committee on Rules in the case of a resolution making in order the consideration of a bill, resolution, or other order of business), shall not be considered in the House until the third calendar day, excluding Saturdays, Sundays, and legal holidays on which the report of that committee upon that measure or matter has been available to the Members of the House, or as provided by section 305(a)(1) of the Congressional Budget Act of 1974 in the case of a concurrent resolution on the budget: *Provided, however,* That it shall always be in order to call up for consideration, notwithstanding the provisions of clause 4(b), Rule XI, a report from the Committee on Rules specifically providing for the consideration of a reported measure or matter notwithstanding this restriction. If hearings have been held on any such measure or matter so reported, the committee reporting the measure or matter shall make every reasonable effort to have such hearings printed and available for distribution to the Members of the House prior to the consideration of such measure or matter in the House. This subparagraph shall not apply to—

(A) any measure for the declaration of war, or the declaration of a national emergency, by the Congress; or

(B) any decision, determination, or action by a Government agency which would become or continue to be, effective unless disapproved or otherwise invalidated by one or both Houses of Congress.

For the purposes of the preceding sentence, a Government agency includes any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or the government of the District of Columbia.

(7) If, within seven calendar days after a measure has, by resolution, been made in order for consideration by the House, no motion has been offered that the House consider that measure, any member of the committee which reported that measure may be recognized in the discretion of the Speaker to offer a motion that the House shall consider that measure, if that committee has duly authorized that member to offer that motion.

Power to sit and act; subpoena power

(m)(1) For the purpose of carrying out any of its functions and duties under this rule and Rule X (including any matters referred to it under clause 5 of Rule X), any committee, or any subcommittee thereof, is authorized (subject to subparagraph (2)(A) of this paragraph)—

(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings, and

(B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as it deems necessary.

The chairman of the committee, or any member designated by such chairman, may administer oaths to any witness.

(2)(A) A subpoena may be authorized and issued by a committee or subcommittee under subparagraph (1)(B) in the conduct of any investigation or series of investigations or activities, only when authorized by a majority of the members voting, a majority being present. The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chairman of the committee pursuant to such rules and under such limitations as the committee may prescribe. Authorized subpoenas shall be signed by the chairman of the committee or by any member designated by the committee.

(B) Compliance with any subpoena issued by a committee or subcommittee under subparagraph (1)(B) may be enforced only as authorized or directed by the House.

Use of committee funds for travel

(n)(1) Funds authorized for a committee under clause 5 are for expenses incurred in the committee's activities; however, local currencies owned by the United States shall be made available to the committee and its employees engaged in carrying out their official duties outside the United States, its territories or possessions. No appropriated funds, including those authorized under clause 5,

shall be expended for the purpose of defraying expenses of members of the committee or its employees in any country where local currencies are available for this purpose; and the following conditions shall apply with respect to travel outside the United States or its territories or possessions:

(A) No member or employee of the committee shall receive or expend local currencies for subsistence in any country for any day at a rate in excess of the maximum per diem set forth in applicable Federal law, or if the Member or employee is reimbursed for any expenses for such day, then the lesser of the per diem or the actual, unreimbursed expenses (other than for transportation) incurred by the Member or employee during that day.

(B) Each member or employee of the committee shall make to the chairman of the committee an itemized report showing the dates each country was visited, the amount of per diem furnished, the cost of transportation furnished, any funds expended for any other official purpose and shall summarize in these categories the total foreign currencies and/or appropriated funds expended. All such individual reports shall be filed no later than sixty days following the completion of travel with the chairman of the committee for use in complying with reporting requirements in applicable Federal law and shall be open for public inspection.

(2) In carrying out the committee's activities outside of the United States in any country where local currencies are unavailable, a member or employee of the committee may not receive reimbursement for expenses (other than for transportation) in excess of the maximum per diem set forth in applicable Federal law, or if the member or employee is reimbursed for any expenses for such day, then the lesser of the per diem or the actual unreimbursed expenses (other than for transportation) incurred, by the member or employee during any day.

(3) A member or employee of a committee may not receive reimbursement for the cost of any transportation in connection with travel outside of the United States unless the member or employee has actually paid for the transportation.

(4) The restrictions respecting travel outside of the United States set forth in subparagraphs (2) and (3) shall also apply to travel outside of the United States by Members, officers, and employees of the House authorized under clause 8 of Rule I, clause 1(b) of this rule, or any other provision of these Rules of the House of Representatives.

(5) No local currencies owned by the United States may be made available under this paragraph for the use outside of the United States for defraying the expenses of a member of any committee after—

(A) the date of the general election of Members in which the Member has not been elected to the succeeding Congress; or

(B) in the case of a Member who is not a candidate in such general election, the earlier of the date of such general election or the adjournment sine die of the last regular session of the Congress.

Broadcasting of Committee Hearings

3. (a) It is the purpose of this clause to provide a means, in conformity with acceptable standards of dignity, propriety, and decorum, by which committee hearings, or committee meetings, which are open to the public may be covered, by television broadcast, radio broadcast, and still photography, or by any of such methods of coverage—

(1) for the education, enlightenment, and information of the general public, on the basis of accurate and impartial news coverage, regarding the operations, procedures, and practices of the House as a legislative and representative body and regarding the measures, public issues, and other matters before the House and its committees, the consideration thereof, and the action taken thereon; and

(2) for the development of the perspective and understanding of the general public with respect to the role and function of the House under the Constitution of the United States as an organ of the Federal Government.

(b) In addition, it is the intent of this clause that radio and television tapes and television film of any coverage under this clause shall not be used, or made available for use, as partisan political campaign material to promote or oppose the candidacy of any person for elective public office.

(c) It is, further, the intent of this clause that the general conduct of each meeting (whether of a hearing or otherwise) covered, under authority of this clause, by television broadcast, radio broadcast, and still photography, or by any of such methods of coverage, and the personal behavior of the committee members and staff, other Government officials and personnel, witnesses, television, radio, and press media personnel, and the general public at the hearing or other meeting shall be in strict conformity with and observance of the acceptable standards of dignity, propriety, courtesy, and decorum traditionally observed by the House in its operations and shall not be such as to—

(1) distort the objects and purposes of the hearing or other meeting or the activities of committee members in connection with that hearing or meeting or in connection with the general work of the committee or of the House; or

(2) cast discredit or dishonor on the House, the committee, or any Member or bring the House, the committee, or any Member into disrepute.

(d) The coverage of committee hearings and meetings by television broadcast, radio broadcast, or still photography is a privilege made available by the House and shall be permitted and conducted only in strict conformity with the purposes, provisions, and requirements of this clause.

(e) Whenever any hearing or meeting conducted by any committee of the House is open to the public, that committee may permit, by majority vote of the committee, that hearing or meeting to be covered, in whole or in part, by television broadcast, radio broadcast, and still photography, or by any of such methods of coverage, but only under such written rules as the committee may adopt in accordance with the purposes, provisions, and requirements of this

clause: *Provided, however,* Each committee or subcommittee chairman shall determine, in his discretion, the number of television and still cameras permitted in a hearing or meeting room.

(f) The written rules which may be adopted by a committee under paragraph (e) of this clause shall contain provisions to the following effect:

(1) If the television or radio coverage of the hearing or meeting is to be presented to the public as live coverage, that coverage shall be conducted and presented without commercial sponsorship.

(2) No witness served with a subpoena by the committee shall be required against his or her will to be photographed at any hearing or to give evidence or testimony while the broadcasting of that hearing, by radio or television, is being conducted. At the request of any such witness who does not wish to be subjected to radio, television, or still photography coverage, all lenses shall be covered and all microphones used for coverage turned off. This subparagraph is supplementary to clause 2(k)(5) of this rule, relating to the protection of the rights of witnesses.

(3) The allocation among the television media of the positions of the number of television cameras permitted by a committee or subcommittee chairman in a hearing or meeting room shall be in accordance with fair and equitable procedures devised by the Executive Committee of the Radio and Television Correspondents' Galleries.

(4) Television cameras shall be placed so as not to obstruct in any way the space between any witness giving evidence or testimony and any member of the committee or the visibility of that witness and that member to each other.

(5) Television cameras shall operate from fixed positions but shall not be placed in positions which obstruct unnecessarily the coverage of the hearing or meeting by the other media.

(6) Equipment necessary for coverage by the television and radio media shall not be installed in, or removed from, the hearing or meeting room while the committee is in session.

(7) Floodlights, spotlights, strobелights, and flashguns shall not be used in providing any method of coverage of the hearing or meeting, except that the television media may install additional lighting in the hearing or meeting room, without cost to the Government, in order to raise the ambient lighting level in the hearing or meeting room to the lowest level necessary to provide adequate television coverage of the hearing or meeting at the then current state of the art of television coverage.

(8) In the allocation of the number of still photographers permitted by a committee or subcommittee chairman in a hearing or meeting room, preference shall be given to photographers from Associated Press Photos and United Press International Newspictures. If requests are made by more of the media than will be permitted by a committee or subcommittee chairman for coverage of the hearing or meeting by still photography, that coverage shall be made on the basis of a fair and equitable pool arrangement devised by the Standing Committee of Press Photographers.

(9) Photographers shall not position themselves, at any time during the course of the hearing or meeting, between the witness table and the members of the committee.

(10) Photographers shall not place themselves in positions which obstruct unnecessarily the coverage of the hearing by the other media.

(11) Personnel providing coverage by the television and radio media shall be then currently accredited to the Radio and Television Correspondents' Galleries.

(12) Personnel providing coverage by still photography shall be then currently accredited to the Press Photographers' Gallery.

(13) Personnel providing coverage by the television and radio media and by still photography shall conduct themselves and their coverage activities in an orderly and unobtrusive manner.

Privileged Reports and Amendments

4. (a) The following committees shall have leave to report at any time on the matters herein stated, namely: The Committee on Appropriations—on general appropriation bills and on joint resolutions continuing appropriations for a fiscal year if reported after September 15 preceding the beginning of such fiscal year; the Committee on the Budget—on the matters required to be reported by such committee under Titles III and IV of the Congressional Budget Act of 1974; the Committee on House Administration—on enrolled bills, contested elections, and all matters referred to it of printing for the use of the House or the two Houses, and on all matters of expenditure of the contingent fund of the House, and on all matters relating to preservation and availability of noncurrent records of the House under rule XXXVI; the Committee on Rules—on rules, joint rules, and the order of business; and the Committee on Standards of Official Conduct—on resolutions recommending action by the House of Representatives with respect to an individual Member, officer, or employee of the House of Representatives as a result of any investigation by the committee relating to the official conduct of such Member, officer, or employee of the House of Representatives.

(b) It shall always be in order to call up for consideration a report from the Committee on Rules on a rule, joint rule, or the order of business (except it shall not be called up for consideration on the same day it is presented to the House, unless so determined by a vote of not less than two-thirds of the Members voting, but this provision shall not apply during the last three days of the session), and, pending the consideration thereof, the Speaker may entertain one motion that the House adjourn; but after the result is announced the Speaker shall not entertain any other dilatory motion until the report shall have been fully disposed of. The Committee on Rules shall not report any rule or order which provides that business under clause 7 of Rule XXIV shall be set aside by a vote of less than two-thirds of the Members present; nor shall it report any rule or order which would prevent the motion to recommit from being made as provided in clause 4 of Rule XVI.

(c) The Committee on Rules shall present to the House reports concerning rules, joint rules, and order of business, within three legislative days of the time when the bill or resolution involved is ordered reported by the committee. If any such rule or order is not considered immediately, it shall be referred to the calendar and, if not called up by the Member making the report within seven legislative days thereafter, any member of the Rules Committee may call it up as a question of privilege (but only on the day after the calendar day on which such Member announces to the House his intention to do so) and the Speaker shall recognize any member of the Rules Committee seeking recognition for that purpose. If the Committee on Rules makes an adverse report on any resolution pending before the committee, providing for an order of business for the consideration by the House of any public bill or joint resolution, on days when it shall be in order to call up motions to discharge committees it shall be in order for any Member of the House to call up for consideration by the House such adverse report, and it shall be in order to move the adoption by the House of such resolution adversely reported notwithstanding the adverse report of the Committee on Rules, and the Speaker shall recognize the Member seeking recognition for that purpose as a question of the highest privilege.

(d) Whenever the Committee on Rules reports a resolution repealing or amending any of the Rules of the House of Representatives or part thereof it shall include in its report or in an accompanying document—

(1) the text of any part of the Rules of the House of Representatives which is proposed to be repealed; and

(2) a comparative print of any part of the resolution making such an amendment and any part of the Rules of the House of Representatives to be amended, showing by an appropriate typographical device the omissions and insertions proposed to be made.

Committee Expenses

5. (a) Whenever any committee, commission or other entity (except the Committee on Appropriations and the Committee on the Budget) is to be granted authorization for the payment, from the contingent fund of the House, of its expenses in any year, other than those expenses to be paid from appropriations provided by statute, such authorization initially shall be procured by one primary expense resolution for the committee, commission or other entity providing funds for the payment of the expenses of the committee, commission or other entity for that year from the contingent fund of the House. Any such primary expense resolution reported to the House shall not be considered in the House unless a printed report on that resolution has been available to the Members of the House for at least one calendar day prior to the consideration of that resolution in the House. Such report shall, for the information of the House—

(1) state the total amount of the funds to be provided to the committee, commission or other entity under the primary ex-

pense resolution for all anticipated activities and programs of the committee, commission or other entity; and

(2) to the extent practicable, contain such general statements regarding the estimated foreseeable expenditures for the respective anticipated activities and programs of the committee, commission or other entity as may be appropriate to provide the House with basic estimates with respect to the expenditure generally of the funds to be provided to the committee, commission or other entity under the primary expense resolution.

(b) After the date of adoption by the House of any such primary expense resolution for any such committee, commission or other entity for any year, authorization for the payment from the contingent fund of additional expenses of such committee, commission or other entity in that year, other than those expenses to be paid from appropriations provided by statute, may be procured by one or more supplemental expense resolutions for that committee, commission or other entity as necessary. Any such supplemental expense resolution reported to the House shall not be considered in the House unless a printed report on that resolution has been available to the Members of the House for at least one calendar day prior to the consideration of that resolution in the House. Such report shall, for the information of the House—

(1) state the total amount of additional funds to be provided to the committee, commission or other entity under the supplemental expense resolution and the purpose or purposes for which those additional funds are to be used by the committee, commission or other entity; and

(2) state the reason or reasons for the failure to procure the additional funds for the committee, commission or other entity by means of the primary expense resolution.

(c) The preceding provisions of this clause do not apply to—

(1) any resolution providing for the payment from the contingent fund of the House of sums necessary to pay compensation for staff services performed for, or to pay other expenses of, any committee, commission or other entity at any time from and after the beginning of any year and before the date of adoption by the House of the primary expense resolution providing funds to pay the expenses of that committee, commission or other entity for that year; or

(2) any resolution providing in any Congress, for all of the standing committees of the House, additional office equipment, airmail and special delivery postage stamps, supplies, staff personnel, or any other specific item for the operation of the standing committees, and containing an authorization for the payment from the contingent fund of the House of the expenses of any of the foregoing items provided by that resolution, subject to and until enactment of the provisions of the resolution as permanent law.

(d) From the funds provided for the appointment of committee staff pursuant to primary and additional expense resolutions—

(1) The chairman of each standing subcommittee of a standing committee of the House is authorized to appoint one staff member who shall serve at the pleasure of the subcommittee chairman.

(2) The ranking minority party member of each standing subcommittee on each standing committee of the House is authorized to appoint one staff person who shall serve at the pleasure of the ranking minority party member.

(3) The staff members appointed pursuant to the provisions of subparagraphs (1) and (2) shall be compensated at a rate determined by the subcommittee chairman not to exceed (A) 75 per centum of the maximum established in paragraph (c) of clause 6 or (B) the rate paid the staff member appointed pursuant to subparagraph (1) of this paragraph.

(4) For the purpose of this paragraph, (A) there shall be no more than six standing subcommittees of each standing committee of the House, except for the Committee on Appropriations, and (B) no member shall appoint more than one person pursuant to the above provisions.

(5) The staff positions made available to the subcommittee chairman and ranking minority party members pursuant to subparagraphs (1) and (2) of this paragraph shall be made available from the staff positions provided under clause 6 of Rule XI unless such staff positions are made available pursuant to a primary or additional expense resolution.

(e) No primary expense resolution or additional expense resolution of a committee may provide for the payment or reimbursement of expenses incurred by any member of the committee for travel by the member after the date of the general election of Members in which the Member is not elected to the succeeding Congress, or in the case of a Member who is not a candidate in such general election, the earlier of the date of such general election or the adjournment sine die of the last regular session of the Congress.

(f)(1) For continuance of necessary investigations and studies by—

(A) each standing committee and select committee established by these rules; and

(B) except as provided in subparagraph (2), each select committee established by resolution;

there shall be paid out of the contingent fund of the House such amounts as may be necessary for the period beginning at noon on January 3 and ending at midnight on March 31 of each year.

(2) In the case of the first session of a Congress, amounts shall be made available under this paragraph for a select committee established by resolution in the preceding Congress only if—

(A) a reestablishing resolution for such select committee is introduced in the present Congress; and

(B) no resolution of the preceding Congress provided for termination of funding of investigations and studies by such select committee at or before the end of the preceding Congress.

(3) Each committee receiving amounts under this paragraph shall be entitled, for each month in the period specified in subparagraph (1), to 9 per centum (or such lesser per centum as may be determined by the Committee on House Administration) of the total annualized amount made available under expense resolutions for such committee in the preceding session of Congress.

(4) Payments under this paragraph shall be made on vouchers authorized by the committee involved, signed by the chairman of such committee, except as provided in subparagraph (5), and approved by the Committee on House Administration.

(5) Notwithstanding any provision of law, rule of the House, or other authority, from noon on January 3 of the first session of a Congress, until the election by the House of the committee involved in that Congress, payments under this paragraph shall be made on vouchers signed by—

(A) the chairman of such committee as constituted at the close of the preceding Congress; or

(B) if such chairman is not a Member in the present Congress, the ranking majority party member of such committee as constituted at the close of the preceding Congress who is a Member in the present Congress.

(6)(A) The authority of a committee to incur expenses under this paragraph shall expire upon agreement by the House to a primary expense resolution for such committee.

(B) Amounts made available under this paragraph shall be expended in accordance with regulations prescribed by the Committee on House Administration.

(C) The provisions of this paragraph shall be effective only insofar as not inconsistent with any resolution, reported by the Committee on House Administration and adopted after the date of adoption of these rules.

Committee Staffs

6. (a)(1) Subject to subparagraph (2) of this paragraph and paragraph (f) of this clause, each standing committee may appoint, by majority vote of the committee, not more than eighteen professional staff members. Each professional staff member appointed under this subparagraph shall be assigned to the chairman and the ranking minority party member of such committee, as the committee considers advisable.

(2) Subject to paragraph (f) of this clause, whenever a majority of the minority party members of a standing committee (except the Committee on Standards of Official Conduct and the Permanent Select Committee on Intelligence) so request, not more than six persons may be selected, by majority vote of the minority party members, for appointment by the committee as professional staff members from among the number authorized by subparagraph (1) of this paragraph. The committee shall appoint any persons so selected whose character and qualifications are acceptable to a majority of the committee. If the committee determines that the character and qualifications of any person so selected are unacceptable to the committee, a majority of the minority party members may select other persons for appointment by the committee to the professional staff until such appointment is made. Each professional staff member appointed under this subparagraph shall be assigned to such committee business as the minority party members of the committee consider advisable.

(3) The professional staff members of each standing committee—

(A) shall not engage in any work other than committee business during congressional working hours; and

(B) shall not be assigned any duties other than those pertaining to committee business.

(4) Services of the professional staff members of each standing committee may be terminated by majority vote of the committee.

(5) The foregoing provisions of this paragraph do not apply to the Committee on Appropriations and to the Committee on the Budget and the provisions of subparagraphs (3) (B) and (C) do not apply to the Committee on Rules.

(b)(1) The clerical staff of each standing committee shall consist of not more than twelve clerks, to be attached to the office of the chairman, to the ranking minority party members, and to the professional staff, as the committee considers advisable. Subject to subparagraph (2) of this paragraph and paragraph (f) of this clause, the clerical staff shall be appointed by majority vote of the committee. Except as provided by subparagraph (2) of this paragraph the clerical staff shall handle committee correspondence and stenographic work both for the committee staff and for the chairman and the ranking minority party member on matters related to committee work.

(2) Subject to paragraph (f) of this clause, whenever a majority of the minority party members of a standing committee (except the Committee on Standards of Official Conduct and the Permanent Select Committee on Intelligence) so request, four persons may be selected, by majority vote of the minority party members, for appointment by the committee to positions on the clerical staff from among the number of clerks authorized by subparagraph (1) of this paragraph. The committee shall appoint to those positions any person so selected whose character and qualifications are acceptable to a majority of the committee. If the committee determines that the character and qualifications of any person so selected are unacceptable to the committee, a majority of the minority party members, may select other persons for appointment by the committee to the position involved on the clerical staff until such appointment is made. Each clerk appointed under this subparagraph shall handle committee correspondence and stenographic work for the minority party members of the committee and for any members of the professional staff appointed under subparagraph (2) of paragraph (a) of this clause on matters related to committee work.

(3) Services of the clerical staff members of each standing committee may be terminated by majority vote of the committee.

(4) The foregoing provisions of this paragraph do not apply to the Committee on Appropriations and the Committee on the Budget.

(c) Each employee on the professional, clerical and investigating staff of each standing committee shall be entitled to pay at a single gross per annum rate, to be fixed by the chairman, which does not exceed the maximum rate of pay, as in effect from time to time, under applicable provisions of law.

(d) Subject to appropriations hereby authorized, the Committee on Appropriations and the Committee on the Budget may appoint such staff, in addition to the clerk thereof and assistants for the minority, as it determines by majority vote to be necessary, such

personnel, other than minority assistants, to possess such qualifications as the committee may prescribe.

(e) No committee shall appoint to its staff any experts or other personnel detailed or assigned from any department or agency of the Government, except with the written permission of the Committee on House Administration.

(f) If a request for the appointment of a minority professional staff member under paragraph (a), or a minority clerical staff member under paragraph (b), is made when no vacancy exists to which that appointment may be made, the committee nevertheless shall appoint, under paragraph (a) or paragraph (b), as applicable, the person selected by the minority and acceptable to the committee. The person so appointed shall serve as an additional member of the professional staff or the clerical staff, as the case may be, of the committee, and shall be paid from the contingent fund, until such a vacancy (other than a vacancy in the position of head of the professional staff, by whatever title designated) occurs, at which time that person shall be deemed to have been appointed to that vacancy. If such vacancy occurs on the professional staff when seven or more persons have been so appointed who are eligible to fill that vacancy, a majority of the minority party members shall designate which of those persons shall fill that vacancy.

(g) Each staff member appointed pursuant to a request by minority party members under paragraph (a) or (b) of this clause, and each staff member appointed to assist minority party members of a committee pursuant to an expense resolution described in paragraph (a) or (b) of clause 5, shall be accorded equitable treatment with respect to the fixing of his or her rate of pay, the assignment to him or her of work facilities, and the accessibility to him or her of committee records.

(h) Paragraphs (a) and (b) of this clause shall not be construed to authorize the appointment of additional professional or clerical staff members of a committee pursuant to a request under either of such paragraphs by the minority party members of that committee if six or more professional staff members or four or more clerical staff members, provided for in paragraph (a)(1) or paragraph (b)(1) of this clause, as the case may be, who are satisfactory to a majority of the minority party members, are otherwise assigned to assist the minority party members.

(i) Notwithstanding paragraphs (a)(2) and (b)(2), a committee may employ nonpartisan staff, in lieu of or in addition to committee staff designated exclusively for the majority or minority party, upon an affirmative vote of a majority of the members of the majority party and a majority of the members of the minority party.



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit VV

RULES OF THE HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

RULE I

THE SPEAKER

Approval of the Journal

1. The Speaker shall take the Chair on every legislative day precisely at the hour to which the House last adjourned and immediately call the House to order. Having examined and approved the Journal of the last day's proceedings, the Speaker shall announce to the House approval thereof. The Speaker's approval of the Journal shall be deemed agreed to unless a Member, Delegate, or Resident Commissioner demands a vote thereon. If such a vote is decided in the affirmative, it shall not be subject to a motion to reconsider. If such a vote is decided in the negative, then one motion that the Journal be read shall be privileged, shall be decided without debate, and shall not be subject to a motion to reconsider.

Preservation of order

2. The Speaker shall preserve order and decorum and, in case of disturbance or disorderly conduct in the

galleries or in the lobby, may cause the same to be cleared.

Control of Capitol facilities

3. Except as otherwise provided by rule or law, the Speaker shall have general control of the Hall of the House, the corridors and passages in the part of the Capitol assigned to the use of the House, and the disposal of unappropriated rooms in that part of the Capitol.

Signature of documents

4. The Speaker shall sign all acts and joint resolutions passed by the two Houses and all writs, warrants, and subpoenas of, or issued by order of, the House. The Speaker may sign enrolled bills and joint resolutions whether or not the House is in session.

Questions of order

5. The Speaker shall decide all questions of order, subject to appeal by a Member, Delegate, or Resident Commissioner. On such an appeal a Member, Delegate, or Resident Commissioner may not speak more than once without permission of the House.

Form of a question

6. The Speaker shall rise to put a question but may state it sitting. The Speaker shall put a question in this form: “Those in favor (of the question), say ‘Aye.’”; and after

the affirmative voice is expressed, “Those opposed, say ‘No.’”. After a vote by voice under this clause, the Speaker may use such voting procedures as may be invoked under rule XX.

Discretion to vote

7. The Speaker is not required to vote in ordinary legislative proceedings, except when such vote would be decisive or when the House is engaged in voting by ballot.

Speaker pro tempore

8. (a) The Speaker may appoint a Member to perform the duties of the Chair. Except as specified in paragraph (b), such an appointment may not extend beyond three legislative days.

(b)(1) In the case of illness, the Speaker may appoint a Member to perform the duties of the Chair for a period not exceeding 10 days, subject to the approval of the House. If the Speaker is absent and has omitted to make such an appointment, then the House shall elect a Speaker pro tempore to act during the absence of the Speaker.

(2) With the approval of the House, the Speaker may appoint a Member to act as Speaker pro tempore only to sign enrolled bills and joint resolutions for a specified period of time.

(3)(A) In the case of a vacancy in the Office of Speaker, the next Member on the list described in subdivision (B) shall act as Speaker pro tempore until the election of a

Speaker or a Speaker pro tempore. Pending such election the Member acting as Speaker pro tempore may exercise such authorities of the Office of Speaker as may be necessary and appropriate to that end.

(B) As soon as practicable after the election of the Speaker and whenever appropriate thereafter, the Speaker shall deliver to the Clerk a list of Members in the order in which each shall act as Speaker pro tempore under subdivision (A).

(C) For purposes of subdivision (A), a vacancy in the Office of Speaker may exist by reason of the physical inability of the Speaker to discharge the duties of the office.

Other responsibilities

9. The Speaker, in consultation with the Minority Leader, shall develop through an appropriate entity of the House a system for drug testing in the House. The system may provide for the testing of a Member, Delegate, Resident Commissioner, officer, or employee of the House, and otherwise shall be comparable in scope to the system for drug testing in the executive branch pursuant to Executive Order 12564 (Sept. 15, 1986). The expenses of the system may be paid from applicable accounts of the House for official expenses.

Designation of travel

10. The Speaker may designate a Member, Delegate, Resident Commissioner, officer, or employee of the House to travel on the business of the House within or without the United States, whether the House is meeting, has recessed, or has adjourned. Expenses for such travel may be paid from applicable accounts of the House described in clause 1(k)(1) of rule X on vouchers approved and signed solely by the Speaker.

Committee appointment

11. The Speaker shall appoint all select, joint, and conference committees ordered by the House. At any time after an original appointment, the Speaker may remove Members, Delegates, or the Resident Commissioner from, or appoint additional Members, Delegates, or the Resident Commissioner to, a select or conference committee. In appointing Members, Delegates, or the Resident Commissioner to conference committees, the Speaker shall appoint no less than a majority who generally supported the House position as determined by the Speaker, shall name those who are primarily responsible for the legislation, and shall, to the fullest extent feasible, include the principal proponents of the major provisions of the bill or resolution passed or adopted by the House.

Recess and Convening Authorities

12. (a) To suspend the business of the House for a short time when no question is pending before the House, the

Speaker may declare a recess subject to the call of the Chair.

(b)(1) To suspend the business of the House when notified of an imminent threat to its safety, the Speaker may declare an emergency recess subject to the call of the Chair.

(2) To suspend the business of the Committee of the Whole House on the state of the Union when notified of an imminent threat to its safety, the Chair of the Committee of the Whole may declare an emergency recess subject to the call of the Chair.

(c) During any recess or adjournment of not more than three days, if the Speaker is notified by the Sergeant-at-Arms of an imminent impairment of the place of reconvening at the time previously appointed, then the Speaker may, in consultation with the Minority Leader—

(1) postpone the time for reconvening within the limits of clause 4, section 5, article I of the Constitution and notify Members accordingly; or

(2) reconvene the House before the time previously appointed solely to declare the House in recess within the limits of clause 4, section 5, article I of the Constitution and notify Members accordingly.

(d) The Speaker may convene the House in a place at the seat of government other than the Hall of the House whenever, in the opinion of the Speaker, the public interest shall warrant it.

RULE II

OTHER OFFICERS AND OFFICIALS

Elections

1. There shall be elected at the commencement of each Congress, to continue in office until their successors are chosen and qualified, a Clerk, a Sergeant-at-Arms, a Chief Administrative Officer, and a Chaplain. Each of these officers shall take an oath to support the Constitution of the United States, and for the true and faithful exercise of the duties of the office to the best of the knowledge and ability of the officer, and to keep the secrets of the House. Each of these officers shall appoint all of the employees of the department concerned provided for by law. The Clerk, Sergeant-at-Arms, and Chief Administrative Officer may be removed by the House or by the Speaker.

Clerk

2. (a) At the commencement of the first session of each Congress, the Clerk shall call the Members, Delegates, and Resident Commissioner to order and proceed to record their presence by States in alphabetical order, either by call of the roll or by use of the electronic voting system. Pending the election of a Speaker or Speaker pro tempore, the Clerk shall preserve order and decorum and decide all questions of order, subject to appeal by a Member, Delegate, or Resident Commissioner.

(b) At the commencement of every regular session of Congress, the Clerk shall make and cause to be delivered to each Member, Delegate, and the Resident Commissioner a list of the reports that any officer or Department is required to make to Congress, citing the law or resolution in which the requirement may be contained and placing under the name of each officer the list of reports required to be made by such officer.

(c) The Clerk shall—

(1) note all questions of order, with the decisions thereon, the record of which shall be appended to the Journal of each session;

(2) enter on the Journal the hour at which the House adjourns;

(3) complete the distribution of the Journal to Members, Delegates, and the Resident Commissioner, together with an accurate and complete index, as soon as possible after the close of a session; and

(4) send a copy of the Journal to the executive of and to each branch of the legislature of every State as may be requested by such State officials.

(d)(1) The Clerk shall attest and affix the seal of the House to all writs, warrants, and subpoenas issued by order of the House and certify the passage of all bills and joint resolutions.

(2) The Clerk shall examine all bills, amendments, and joint resolutions after passage by the House and, in

cooperation with the Senate, examine all bills and joint resolutions that have passed both Houses to see that they are correctly enrolled and forthwith present those bills and joint resolutions that originated in the House to the President in person after their signature by the Speaker and the President of the Senate, and report to the House the fact and date of their presentment.

(e) The Clerk shall cause the calendars of the House to be distributed each legislative day.

(f) The Clerk shall—

(1) retain in the library at the Office of the Clerk for the use of the Members, Delegates, Resident Commissioner, and officers of the House, and not to be withdrawn therefrom, two copies of all the books and printed documents deposited there; and

(2) deliver to any Member, Delegate, or the Resident Commissioner an extra copy of each document requested by that Member, Delegate, or Resident Commissioner that has been printed by order of either House of Congress in any Congress in which the Member, Delegate, or Resident Commissioner served.

(g) The Clerk shall provide for the temporary absence or disability of the Clerk by designating an official in the Office of the Clerk to sign all papers that may require the official signature of the Clerk and to perform all other official acts that the Clerk may be required to perform under the rules and practices of the House, except such

official acts as are provided for by statute. Official acts performed by the designated official shall be under the name of the Clerk. The designation shall be in writing and shall be laid before the House and entered on the Journal.

(h) The Clerk may receive messages from the President and from the Senate at any time when the House is in recess or adjournment.

(i)(1) The Clerk shall supervise the staff and manage the office of a Member, Delegate, or Resident Commissioner who has died, resigned, or been expelled until a successor is elected. The Clerk shall perform similar duties in the event that a vacancy is declared by the House in any congressional district because of the incapacity of the person representing such district or other reason. When acting as a supervisory authority over such staff, the Clerk shall have authority to terminate employees and, with the approval of the Committee on House Administration, may appoint such staff as is required to operate the office until a successor is elected.

(2) For 60 days following the death of a former Speaker, the Clerk shall maintain on the House payroll, and shall supervise in the same manner, staff appointed under House Resolution 1238, Ninety-first Congress (as enacted into permanent law by chapter VIII of the Supplemental Appropriations Act, 1971) (2 U.S.C. 31b–5).

(j) In addition to any other reports required by the Speaker or the Committee on House Administration, the Clerk shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or on December 31 on the financial and operational status of each function under the jurisdiction of the Clerk. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

(k) The Clerk shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

Sergeant-at-Arms

3. (a) The Sergeant-at-Arms shall attend the House during its sittings and maintain order under the direction of the Speaker or other presiding officer. The Sergeant-at-Arms shall execute the commands of the House, and all processes issued by authority thereof, directed to the Sergeant-at-Arms by the Speaker.

(b) The symbol of the Office of the Sergeant-at-Arms shall be the mace, which shall be borne by the Sergeant-at-Arms while enforcing order on the floor.

(c) The Sergeant-at-Arms shall enforce strictly the rules relating to the privileges of the Hall of the House and be

responsible to the House for the official conduct of employees of the Office of the Sergeant-at-Arms.

(d) The Sergeant-at-Arms may not allow a person to enter the room over the Hall of the House during its sittings and, from 15 minutes before the hour of the meeting of the House each day until 10 minutes after adjournment, shall see that the floor is cleared of all persons except those privileged to remain.

(e) In addition to any other reports required by the Speaker or the Committee on House Administration, the Sergeant-at-Arms shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or on December 31 on the financial and operational status of each function under the jurisdiction of the Sergeant-at-Arms. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

(f) The Sergeant-at-Arms shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

Chief Administrative Officer

4. (a) The Chief Administrative Officer shall have operational and financial responsibility for functions as assigned by the Committee on House Administration and

shall be subject to the oversight of the Committee on House Administration.

(b) In addition to any other reports required by the Committee on House Administration, the Chief Administrative Officer shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or December 31 on the financial and operational status of each function under the jurisdiction of the Chief Administrative Officer. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

(c) The Chief Administrative Officer shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

Chaplain

5. The Chaplain shall offer a prayer at the commencement of each day's sitting of the House.

Office of Inspector General

6. (a) There is established an Office of Inspector General.

(b) The Inspector General shall be appointed for a Congress by the Speaker, the Majority Leader, and the Minority Leader, acting jointly.

(c) Subject to the policy direction and oversight of the Committee on House Administration, the Inspector General shall only—

(1) provide audit, investigative, and advisory services to the House and joint entities in a manner consistent with government-wide standards;

(2) inform the officers or other officials who are the subject of an audit of the results of that audit and suggesting appropriate curative actions;

(3) simultaneously notify the Speaker, the Majority Leader, the Minority Leader, and the chair and ranking minority member of the Committee on House Administration in the case of any financial irregularity discovered in the course of carrying out responsibilities under this clause;

(4) simultaneously submit to the Speaker, the Majority Leader, the Minority Leader, and the chair and ranking minority member of the Committee on House Administration a report of each audit conducted under this clause; and

(5) report to the Committee on Ethics information involving possible violations by a Member, Delegate, Resident Commissioner, officer, or employee of the House of any rule of the House or of any law applicable to the performance of official duties or the discharge of official responsibilities that may require referral to the

appropriate Federal or State authorities under clause 3(a)(3) of rule XI.

Office of the Historian

7. There is established an Office of the Historian of the House of Representatives. The Speaker shall appoint and set the annual rate of pay for employees of the Office of the Historian.

Office of General Counsel

8. There is established an Office of General Counsel for the purpose of providing legal assistance and representation to the House. Legal assistance and representation shall be provided without regard to political affiliation. The Office of General Counsel shall function pursuant to the direction of the Speaker, who shall consult with a Bipartisan Legal Advisory Group, which shall include the majority and minority leaderships. The Speaker shall appoint and set the annual rate of pay for employees of the Office of General Counsel.

RULE III

THE MEMBERS, DELEGATES, AND RESIDENT COMMISSIONER OF
PUERTO RICO

Voting

1. Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily

prevented, and shall vote on each question put, unless having a direct personal or pecuniary interest in the event of such question.

2. (a) A Member may not authorize any other person to cast the vote of such Member or record the presence of such Member in the House or the Committee of the Whole House on the state of the Union.

(b) No other person may cast a Member's vote or record a Member's presence in the House or the Committee of the Whole House on the state of the Union.

Delegates and the Resident Commissioner

3. (a) Each Delegate and the Resident Commissioner shall be elected to serve on standing committees in the same manner as Members and shall possess in such committees the same powers and privileges as the other members of the committee.

(b) The Delegates and the Resident Commissioner may be appointed to any select committee and to any conference committee.

RULE IV

THE HALL OF THE HOUSE

Use and admittance

1. The Hall of the House shall be used only for the legislative business of the House and for caucus and conference meetings of its Members, except when the

House agrees to take part in any ceremonies to be observed therein.

2. (a) Only the following persons shall be admitted to the Hall of the House or rooms leading thereto:

(1) Members of Congress, Members-elect, and contestants in election cases during the pendency of their cases on the floor.

(2) The Delegates and the Resident Commissioner.

(3) The President and Vice President of the United States and their private secretaries.

(4) Justices of the Supreme Court.

(5) Elected officers and minority employees nominated as elected officers of the House.

(6) The Parliamentarian.

(7) Staff of committees when business from their committee is under consideration, and staff of the respective party leaderships when so assigned with the approval of the Speaker.

(8) Not more than one person from the staff of a Member, Delegate, or Resident Commissioner when that Member, Delegate, or Resident Commissioner has an amendment under consideration (subject to clause 5).

(9) The Architect of the Capitol.

(10) The Librarian of Congress and the assistant in charge of the Law Library.

(11) The Secretary and Sergeant-at-Arms of the Senate.

(12) Heads of departments.

(13) Foreign ministers.

(14) Governors of States.

(15) Former Members, Delegates, and Resident Commissioners; former Parliamentarians of the House; and former elected officers and minority employees nominated as elected officers of the House (subject to clause 4).

(16) One attorney to accompany a Member, Delegate, or Resident Commissioner who is the respondent in an investigation undertaken by the Committee on Ethics when a recommendation of that committee is under consideration in the House.

(17) Such persons as have, by name, received the thanks of Congress.

(b) The Speaker may not entertain a unanimous consent request or a motion to suspend this clause or clauses 1, 3, 4, or 5.

3. (a) Except as provided in paragraph (b), all persons not entitled to the privilege of the floor during the session shall be excluded at all times from the Hall of the House and the cloakrooms.

(b) Until 15 minutes of the hour of the meeting of the House, persons employed in its service, accredited members of the press entitled to admission to the press

gallery, and other persons on request of a Member, Delegate, or Resident Commissioner by card or in writing, may be admitted to the Hall of the House.

4. (a) A former Member, Delegate, or Resident Commissioner; a former Parliamentarian of the House; or a former elected officer of the House or former minority employee nominated as an elected officer of the House shall not be entitled to the privilege of admission to the Hall of the House and rooms leading thereto if such individual—

(1) is a registered lobbyist or agent of a foreign principal as those terms are defined in clause 5 of rule XXV;

(2) has any direct personal or pecuniary interest in any legislative measure pending before the House or reported by a committee; or

(3) is in the employ of or represents any party or organization for the purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any legislative proposal.

(b) The Speaker may promulgate regulations to carry out this rule including regulations that exempt ceremonial or educational functions from the restrictions of this clause.

5. A person from the staff of a Member, Delegate, or Resident Commissioner may be admitted to the Hall of the House or rooms leading thereto under clause 2 only

upon prior notice to the Speaker. Such persons, and persons from the staff of committees admitted under clause 2, may not engage in efforts in the Hall of the House or rooms leading thereto to influence Members with regard to the legislation being amended. Such persons shall remain at the desk and are admitted only to advise the Member, Delegate, Resident Commissioner, or committee responsible for their admission. A person who violates this clause may be excluded during the session from the Hall of the House and rooms leading thereto by the Speaker.

Gallery

6. (a) The Speaker shall set aside a portion of the west gallery for the use of the President, the members of the Cabinet, justices of the Supreme Court, foreign ministers and suites, and the members of their respective families. The Speaker shall set aside another portion of the same gallery for the accommodation of persons to be admitted on the cards of Members, Delegates, or the Resident Commissioner.

(b) The Speaker shall set aside the southerly half of the east gallery for the use of the families of Members of Congress. The Speaker shall control one bench. On the request of a Member, Delegate, Resident Commissioner, or Senator, the Speaker shall issue a card of admission to the family of such individual, which may include their visitors. No other person shall be admitted to this section.

Prohibition on campaign contributions

7. A Member, Delegate, Resident Commissioner, officer, or employee of the House, or any other person entitled to admission to the Hall of the House or rooms leading thereto by this rule, may not knowingly distribute a political campaign contribution in the Hall of the House or rooms leading thereto.

RULE V

BROADCASTING THE HOUSE

1. The Speaker shall administer, direct, and control a system for closed-circuit viewing of floor proceedings of the House in the offices of all Members, Delegates, the Resident Commissioner, and committees and in such other places in the Capitol and the House Office Buildings as the Speaker considers appropriate. Such system may include other telecommunications functions as the Speaker considers appropriate. Any such telecommunications shall be subject to rules and regulations issued by the Speaker.

2. (a) The Speaker shall administer, direct, and control a system for complete and unedited audio and visual broadcasting and recording of the proceedings of the House. The Speaker shall provide for the distribution of such broadcasts and recordings to news media, for the storage of audio and video recordings of the proceedings,

and for the closed-captioning of the proceedings for hearing-impaired persons.

(b) All television and radio broadcasting stations, networks, services, and systems (including cable systems) that are accredited to the House Radio and Television Correspondents' Galleries, and all radio and television correspondents who are so accredited, shall be provided access to the live coverage of the House.

(c) Coverage made available under this clause, including any recording thereof—

(1) may not be used for any political purpose;

(2) may not be used in any commercial advertisement; and

(3) may not be broadcast with commercial sponsorship except as part of a bona fide news program or public affairs documentary program.

3. The Speaker may delegate any of the responsibilities under this rule to such legislative entity as the Speaker considers appropriate.

RULE VI

OFFICIAL REPORTERS AND NEWS MEDIA GALLERIES

Official reporters

1. Subject to the direction and control of the Speaker, the Clerk shall appoint, and may remove for cause, the official reporters of the House, including stenographers of

committees, and shall supervise the execution of their duties.

News media galleries

2. A portion of the gallery over the Speaker's chair, as may be necessary to accommodate representatives of the press wishing to report debates and proceedings, shall be set aside for their use. Reputable reporters and correspondents shall be admitted thereto under such regulations as the Speaker may prescribe from time to time. The Standing Committee of Correspondents for the Press Gallery, and the Executive Committee of Correspondents for the Periodical Press Gallery, shall supervise such galleries, including the designation of its employees, subject to the direction and control of the Speaker. The Speaker may admit to the floor, under such regulations as the Speaker may prescribe, not more than one representative of each press association.

3. A portion of the gallery as may be necessary to accommodate reporters of news to be disseminated by radio, television, and similar means of transmission, wishing to report debates and proceedings, shall be set aside for their use. Reputable reporters and correspondents shall be admitted thereto under such regulations as the Speaker may prescribe. The Executive Committee of the Radio and Television Correspondents' Galleries shall supervise such gallery, including the designation of its employees, subject to the direction and

control of the Speaker. The Speaker may admit to the floor, under such regulations as the Speaker may prescribe, not more than one representative of each media outlet.

RULE VII

RECORDS OF THE HOUSE

Archiving

1. (a) At the end of each Congress, the chair of each committee shall transfer to the Clerk any noncurrent records of such committee, including the subcommittees thereof.

(b) At the end of each Congress, each officer of the House elected under rule II shall transfer to the Clerk any noncurrent records made or acquired in the course of the duties of such officer.

2. The Clerk shall deliver the records transferred under clause 1, together with any other noncurrent records of the House, to the Archivist of the United States for preservation at the National Archives and Records Administration. Records so delivered are the permanent property of the House and remain subject to this rule and any order of the House.

Public availability

3. (a) The Clerk shall authorize the Archivist to make records delivered under clause 2 available for public use,

subject to clause 4(b) and any order of the House.

(b)(1) A record shall immediately be made available if it was previously made available for public use by the House or a committee or a subcommittee.

(2) An investigative record that contains personal data relating to a specific living person (the disclosure of which would be an unwarranted invasion of personal privacy), an administrative record relating to personnel, or a record relating to a hearing that was closed under clause 2(g)(2) of rule XI shall be made available if it has been in existence for 50 years.

(3) A record for which a time, schedule, or condition for availability is specified by order of the House shall be made available in accordance with that order. Except as otherwise provided by order of the House, a record of a committee for which a time, schedule, or condition for availability is specified by order of the committee (entered during the Congress in which the record is made or acquired by the committee) shall be made available in accordance with the order of the committee.

(4) A record (other than a record referred to in subparagraph (1), (2), or (3)) shall be made available if it has been in existence for 30 years.

4. (a) A record may not be made available for public use under clause 3 if the Clerk determines that such availability would be detrimental to the public interest or inconsistent with the rights and privileges of the House.

The Clerk shall notify in writing the chair and ranking minority member of the Committee on House Administration of any such determination.

(b) A determination of the Clerk under paragraph (a) is subject to later orders of the House and, in the case of a record of a committee, later orders of the committee.

5. (a) This rule does not supersede rule VIII or clause 11 of rule X and does not authorize the public disclosure of any record if such disclosure is prohibited by law or executive order of the President.

(b) The Committee on House Administration may prescribe guidelines and regulations governing the applicability and implementation of this rule.

(c) A committee may withdraw from the National Archives and Records Administration any record of the committee delivered to the Archivist under this rule. Such a withdrawal shall be on a temporary basis and for official use of the committee.

Definition of record

6. In this rule the term “record” means any official, permanent record of the House (other than a record of an individual Member, Delegate, or Resident Commissioner), including—

(a) with respect to a committee, an official, permanent record of the committee (including any record of a legislative, oversight, or other activity of such committee or a subcommittee thereof); and

(b) with respect to an officer of the House elected under rule II, an official, permanent record made or acquired in the course of the duties of such officer.

Withdrawal of papers

7. A memorial or other paper presented to the House may not be withdrawn from its files without its leave. If withdrawn certified copies thereof shall be left in the Office of the Clerk. When an act passes for the settlement of a claim, the Clerk may transmit to the officer charged with the settlement thereof the papers on file in the Office of the Clerk relating to such claim. The Clerk may lend temporarily to an officer or bureau of the executive departments any papers on file in the Office of the Clerk relating to any matter pending before such officer or bureau, taking proper receipt therefor.

RULE VIII

RESPONSE TO SUBPOENAS

1. When a Member, Delegate, Resident Commissioner, officer, or employee of the House is properly served with a judicial or administrative subpoena or judicial order directing appearance as a witness relating to the official functions of the House or for the production or disclosure of any document relating to the official functions of the House, such Member, Delegate, Resident Commissioner, officer, or employee shall comply, consistently with the

privileges and rights of the House, with the judicial or administrative subpoena or judicial order as hereinafter provided, unless otherwise determined under this rule.

2. Upon receipt of a properly served judicial or administrative subpoena or judicial order described in clause 1, a Member, Delegate, Resident Commissioner, officer, or employee of the House shall promptly notify the Speaker of its receipt in writing. Such notification shall promptly be laid before the House by the Speaker. During a period of recess or adjournment of longer than three days, notification to the House is not required until the reconvening of the House, when the notification shall promptly be laid before the House by the Speaker.

3. Once notification has been laid before the House, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall determine whether the issuance of the judicial or administrative subpoena or judicial order described in clause 1 is a proper exercise of jurisdiction by the court, is material and relevant, and is consistent with the privileges and rights of the House. Such Member, Delegate, Resident Commissioner, officer, or employee shall notify the Speaker before seeking judicial determination of these matters.

4. Upon determination whether a judicial or administrative subpoena or judicial order described in clause 1 is a proper exercise of jurisdiction by the court, is material and relevant, and is consistent with the privileges

and rights of the House, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall immediately notify the Speaker of the determination in writing.

5. The Speaker shall inform the House of a determination whether a judicial or administrative subpoena or judicial order described in clause 1 is a proper exercise of jurisdiction by the court, is material and relevant, and is consistent with the privileges and rights of the House. In so informing the House, the Speaker shall generally describe the records or information sought. During a period of recess or adjournment of longer than three days, such notification is not required until the reconvening of the House, when the notification shall promptly be laid before the House by the Speaker.

6. (a) Except as specified in paragraph (b) or otherwise ordered by the House, upon notification to the House that a judicial or administrative subpoena or judicial order described in clause 1 is a proper exercise of jurisdiction by the court, is material and relevant, and is consistent with the privileges and rights of the House, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall comply with the judicial or administrative subpoena or judicial order by supplying certified copies.

(b) Under no circumstances may minutes or transcripts of executive sessions, or evidence of witnesses in respect thereto, be disclosed or copied. During a period of recess

or adjournment of longer than three days, the Speaker may authorize compliance or take such other action as the Speaker considers appropriate under the circumstances. Upon the reconvening of the House, all matters that transpired under this clause shall promptly be laid before the House by the Speaker.

7. A copy of this rule shall be transmitted by the Clerk to the court when a judicial or administrative subpoena or judicial order described in clause 1 is issued and served on a Member, Delegate, Resident Commissioner, officer, or employee of the House.

8. Nothing in this rule shall be construed to deprive, condition, or waive the constitutional or legal privileges or rights applicable or available at any time to a Member, Delegate, Resident Commissioner, officer, or employee of the House, or of the House itself, or the right of such Member, Delegate, Resident Commissioner, officer, or employee, or of the House itself, to assert such privileges or rights before a court in the United States.

RULE IX

QUESTIONS OF PRIVILEGE

1. Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; and second, those affecting the rights, reputation, and conduct of Members,

Delegates, or the Resident Commissioner, individually, in their representative capacity only.

2. (a)(1) A resolution reported as a question of the privileges of the House, or offered from the floor by the Majority Leader or the Minority Leader as a question of the privileges of the House, or offered as privileged under clause 1, section 7, article I of the Constitution, shall have precedence of all other questions except motions to adjourn. A resolution offered from the floor by a Member, Delegate, or Resident Commissioner other than the Majority Leader or the Minority Leader as a question of the privileges of the House shall have precedence of all other questions except motions to adjourn only at a time or place, designated by the Speaker, in the legislative schedule within two legislative days after the day on which the proponent announces to the House an intention to offer the resolution and the form of the resolution. Oral announcement of the form of the resolution may be dispensed with by unanimous consent.

(2) The time allotted for debate on a resolution offered from the floor as a question of the privileges of the House shall be equally divided between (A) the proponent of the resolution, and (B) the Majority Leader, the Minority Leader, or a designee, as determined by the Speaker.

(b) A question of personal privilege shall have precedence of all other questions except motions to adjourn.

RULE X

ORGANIZATION OF COMMITTEES

Committees and their legislative jurisdictions

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:

(a) Committee on Agriculture.

(1) Adulteration of seeds, insect pests, and protection of birds and animals in forest reserves.

(2) Agriculture generally.

(3) Agricultural and industrial chemistry.

(4) Agricultural colleges and experiment stations.

(5) Agricultural economics and research.

(6) Agricultural education extension services.

(7) Agricultural production and marketing and stabilization of prices of agricultural products, and commodities (not including distribution outside of the United States).

(8) Animal industry and diseases of animals.

(9) Commodity exchanges.

(10) Crop insurance and soil conservation.

(11) Dairy industry.

- (12) Entomology and plant quarantine.
- (13) Extension of farm credit and farm security.
- (14) Inspection of livestock, poultry, meat products, and seafood and seafood products.
- (15) Forestry in general and forest reserves other than those created from the public domain.
- (16) Human nutrition and home economics.
- (17) Plant industry, soils, and agricultural engineering.
- (18) Rural electrification.
- (19) Rural development.
- (20) Water conservation related to activities of the Department of Agriculture.

(b) Committee on Appropriations.

- (1) Appropriation of the revenue for the support of the Government.
- (2) Rescissions of appropriations contained in appropriation Acts.
- (3) Transfers of unexpended balances.
- (4) Bills and joint resolutions reported by other committees that provide new entitlement authority as defined in section 3(9) of the Congressional Budget Act of 1974 and referred to the committee under clause 4(a)(2).

(c) Committee on Armed Services.

- (1) Ammunition depots; forts; arsenals; and Army, Navy, and Air Force reservations and establishments.

(2) Common defense generally.

(3) Conservation, development, and use of naval petroleum and oil shale reserves.

(4) The Department of Defense generally, including the Departments of the Army, Navy, and Air Force, generally.

(5) Interoceanic canals generally, including measures relating to the maintenance, operation, and administration of interoceanic canals.

(6) Merchant Marine Academy and State Maritime Academies.

(7) Military applications of nuclear energy.

(8) Tactical intelligence and intelligence-related activities of the Department of Defense.

(9) National security aspects of merchant marine, including financial assistance for the construction and operation of vessels, maintenance of the U.S. shipbuilding and ship repair industrial base, cabotage, cargo preference, and merchant marine officers and seamen as these matters relate to the national security.

(10) Pay, promotion, retirement, and other benefits and privileges of members of the armed forces.

(11) Scientific research and development in support of the armed services.

(12) Selective service.

(13) Size and composition of the Army, Navy, Marine Corps, and Air Force.

(14) Soldiers' and sailors' homes.

(15) Strategic and critical materials necessary for the common defense.

(16) Cemeteries administered by the Department of Defense.

(d) Committee on the Budget.

(1) Concurrent resolutions on the budget (as defined in section 3(4) of the Congressional Budget Act of 1974), other matters required to be referred to the committee under titles III and IV of that Act, and other measures setting forth appropriate levels of budget totals for the United States Government.

(2) Budget process generally.

(3) Establishment, extension, and enforcement of special controls over the Federal budget, including the budgetary treatment of off-budget Federal agencies and measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(e) Committee on Education and the Workforce.

(1) Child labor.

(2) Gallaudet University and Howard University and Hospital.

(3) Convict labor and the entry of goods made by convicts into interstate commerce.

(4) Food programs for children in schools.

(5) Labor standards and statistics.

(6) Education or labor generally.

(7) Mediation and arbitration of labor disputes.

(8) Regulation or prevention of importation of foreign laborers under contract.

(9) Workers' compensation.

(10) Vocational rehabilitation.

(11) Wages and hours of labor.

(12) Welfare of miners.

(13) Work incentive programs.

(f) Committee on Energy and Commerce.

(1) Biomedical research and development.

(2) Consumer affairs and consumer protection.

(3) Health and health facilities (except health care supported by payroll deductions).

(4) Interstate energy compacts.

(5) Interstate and foreign commerce generally.

(6) Exploration, production, storage, supply, marketing, pricing, and regulation of energy resources, including all fossil fuels, solar energy, and other unconventional or renewable energy resources.

(7) Conservation of energy resources.

(8) Energy information generally.

(9) The generation and marketing of power (except by federally chartered or Federal regional power marketing authorities); reliability and interstate transmission of, and ratemaking for, all power; and siting of generation facilities (except the installation of interconnections between Government waterpower projects).

(10) General management of the Department of Energy and management and all functions of the Federal Energy Regulatory Commission.

(11) National energy policy generally.

(12) Public health and quarantine.

(13) Regulation of the domestic nuclear energy industry, including regulation of research and development reactors and nuclear regulatory research.

(14) Regulation of interstate and foreign communications.

(15) Travel and tourism.

The committee shall have the same jurisdiction with respect to regulation of nuclear facilities and of use of nuclear energy as it has with respect to regulation of nonnuclear facilities and of use of nonnuclear energy.

(g) Committee on Ethics.

The Code of Official Conduct.

(h) Committee on Financial Services.

(1) Banks and banking, including deposit insurance and Federal monetary policy.

(2) Economic stabilization, defense production, renegotiation, and control of the price of commodities, rents, and services.

(3) Financial aid to commerce and industry (other than transportation).

(4) Insurance generally.

(5) International finance.

(6) International financial and monetary organizations.

(7) Money and credit, including currency and the issuance of notes and redemption thereof; gold and silver, including the coinage thereof; valuation and revaluation of the dollar.

(8) Public and private housing.

(9) Securities and exchanges.

(10) Urban development.

(i) Committee on Foreign Affairs.

(1) Relations of the United States with foreign nations generally.

(2) Acquisition of land and buildings for embassies and legations in foreign countries.

(3) Establishment of boundary lines between the United States and foreign nations.

(4) Export controls, including nonproliferation of nuclear technology and nuclear hardware.

(5) Foreign loans.

(6) International commodity agreements (other than those involving sugar), including all agreements for cooperation in the export of nuclear technology and nuclear hardware.

(7) International conferences and congresses.

(8) International education.

(9) Intervention abroad and declarations of war.

(10) Diplomatic service.

(11) Measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad.

(12) International economic policy.

(13) Neutrality.

(14) Protection of American citizens abroad and expatriation.

(15) The American National Red Cross.

(16) Trading with the enemy.

(17) United Nations organizations.

(j) Committee on Homeland Security.

(1) Overall homeland security policy.

(2) Organization and administration of the Department of Homeland Security.

(3) Functions of the Department of Homeland Security relating to the following:

(A) Border and port security (except immigration policy and non-border enforcement).

(B) Customs (except customs revenue).

(C) Integration, analysis, and dissemination of homeland security information.

(D) Domestic preparedness for and collective response to terrorism.

(E) Research and development.

(F) Transportation security.

(k) Committee on House Administration.

(1) Appropriations from accounts for committee salaries and expenses (except for the Committee on Appropriations); House Information Resources; and allowance and expenses of Members, Delegates, the Resident Commissioner, officers, and administrative offices of the House.

(2) Auditing and settling of all accounts described in subparagraph (1).

(3) Employment of persons by the House, including staff for Members, Delegates, the Resident Commissioner, and committees; and reporters of debates, subject to rule VI.

(4) Except as provided in paragraph (r)(11), the Library of Congress, including management thereof; the House Library; statuary and pictures; acceptance or purchase of works of art for the Capitol; the Botanic Garden; and purchase of books and manuscripts.

(5) The Smithsonian Institution and the incorporation of similar institutions (except as provided in paragraph (r)(11)).

(6) Expenditure of accounts described in subparagraph (1).

(7) Franking Commission.

(8) Printing and correction of the Congressional Record.

(9) Accounts of the House generally.

(10) Assignment of office space for Members, Delegates, the Resident Commissioner, and committees.

(11) Disposition of useless executive papers.

(12) Election of the President, Vice President, Members, Senators, Delegates, or the Resident Commissioner; corrupt practices; contested elections; credentials and qualifications; and Federal elections generally.

(13) Services to the House, including the House Restaurant, parking facilities, and administration of the House Office Buildings and of the House wing of the Capitol.

(14) Travel of Members, Delegates, and the Resident Commissioner.

(15) Raising, reporting, and use of campaign contributions for candidates for office of

Representative, of Delegate, and of Resident Commissioner.

(16) Compensation, retirement, and other benefits of the Members, Delegates, the Resident Commissioner, officers, and employees of Congress.

(1) Committee on the Judiciary.

(1) The judiciary and judicial proceedings, civil and criminal.

(2) Administrative practice and procedure.

(3) Apportionment of Representatives.

(4) Bankruptcy, mutiny, espionage, and counterfeiting.

(5) Civil liberties.

(6) Constitutional amendments.

(7) Criminal law enforcement.

(8) Federal courts and judges, and local courts in the Territories and possessions.

(9) Immigration policy and non-border enforcement.

(10) Interstate compacts generally.

(11) Claims against the United States.

(12) Meetings of Congress; attendance of Members, Delegates, and the Resident Commissioner; and their acceptance of incompatible offices.

(13) National penitentiaries.

(14) Patents, the Patent and Trademark Office, copyrights, and trademarks.

(15) Presidential succession.

(16) Protection of trade and commerce against unlawful restraints and monopolies.

(17) Revision and codification of the Statutes of the United States.

(18) State and territorial boundary lines.

(19) Subversive activities affecting the in--ternal security of the United States.

(m) Committee on Natural Resources.

(1) Fisheries and wildlife, including research, restoration, refuges, and conservation.

(2) Forest reserves and national parks created from the public domain.

(3) Forfeiture of land grants and alien ownership, including alien ownership of mineral lands.

(4) Geological Survey.

(5) International fishing agreements.

(6) Interstate compacts relating to apportionment of waters for irrigation purposes.

(7) Irrigation and reclamation, including water supply for reclamation projects and easements of public lands for irrigation projects; and acquisition of private lands when necessary to complete irrigation projects.

(8) Native Americans generally, including the care and allotment of Native American lands and general and special measures relating to claims that are paid out of Native American funds.

(9) Insular possessions of the United States generally (except those affecting the revenue and appropriations).

(10) Military parks and battlefields, national cemeteries administered by the Secretary of the Interior, parks within the District of Columbia, and the erection of monuments to the memory of individuals.

(11) Mineral land laws and claims and entries thereunder.

(12) Mineral resources of public lands.

(13) Mining interests generally.

(14) Mining schools and experimental stations.

(15) Marine affairs, including coastal zone management (except for measures relating to oil and other pollution of navigable waters).

(16) Oceanography.

(17) Petroleum conservation on public lands and conservation of the radium supply in the United States.

(18) Preservation of prehistoric ruins and objects of interest on the public domain.

(19) Public lands generally, including entry, easements, and grazing thereon.

(20) Relations of the United States with Native Americans and Native American tribes.

(21) Trans-Alaska Oil Pipeline (except ratemaking).

(n) Committee on Oversight and Government Reform.

(1) Federal civil service, including intergovernmental personnel; and the status of officers and employees of the United States, including their compensation, classification, and retirement.

(2) Municipal affairs of the District of Columbia in general (other than appropriations).

(3) Federal paperwork reduction.

(4) Government management and accounting measures generally.

(5) Holidays and celebrations.

(6) Overall economy, efficiency, and management of government operations and activities, including Federal procurement.

(7) National archives.

(8) Population and demography generally, including the Census.

(9) Postal service generally, including transportation of the mails.

(10) Public information and records.

(11) Relationship of the Federal Government to the States and municipalities generally.

(12) Reorganizations in the executive branch of the Government.

(o) Committee on Rules.

(1) Rules and joint rules (other than those relating to the Code of Official Conduct) and the order of business of the House.

(2) Recesses and final adjournments of Congress.

(p) Committee on Science, Space, and Technology.

(1) All energy research, development, and demonstration, and projects therefor, and all federally owned or operated nonmilitary energy laboratories.

(2) Astronautical research and development, including resources, personnel, equipment, and facilities.

(3) Civil aviation research and development.

(4) Environmental research and development.

(5) Marine research.

(6) Commercial application of energy technology.

(7) National Institute of Standards and Technology, standardization of weights and measures, and the metric system.

(8) National Aeronautics and Space Administration.

(9) National Space Council.

(10) National Science Foundation.

(11) National Weather Service.

(12) Outer space, including exploration and control thereof.

(13) Science scholarships.

(14) Scientific research, development, and demonstration, and projects therefor.

(q) Committee on Small Business.

(1) Assistance to and protection of small business, including financial aid, regulatory flexibility, and paperwork reduction.

(2) Participation of small-business enterprises in Federal procurement and Government contracts.

(r) Committee on Transportation and Infrastructure.

(1) Coast Guard, including lifesaving service, lighthouses, lightships, ocean derelicts, and the Coast Guard Academy.

(2) Federal management of emergencies and natural disasters.

(3) Flood control and improvement of rivers and harbors.

(4) Inland waterways.

(5) Inspection of merchant marine vessels, lights and signals, lifesaving equipment, and fire protection on such vessels.

(6) Navigation and laws relating thereto, including pilotage.

(7) Registering and licensing of vessels and small boats.

(8) Rules and international arrangements to prevent collisions at sea.

(9) The Capitol Building and the Senate and House Office Buildings.

(10) Construction or maintenance of roads and post roads (other than appropriations therefor).

(11) Construction or reconstruction, maintenance, and care of buildings and grounds of the Botanic Garden, the Library of Congress, and the Smithsonian Institution.

(12) Merchant marine (except for national security aspects thereof).

(13) Purchase of sites and construction of post offices, customhouses, Federal courthouses, and Government buildings within the District of Columbia.

(14) Oil and other pollution of navigable waters, including inland, coastal, and ocean waters.

(15) Marine affairs, including coastal zone management, as they relate to oil and other pollution of navigable waters.

(16) Public buildings and occupied or improved grounds of the United States generally.

(17) Public works for the benefit of navigation, including bridges and dams (other than international bridges and dams).

(18) Related transportation regulatory agencies (except the Transportation Security Administration).

(19) Roads and the safety thereof.

(20) Transportation, including civil aviation, railroads, water transportation, transportation safety (except automobile safety and transportation security functions of the Department of Homeland Security), transportation infrastructure, transportation labor, and railroad retirement and unemployment (except revenue measures related thereto).

(21) Water power.

(s) Committee on Veterans' Affairs.

(1) Veterans' measures generally.

(2) Cemeteries of the United States in which veterans of any war or conflict are or may be buried, whether in the United States or abroad (except cemeteries administered by the Secretary of the Interior).

(3) Compensation, vocational rehabilitation, and education of veterans.

(4) Life insurance issued by the Government on account of service in the Armed Forces.

(5) Pensions of all the wars of the United States, general and special.

(6) Readjustment of servicemembers to civil life.

(7) Servicemembers' civil relief.

(8) Veterans' hospitals, medical care, and treatment of veterans.

(t) Committee on Ways and Means.

(1) Customs revenue, collection districts, and ports of entry and delivery.

(2) Reciprocal trade agreements.

(3) Revenue measures generally.

(4) Revenue measures relating to insular possessions.

(5) Bonded debt of the United States, subject to the last sentence of clause 4(f).

(6) Deposit of public monies.

(7) Transportation of dutiable goods.

(8) Tax exempt foundations and charitable trusts.

(9) National social security (except health care and facilities programs that are supported from general revenues as opposed to payroll deductions and except work incentive programs).

General oversight responsibilities

2. (a) The various standing committees shall have general oversight responsibilities as provided in paragraph (b) in order to assist the House in—

(1) its analysis, appraisal, and evaluation of—

(A) the application, administration, execution, and effectiveness of Federal laws; and

(B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and

(2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.

(b)(1) In order to determine whether laws and programs addressing subjects within the jurisdiction of a committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (other than the Committee on Appropriations) shall review and study on a continuing basis—

(A) the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;

(B) the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;

(C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto); and

(D) future research and forecasting on subjects within its jurisdiction.

(2) Each committee to which subparagraph (1) applies having more than 20 members shall establish an oversight subcommittee, or require its subcommittees to conduct oversight in their respective jurisdictions, to assist in carrying out its responsibilities under this clause. The establishment of an oversight subcommittee does not limit the responsibility of a subcommittee with legislative jurisdiction in carrying out its oversight responsibilities.

(c) Each standing committee shall review and study on a continuing basis the impact or probable impact of tax policies affecting subjects within its jurisdiction as described in clauses 1 and 3.

(d)(1) Not later than February 15 of the first session of a Congress, each standing committee shall, in a meeting that is open to the public and with a quorum present, adopt its oversight plan for that Congress. Such plan shall be submitted simultaneously to the Committee on Oversight and Government Reform and to the Committee on House Administration. In developing its plan each committee shall, to the maximum extent feasible—

(A) consult with other committees that have jurisdiction over the same or related laws, programs, or agencies within its jurisdiction with the objective of ensuring maximum coordination and cooperation among committees when conducting reviews of such laws, programs, or agencies and include in its plan an

explanation of steps that have been or will be taken to ensure such coordination and cooperation;

(B) review specific problems with Federal rules, regulations, statutes, and court decisions that are ambiguous, arbitrary, or nonsensical, or that impose severe financial burdens on individuals;

(C) give priority consideration to including in its plan the review of those laws, programs, or agencies operating under permanent budget authority or permanent statutory authority;

(D) have a view toward ensuring that all significant laws, programs, or agencies within its jurisdiction are subject to review every 10 years;

(E) have a view toward insuring against duplication of Federal programs; and

(F) include proposals to cut or eliminate programs, including mandatory spending programs, that are inefficient, duplicative, outdated, or more appropriately administered by State or local governments.

(2) Not later than March 31 in the first session of a Congress, after consultation with the Speaker, the Majority Leader, and the Minority Leader, the Committee on Oversight and Government Reform shall report to the House the oversight plans submitted by committees together with any recommendations that it, or the House leadership group described above, may make to ensure the

most effective coordination of oversight plans and otherwise to achieve the objectives of this clause.

(e) The Speaker, with the approval of the House, may appoint special ad hoc oversight committees for the purpose of reviewing specific matters within the jurisdiction of two or more standing committees.

Special oversight functions

3. (a) The Committee on Appropriations shall conduct such studies and examinations of the organization and operation of executive departments and other executive agencies (including an agency the majority of the stock of which is owned by the United States) as it considers necessary to assist it in the determination of matters within its jurisdiction.

(b) The Committee on Armed Services shall review and study on a continuing basis laws, programs, and Government activities relating to international arms control and disarmament and the education of military dependents in schools.

(c) The Committee on the Budget shall study on a continuing basis the effect on budget outlays of relevant existing and proposed legislation and report the results of such studies to the House on a recurring basis.

(d) The Committee on Education and the Workforce shall review, study, and coordinate on a continuing basis laws, programs, and Government activities relating to domestic educational programs and institutions and

programs of student assistance within the jurisdiction of other committees.

(e) The Committee on Energy and Commerce shall review and study on a continuing basis laws, programs, and Government activities relating to nuclear and other energy and nonmilitary nuclear energy research and development including the disposal of nuclear waste.

(f) The Committee on Foreign Affairs shall review and study on a continuing basis laws, programs, and Government activities relating to customs administration, intelligence activities relating to foreign policy, international financial and monetary organizations, and international fishing agreements.

(g)(1) The Committee on Homeland Security shall review and study on a continuing basis all Government activities relating to homeland security, including the interaction of all departments and agencies with the Department of Homeland Security.

(2) In addition, the committee shall review and study on a primary and continuing basis all Government activities, programs, and organizations related to homeland security that fall within its primary legislative jurisdiction.

(h) The Committee on Natural Resources shall review and study on a continuing basis laws, programs, and Government activities relating to Native Americans.

(i) The Committee on Oversight and Government Reform shall review and study on a continuing basis the

operation of Government activities at all levels with a view to determining their economy and efficiency.

(j) The Committee on Rules shall review and study on a continuing basis the congressional budget process, and the committee shall report its findings and recommendations to the House from time to time.

(k) The Committee on Science, Space, and Technology shall review and study on a continuing basis laws, programs, and Government activities relating to nonmilitary research and development.

(l) The Committee on Small Business shall study and investigate on a continuing basis the problems of all types of small business.

(m) The Permanent Select Committee on Intelligence shall review and study on a continuing basis laws, programs, and activities of the intelligence community and shall review and study on an exclusive basis the sources and methods of entities described in clause 11(b)(1)(A).

Additional functions of committees

4. (a)(1)(A) The Committee on Appropriations shall, within 30 days after the transmittal of the Budget to Congress each year, hold hearings on the Budget as a whole with particular reference to—

(i) the basic recommendations and budgetary policies of the President in the presentation of the Budget; and

(ii) the fiscal, financial, and economic assumptions used as bases in arriving at total estimated expenditures and receipts.

(B) In holding hearings under subdivision (A), the committee shall receive testimony from the Secretary of the Treasury, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and such other persons as the committee may desire.

(C) A hearing under subdivision (A), or any part thereof, shall be held in open session, except when the committee, in open session and with a quorum present, determines by record vote that the testimony to be taken at that hearing on that day may be related to a matter of national security. The committee may by the same procedure close one subsequent day of hearing. A transcript of all such hearings shall be printed and a copy thereof furnished to each Member, Delegate, and the Resident Commissioner.

(D) A hearing under subdivision (A), or any part thereof, may be held before a joint meeting of the committee and the Committee on Appropriations of the Senate in accordance with such procedures as the two committees jointly may determine.

(2) Pursuant to section 401(b)(2) of the Congressional Budget Act of 1974, when a committee reports a bill or joint resolution that provides new entitlement authority as

defined in section 3(9) of that Act, and enactment of the bill or joint resolution, as reported, would cause a breach of the committee's pertinent allocation of new budget authority under section 302(a) of that Act, the bill or joint resolution may be referred to the Committee on Appropriations with instructions to report it with recommendations (which may include an amendment limiting the total amount of new entitlement authority provided in the bill or joint resolution). If the Committee on Appropriations fails to report a bill or joint resolution so referred within 15 calendar days (not counting any day on which the House is not in session), the committee automatically shall be discharged from consideration of the bill or joint resolution, and the bill or joint resolution shall be placed on the appropriate calendar.

(3) In addition, the Committee on Appropriations shall study on a continuing basis those provisions of law that (on the first day of the first fiscal year for which the congressional budget process is effective) provide spending authority or permanent budget authority and shall report to the House from time to time its recommendations for terminating or modifying such provisions.

(4) In the manner provided by section 302 of the Congressional Budget Act of 1974, the Committee on Appropriations (after consulting with the Committee on Appropriations of the Senate) shall subdivide any

allocations made to it in the joint explanatory statement accompanying the conference report on such concurrent resolution, and promptly report the subdivisions to the House as soon as practicable after a concurrent resolution on the budget for a fiscal year is agreed to.

(b) The Committee on the Budget shall—

(1) review on a continuing basis the conduct by the Congressional Budget Office of its functions and duties;

(2) hold hearings and receive testimony from Members, Senators, Delegates, the Resident Commissioner, and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as it considers desirable in developing concurrent resolutions on the budget for each fiscal year;

(3) make all reports required of it by the Congressional Budget Act of 1974;

(4) study on a continuing basis those provisions of law that exempt Federal agencies or any of their activities or outlays from inclusion in the Budget of the United States Government, and report to the House from time to time its recommendations for terminating or modifying such provisions;

(5) study on a continuing basis proposals designed to improve and facilitate the congressional budget process, and report to the House from time to time the

results of such studies, together with its recommendations; and

(6) request and evaluate continuing studies of tax expenditures, devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and report the results of such studies to the House on a recurring basis.

(c)(1) The Committee on Oversight and Government Reform shall—

(A) receive and examine reports of the Comptroller General of the United States and submit to the House such recommendations as it considers necessary or desirable in connection with the subject matter of the reports;

(B) evaluate the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

(C) study intergovernmental relationships between the United States and the States and municipalities and between the United States and international organizations of which the United States is a member.

(2) In addition to its duties under subparagraph (1), the Committee on Oversight and Government Reform may at any time conduct investigations of any matter without regard to clause 1, 2, 3, or this clause conferring jurisdiction over the matter to another standing committee. The findings and recommendations of the

committee in such an investigation shall be made available to any other standing committee having jurisdiction over the matter involved.

(3)(A) The Committee on Oversight and Government Reform may adopt a rule authorizing and regulating the taking of depositions by a member or counsel of the committee, including pursuant to subpoena under clause 2(m) of rule XI (which hereby is made applicable for such purpose).

(B) A rule adopted by the committee pursuant to this subparagraph—

(i) may provide that a deponent be directed to subscribe an oath or affirmation before a person authorized by law to administer the same;

(ii) shall ensure that the minority members and staff of the committee are accorded equitable treatment with respect to notice of and a reasonable opportunity to participate in any proceeding conducted thereunder; and

(iii) shall, unless waived by the deponent, require the attendance of a member of the committee.

(C) Information secured pursuant to the authority described in subdivision (A) shall retain the character of discovery until offered for admission in evidence before the committee, at which time any proper objection shall be timely.

(d)(1) The Committee on House Administration shall—

(A) provide policy direction for the Inspector General and oversight of the Clerk, Sergeant-at-Arms, Chief Administrative Officer, and Inspector General;

(B) oversee the management of services provided to the House by the Architect of the Capitol, except those services that lie within the jurisdiction of the Committee on Transportation and Infrastructure under clause 1(r);

(C) have the function of accepting on behalf of the House a gift, except as otherwise provided by law, if the gift does not involve a duty, burden, or condition, or is not made dependent on some future performance by the House;

(D) promulgate regulations to carry out subdivision (C); and

(E) establish and maintain standards for making documents publicly available in electronic form by the House and its committees.

(2) An employing office of the House may enter into a settlement of a complaint under the Congressional Accountability Act of 1995 that provides for the payment of funds only after receiving the joint approval of the chair and ranking minority member of the Committee on House Administration concerning the amount of such payment.

(e)(1) Each standing committee shall, in its consideration of all public bills and public joint resolutions within its jurisdiction, ensure that appropriations for continuing programs and activities of the Federal Government and the government of the District of Columbia will be made annually to the maximum extent feasible and consistent with the nature, requirement, and objective of the programs and activities involved. In this subparagraph programs and activities of the Federal Government and the government of the District of Columbia includes programs and activities of any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or of the government of the District of Columbia.

(2) Each standing committee shall review from time to time each continuing program within its jurisdiction for which appropriations are not made annually to ascertain whether the program should be modified to provide for annual appropriations.

Budget Act responsibilities

(f)(1) Each standing committee shall submit to the Committee on the Budget not later than six weeks after the submission of the budget by the President, or at such time as the Committee on the Budget may request—

(A) its views and estimates with respect to all matters to be set forth in the concurrent resolution on the

budget for the ensuing fiscal year that are within its jurisdiction or functions; and

(B) an estimate of the total amounts of new budget authority, and budget outlays resulting therefrom, to be provided or authorized in all bills and resolutions within its jurisdiction that it intends to be effective during that fiscal year.

(2) The views and estimates submitted by the Committee on Ways and Means under subparagraph (1) shall include a specific recommendation, made after holding public hearings, as to the appropriate level of the public debt that should be set forth in the concurrent resolution on the budget.

Election and membership of standing committees

5. (a)(1) The standing committees specified in clause 1 shall be elected by the House within seven calendar days after the commencement of each Congress, from nominations submitted by the respective party caucus or conference. A resolution proposing to change the composition of a standing committee shall be privileged if offered by direction of the party caucus or conference concerned.

(2)(A) The Committee on the Budget shall be composed of members as follows:

(i) Members, Delegates, or the Resident Commissioner who are members of other standing committees, including five from the Committee on

Appropriations, five from the Committee on Ways and Means, and one from the Committee on Rules;

(ii) one Member designated by the elected leadership of the majority party; and

(iii) one Member designated by the elected leadership of the minority party.

(B) Except as permitted by subdivision (C), a member of the Committee on the Budget other than one described in subdivision (A)(ii) or (A)(iii) may not serve on the committee during more than four Congresses in a period of six successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(C) A Member, Delegate, or Resident Commissioner may exceed the limitation of subdivision (B) if elected to serve a second consecutive Congress as the chair or a second consecutive Congress as the ranking minority member.

(3)(A) The Committee on Ethics shall be composed of 10 members, five from the majority party and five from the minority party.

(B) Except as permitted by subdivision (C), a member of the Committee on Ethics may not serve on the committee during more than three Congresses in a period of five successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(C) A member of the Committee on Ethics may serve on the committee during a fourth Congress in a period of five successive Congresses only as either the chair or the ranking minority member of the committee.

(4)(A) At the beginning of a Congress, the Speaker or a designee and the Minority Leader or a designee each shall name 10 Members, Delegates, or the Resident Commissioner from the respective party of such individual who are not members of the Committee on Ethics to be available to serve on investigative subcommittees of that committee during that Congress. The lists of Members, Delegates, or the Resident Commissioner so named shall be announced to the House.

(B) Whenever the chair and the ranking minority member of the Committee on Ethics jointly determine that Members, Delegates, or the Resident Commissioner named under subdivision (A) should be assigned to serve on an investigative subcommittee of that committee, each of them shall select an equal number of such Members, Delegates, or Resident Commissioner from the respective party of such individual to serve on that subcommittee.

(b)(1) Membership on a standing committee during the course of a Congress shall be contingent on continuing membership in the party caucus or conference that nominated the Member, Delegate, or Resident Commissioner concerned for election to such committee. Should a Member, Delegate, or Resident Commissioner

cease to be a member of a particular party caucus or conference, that Member, Delegate, or Resident Commissioner shall automatically cease to be a member of each standing committee to which elected on the basis of nomination by that caucus or conference. The chair of the relevant party caucus or conference shall notify the Speaker whenever a Member, Delegate, or Resident Commissioner ceases to be a member of that caucus or conference. The Speaker shall notify the chair of each affected committee that the election of such Member, Delegate, or Resident Commissioner to the committee is automatically vacated under this subparagraph.

(2)(A) Except as specified in subdivision (B), a Member, Delegate, or Resident Commissioner may not serve simultaneously as a member of more than two standing committees or more than four subcommittees of the standing committees.

(B) (i) Ex officio service by a chair or ranking minority member of a committee on each of its subcommittees under a committee rule does not count against the limitation on subcommittee service.

(ii) Service on an investigative subcommittee of the Committee on Ethics under paragraph (a)(4) does not count against the limitation on subcommittee service.

(iii) Any other exception to the limitations in subdivision (A) may be approved by the House on the

recommendation of the relevant party caucus or conference.

(C) In this subparagraph the term “subcommittee” includes a panel (other than a special oversight panel of the Committee on Armed Services), task force, special subcommittee, or other subunit of a standing committee that is established for a cumulative period longer than six months in a Congress.

(c)(1) One of the members of each standing committee shall be elected by the House, on the nomination of the majority party caucus or conference, as chair thereof. In the absence of the member serving as chair, the member next in rank (and so on, as often as the case shall happen) shall act as chair. Rank shall be determined by the order members are named in resolutions electing them to the committee. In the case of a vacancy in the elected chair of a committee, the House shall elect another chair.

(2) Except in the case of the Committee on Rules, a member of a standing committee may not serve as chair of the same standing committee, or of the same subcommittee of a standing committee, during more than three consecutive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(d)(1) Except as permitted by subparagraph (2), a committee may have not more than five subcommittees.

(2) A committee that maintains a subcommittee on oversight may have not more than six subcommittees. The Committee on Appropriations may have not more than 13 subcommittees. The Committee on Oversight and Government Reform may have not more than seven subcommittees.

(e) The House shall fill a vacancy on a standing committee by election on the nomination of the respective party caucus or conference.

Expense resolutions

6. (a) Whenever a committee, commission, or other entity (other than the Committee on Appropriations) is granted authorization for the payment of its expenses (including staff salaries) for a Congress, such authorization initially shall be procured by one primary expense resolution reported by the Committee on House Administration. A primary expense resolution may include a reserve fund for unanticipated expenses of committees. An amount from such a reserve fund may be allocated to a committee only by the approval of the Committee on House Administration. A primary expense resolution reported to the House may not be considered in the House unless a printed report thereon was available on the previous calendar day. For the information of the House, such report shall—

(1) state the total amount of the funds to be provided to the committee, commission, or other entity under the

primary expense resolution for all anticipated activities and programs of the committee, commission, or other entity; and

(2) to the extent practicable, contain such general statements regarding the estimated foreseeable expenditures for the respective anticipated activities and programs of the committee, commission, or other entity as may be appropriate to provide the House with basic estimates of the expenditures contemplated by the primary expense resolution.

(b) After the date of adoption by the House of a primary expense resolution for a committee, commission, or other entity for a Congress, authorization for the payment of additional expenses (including staff salaries) in that Congress may be procured by one or more supplemental expense resolutions reported by the Committee on House Administration, as necessary. A supplemental expense resolution reported to the House may not be considered in the House unless a printed report thereon was available on the previous calendar day. For the information of the House, such report shall—

(1) state the total amount of additional funds to be provided to the committee, commission, or other entity under the supplemental expense resolution and the purposes for which those additional funds are available; and

(2) state the reasons for the failure to procure the additional funds for the committee, commission, or other entity by means of the primary expense resolution.

(c) The preceding provisions of this clause do not apply to—

(1) a resolution providing for the payment from committee salary and expense accounts of the House of sums necessary to pay compensation for staff services performed for, or to pay other expenses of, a committee, commission, or other entity at any time after the beginning of an odd-numbered year and before the date of adoption by the House of the primary expense resolution described in paragraph (a) for that year; or

(2) a resolution providing each of the standing committees in a Congress additional office equipment, airmail and special-delivery postage stamps, supplies, staff personnel, or any other specific item for the operation of the standing committees, and containing an authorization for the payment from committee salary and expense accounts of the House of the expenses of any of the foregoing items provided by that resolution, subject to and until enactment of the provisions of the resolution as permanent law.

(d) From the funds made available for the appointment of committee staff by a primary or additional expense

resolution, the chair of each committee shall ensure that sufficient staff is made available to each subcommittee to carry out its responsibilities under the rules of the committee and that the minority party is treated fairly in the appointment of such staff.

(e) Funds authorized for a committee under this clause and clauses 7 and 8 are for expenses incurred in the activities of the committee.

Interim funding

7. (a) For the period beginning at noon on January 3 and ending at midnight on March 31 in each odd-numbered year, such sums as may be necessary shall be paid out of the committee salary and expense accounts of the House for continuance of necessary investigations and studies by—

(1) each standing and select committee established by these rules; and

(2) except as specified in paragraph (b), each select committee established by resolution.

(b) In the case of the first session of a Congress, amounts shall be made available for a select committee established by resolution in the preceding Congress only if—

(1) a resolution proposing to reestablish such select committee is introduced in the present Congress; and

(2) the House has not adopted a resolution of the preceding Congress providing for termination of

funding for investigations and studies by such select committee.

(c) Each committee described in paragraph (a) shall be entitled for each month during the period specified in paragraph (a) to 9 percent (or such lesser percentage as may be determined by the Committee on House Administration) of the total annualized amount made available under expense resolutions for such committee in the preceding session of Congress.

(d) Payments under this clause shall be made on vouchers authorized by the committee involved, signed by the chair of the committee, except as provided in paragraph (e), and approved by the Committee on House Administration.

(e) Notwithstanding any provision of law, rule of the House, or other authority, from noon on January 3 of the first session of a Congress until the election by the House of the committee concerned in that Congress, payments under this clause shall be made on vouchers signed by the ranking member of the committee as it was constituted at the expiration of the preceding Congress who is a member of the majority party in the present Congress.

(f)(1) The authority of a committee to incur expenses under this clause shall expire upon adoption by the House of a primary expense resolution for the committee.

(2) Amounts made available under this clause shall be expended in accordance with regulations prescribed by

the Committee on House Administration.

(3) This clause shall be effective only insofar as it is not inconsistent with a resolution reported by the Committee on House Administration and adopted by the House after the adoption of these rules.

Travel

8. (a) Local currencies owned by the United States shall be made available to the committee and its employees engaged in carrying out their official duties outside the United States or its territories or possessions. Appropriated funds, including those authorized under this clause and clause 6, may not be expended for the purpose of defraying expenses of members of a committee or its employees in a country where local currencies are available for this purpose.

(b) The following conditions shall apply with respect to travel outside the United States or its territories or possessions:

(1) A member or employee of a committee may not receive or expend local currencies for subsistence in a country for a day at a rate in excess of the maximum per diem set forth in applicable Federal law.

(2) A member or employee shall be reimbursed for the expenses of such individual for a day at the lesser of

—

(A) the per diem set forth in applicable Federal law; or

(B) the actual, unreimbursed expenses (other than for transportation) incurred during that day.

(3) Each member or employee of a committee shall make to the chair of the committee an itemized report showing the dates each country was visited, the amount of per diem furnished, the cost of transportation furnished, and funds expended for any other official purpose and shall summarize in these categories the total foreign currencies or appropriated funds expended. Each report shall be filed with the chair of the committee not later than 60 days following the completion of travel for use in complying with reporting requirements in applicable Federal law and shall be open for public inspection.

(c)(1) In carrying out the activities of a committee outside the United States in a country where local currencies are unavailable, a member or employee of a committee may not receive reimbursement for expenses (other than for transportation) in excess of the maximum per diem set forth in applicable Federal law.

(2) A member or employee shall be reimbursed for the expenses of such individual for a day, at the lesser of—

(A) the per diem set forth in applicable Federal law;
or

(B) the actual unreimbursed expenses (other than for transportation) incurred during that day.

(3) A member or employee of a committee may not receive reimbursement for the cost of any transportation in connection with travel outside the United States unless the member or employee actually paid for the transportation.

(d) The restrictions respecting travel outside the United States set forth in paragraph (c) also shall apply to travel outside the United States by a Member, Delegate, Resident Commissioner, officer, or employee of the House authorized under any standing rule.

Committee staffs

9. (a)(1) Subject to subparagraph (2) and paragraph (f), each standing committee may appoint, by majority vote, not more than 30 professional staff members to be compensated from the funds provided for the appointment of committee staff by primary and additional expense resolutions. Each professional staff member appointed under this subparagraph shall be assigned to the chair and the ranking minority member of the committee, as the committee considers advisable.

(2) Subject to paragraph (f) whenever a majority of the minority party members of a standing committee (other than the Committee on Ethics or the Permanent Select Committee on Intelligence) so request, not more than 10 persons (or one-third of the total professional committee staff appointed under this clause, whichever is fewer) may be selected, by majority vote of the minority party

members, for appointment by the committee as professional staff members under subparagraph (1). The committee shall appoint persons so selected whose character and qualifications are acceptable to a majority of the committee. If the committee determines that the character and qualifications of a person so selected are unacceptable, a majority of the minority party members may select another person for appointment by the committee to the professional staff until such appointment is made. Each professional staff member appointed under this subparagraph shall be assigned to such committee business as the minority party members of the committee consider advisable.

(b)(1) The professional staff members of each standing committee—

(A) may not engage in any work other than committee business during congressional working hours; and

(B) may not be assigned a duty other than one pertaining to committee business.

(2)(A) Subparagraph (1) does not apply to staff designated by a committee as “associate” or “shared” staff who are not paid exclusively by the committee, provided that the chair certifies that the compensation paid by the committee for any such staff is commensurate with the work performed for the committee in accordance with clause 8 of rule XXIII.

(B) The use of any “associate” or “shared” staff by a committee other than the Committee on Appropriations shall be subject to the review of, and to any terms, conditions, or limitations established by, the Committee on House Administration in connection with the reporting of any primary or additional expense resolution.

(c) Each employee on the professional or investigative staff of a standing committee shall be entitled to pay at a single gross per annum rate, to be fixed by the chair and that does not exceed the maximum rate of pay as in effect from time to time under applicable provisions of law.

(d) Subject to appropriations hereby authorized, the Committee on Appropriations may appoint by majority vote such staff as it determines to be necessary (in addition to the clerk of the committee and assistants for the minority). The staff appointed under this paragraph, other than minority assistants, shall possess such qualifications as the committee may prescribe.

(e) A committee may not appoint to its staff an expert or other personnel detailed or assigned from a department or agency of the Government except with the written permission of the Committee on House Administration.

(f) If a request for the appointment of a minority professional staff member under paragraph (a) is made when no vacancy exists for such an appointment, the committee nevertheless may appoint under paragraph (a) a person selected by the minority and acceptable to the

committee. A person so appointed shall serve as an additional member of the professional staff of the committee until such a vacancy occurs (other than a vacancy in the position of head of the professional staff, by whatever title designated), at which time that person is considered as appointed to that vacancy. Such a person shall be paid from the applicable accounts of the House described in clause 1(k)(1) of rule X. If such a vacancy occurs on the professional staff when seven or more persons have been so appointed who are eligible to fill that vacancy, a majority of the minority party members shall designate which of those persons shall fill the vacancy.

(g) Each staff member appointed pursuant to a request by minority party members under paragraph (a), and each staff member appointed to assist minority members of a committee pursuant to an expense resolution described in clause 6(a), shall be accorded equitable treatment with respect to the fixing of the rate of pay, the assignment of work facilities, and the accessibility of committee records.

(h) Paragraph (a) may not be construed to authorize the appointment of additional professional staff members of a committee pursuant to a request under paragraph (a) by the minority party members of that committee if 10 or more professional staff members provided for in paragraph (a)(1) who are satisfactory to a majority of the

minority party members are otherwise assigned to assist the minority party members.

(i) Notwithstanding paragraph (a)(2), a committee may employ nonpartisan staff, in lieu of or in addition to committee staff designated exclusively for the majority or minority party, by an affirmative vote of a majority of the members of the majority party and of a majority of the members of the minority party.

Select and joint committees

10. (a) Membership on a select or joint committee appointed by the Speaker under clause 11 of rule I during the course of a Congress shall be contingent on continuing membership in the party caucus or conference of which the Member, Delegate, or Resident Commissioner concerned was a member at the time of appointment. Should a Member, Delegate, or Resident Commissioner cease to be a member of that caucus or conference, that Member, Delegate, or Resident Commissioner shall automatically cease to be a member of any select or joint committee to which assigned. The chair of the relevant party caucus or conference shall notify the Speaker whenever a Member, Delegate, or Resident Commissioner ceases to be a member of a party caucus or conference. The Speaker shall notify the chair of each affected select or joint committee that the appointment of such Member, Delegate, or Resident Commissioner to the select or joint committee is automatically vacated under this paragraph.

(b) Each select or joint committee, other than a conference committee, shall comply with clause 2(a) of rule XI unless specifically exempted by law.

Permanent Select Committee on Intelligence

11. (a)(1) There is established a Permanent Select Committee on Intelligence (hereafter in this clause referred to as the “select committee”). The select committee shall be composed of not more than 20 Members, Delegates, or the Resident Commissioner, of whom not more than 12 may be from the same party. The select committee shall include at least one Member, Delegate, or the Resident Commissioner from each of the following committees:

- (A) the Committee on Appropriations;
- (B) the Committee on Armed Services;
- (C) the Committee on Foreign Affairs; and
- (D) the Committee on the Judiciary.

(2) The Speaker and the Minority Leader shall be ex officio members of the select committee but shall have no vote in the select committee and may not be counted for purposes of determining a quorum thereof.

(3) The Speaker and Minority Leader each may designate a respective leadership staff member to assist in the capacity of the Speaker or Minority Leader as ex officio member, with the same access to committee meetings, hearings, briefings, and materials as employees of the select committee and subject to the same security

clearance and confidentiality requirements as employees of the select committee under this clause.

(4)(A) Except as permitted by subdivision (B), a Member, Delegate, or Resident Commissioner, other than the Speaker or the Minority Leader, may not serve as a member of the select committee during more than four Congresses in a period of six successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(B) In the case of a Member, Delegate, or Resident Commissioner appointed to serve as the chair or the ranking minority member of the select committee, tenure on the select committee shall not be limited.

(b)(1) There shall be referred to the select committee proposed legislation, messages, petitions, memorials, and other matters relating to the following:

(A) The Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(B) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(C) The organization or reorganization of a department or agency of the Government to the extent that the organization or reorganization relates to a

function or activity involving intelligence or intelligence-related activities.

(D) Authorizations for appropriations, both direct and indirect, for the following:

(i) The Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(ii) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(iii) A department, agency, subdivision, or program that is a successor to an agency or program named or referred to in (i) or (ii).

(2) Proposed legislation initially reported by the select committee (other than provisions solely involving matters specified in subparagraph (1)(A) or subparagraph (1)(D) (i)) containing any matter otherwise within the jurisdiction of a standing committee shall be referred by the Speaker to that standing committee. Proposed legislation initially reported by another committee that contains matter within the jurisdiction of the select committee shall be referred by the Speaker to the select committee if requested by the chair of the select committee.

(3) Nothing in this clause shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review an intelligence or intelligence-related activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of that committee.

(4) Nothing in this clause shall be construed as amending, limiting, or otherwise changing the authority of a standing committee to obtain full and prompt access to the product of the intelligence and intelligence-related activities of a department or agency of the Government relevant to a matter otherwise within the jurisdiction of that committee.

(c)(1) For purposes of accountability to the House, the select committee shall make regular and periodic reports to the House on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States. The select committee shall promptly call to the attention of the House, or to any other appropriate committee, a matter requiring the attention of the House or another committee. In making such report, the select committee shall proceed in a manner consistent with paragraph (g) to protect national security.

(2) The select committee shall obtain annual reports from the Director of National Intelligence, the Director of the Central Intelligence Agency, the Secretary of Defense,

the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence and intelligence-related activities of the agency or department concerned and the intelligence and intelligence-related activities of foreign countries directed at the United States or its interests. An unclassified version of each report may be made available to the public at the discretion of the select committee. Nothing herein shall be construed as requiring the public disclosure in such reports of the names of persons engaged in intelligence or intelligence-related activities for the United States or the divulging of intelligence methods employed or the sources of information on which the reports are based or the amount of funds authorized to be appropriated for intelligence and intelligence-related activities.

(3) Within six weeks after the President submits a budget under section 1105(a) of title 31, United States Code, or at such time as the Committee on the Budget may request, the select committee shall submit to the Committee on the Budget the views and estimates described in section 301(d) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.

(d)(1) Except as specified in subparagraph (2), clauses 8(a), (b), and (c) and 9(a), (b), and (c) of this rule, and

clauses 1, 2, and 4 of rule XI shall apply to the select committee to the extent not inconsistent with this clause.

(2) Notwithstanding the requirements of the first sentence of clause 2(g)(2) of rule XI, in the presence of the number of members required under the rules of the select committee for the purpose of taking testimony or receiving evidence, the select committee may vote to close a hearing whenever a majority of those present determines that the testimony or evidence would endanger the national security.

(e) An employee of the select committee, or a person engaged by contract or otherwise to perform services for or at the request of the select committee, may not be given access to any classified information by the select committee unless such employee or person has—

(1) agreed in writing and under oath to be bound by the Rules of the House, including the jurisdiction of the Committee on Ethics and of the select committee concerning the security of classified information during and after the period of the employment or contractual agreement of such employee or person with the select committee; and

(2) received an appropriate security clearance, as determined by the select committee in consultation with the Director of National Intelligence, that is commensurate with the sensitivity of the classified

information to which such employee or person will be given access by the select committee.

(f) The select committee shall formulate and carry out such rules and procedures as it considers necessary to prevent the disclosure, without the consent of each person concerned, of information in the possession of the select committee that unduly infringes on the privacy or that violates the constitutional rights of such person. Nothing herein shall be construed to prevent the select committee from publicly disclosing classified information in a case in which it determines that national interest in the disclosure of classified information clearly outweighs any infringement on the privacy of a person.

(g)(1) The select committee may disclose publicly any information in its possession after a determination by the select committee that the public interest would be served by such disclosure. With respect to the disclosure of information for which this paragraph requires action by the select committee—

(A) the select committee shall meet to vote on the matter within five days after a member of the select committee requests a vote; and

(B) a member of the select committee may not make such a disclosure before a vote by the select committee on the matter, or after a vote by the select committee on the matter except in accordance with this paragraph.

(2)(A) In a case in which the select committee votes to disclose publicly any information that has been classified under established security procedures, that has been submitted to it by the executive branch, and that the executive branch requests be kept secret, the select committee shall notify the President of such vote.

(B) The select committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of the vote to disclose is transmitted to the President unless, before the expiration of the five-day period, the President, personally in writing, notifies the select committee that the President objects to the disclosure of such information, provides reasons therefor, and certifies that the threat to the national interest of the United States posed by the disclosure is of such gravity that it outweighs any public interest in the disclosure.

(C) If the President, personally in writing, notifies the select committee of objections to the disclosure of information as provided in subdivision (B), the select committee may, by majority vote, refer the question of the disclosure of such information, with a recommendation thereon, to the House. The select committee may not publicly disclose such information without leave of the House.

(D) Whenever the select committee votes to refer the question of disclosure of any information to the House

under subdivision (C), the chair shall, not later than the first day on which the House is in session following the day on which the vote occurs, report the matter to the House for its consideration.

(E) If the chair of the select committee does not offer in the House a motion to consider in closed session a matter reported under subdivision (D) within four calendar days on which the House is in session after the recommendation described in subdivision (C) is reported, then such a motion shall be privileged when offered by a Member, Delegate, or Resident Commissioner. In either case such a motion shall be decided without debate or intervening motion except one that the House adjourn.

(F) Upon adoption by the House of a motion to resolve into closed session as described in subdivision (E), the Speaker may declare a recess subject to the call of the Chair. At the expiration of the recess, the pending question, in closed session, shall be, "Shall the House approve the recommendation of the select committee?"

(G) Debate on the question described in subdivision (F) shall be limited to two hours equally divided and controlled by the chair and ranking minority member of the select committee. After such debate the previous question shall be considered as ordered on the question of approving the recommendation without intervening motion except one motion that the House adjourn. The House shall vote on the question in open session but

without divulging the information with respect to which the vote is taken. If the recommendation of the select committee is not approved, then the question is considered as recommitted to the select committee for further recommendation.

(3)(A) Information in the possession of the select committee relating to the lawful intelligence or intelligence-related activities of a department or agency of the United States that has been classified under established security procedures, and that the select committee has determined should not be disclosed under subparagraph (1) or (2), may not be made available to any person by a Member, Delegate, Resident Commissioner, officer, or employee of the House except as provided in subdivision (B).

(B) The select committee shall, under such regulations as it may prescribe, make information described in subdivision (A) available to a committee or a Member, Delegate, or Resident Commissioner, and permit a Member, Delegate, or Resident Commissioner to attend a hearing of the select committee that is closed to the public. Whenever the select committee makes such information available, it shall keep a written record showing, in the case of particular information, which committee or which Member, Delegate, or Resident Commissioner received the information. A Member, Delegate, or Resident Commissioner who, and a

committee that, receives information under this subdivision may not disclose the information except in a closed session of the House.

(4) The Committee on Ethics shall investigate any unauthorized disclosure of intelligence or intelligence-related information by a Member, Delegate, Resident Commissioner, officer, or employee of the House in violation of subparagraph (3) and report to the House concerning any allegation that it finds to be substantiated.

(5) Upon the request of a person who is subject to an investigation described in subparagraph (4), the Committee on Ethics shall release to such person at the conclusion of its investigation a summary of its investigation, together with its findings. If, at the conclusion of its investigation, the Committee on Ethics determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, Delegate, Resident Commissioner, officer, or employee of the House, it shall report its findings to the House and recommend appropriate action. Recommendations may include censure, removal from committee membership, or expulsion from the House, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

(h) The select committee may permit a personal representative of the President, designated by the

President to serve as a liaison to the select committee, to attend any closed meeting of the select committee.

(i) Subject to the Rules of the House, funds may not be appropriated for a fiscal year, with the exception of a bill or joint resolution continuing appropriations, or an amendment thereto, or a conference report thereon, to, or for use of, a department or agency of the United States to carry out any of the following activities, unless the funds shall previously have been authorized by a bill or joint resolution passed by the House during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Director of National Intelligence and the Office of the Director of National Intelligence.

(2) The activities of the Central Intelligence Agency.

(3) The activities of the Defense Intelligence Agency.

(4) The activities of the National Security Agency.

(5) The intelligence and intelligence-related activities of other agencies and subdivisions of the Department of Defense.

(6) The intelligence and intelligence-related activities of the Department of State.

(7) The intelligence and intelligence-related activities of the Federal Bureau of Investigation.

(8) The intelligence and intelligence-related activities of all other departments and agencies of the executive

branch.

(j)(1) In this clause the term “intelligence and intelligence-related activities” includes—

(A) the collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of such information;

(B) activities taken to counter similar activities directed against the United States;

(C) covert or clandestine activities affecting the relations of the United States with a foreign government, political group, party, military force, movement, or other association;

(D) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by a department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States; and

(E) covert or clandestine activities directed against persons described in subdivision (D).

(2) In this clause the term “department or agency” includes any organization, committee, council, establishment, or office within the Federal Government.

(3) For purposes of this clause, reference to a department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that a successor engages in intelligence or intelligence-related activities now conducted by the department, agency, bureau, or subdivision referred to in this clause.

(k) Clause 12(a) of rule XXII does not apply to meetings of a conference committee respecting legislation (or any part thereof) reported by the Permanent Select Committee on Intelligence.

RULE XI

PROCEDURES OF COMMITTEES AND UNFINISHED BUSINESS

In general

1. (a)(1)(A) The Rules of the House are the rules of its committees and subcommittees so far as applicable.

(B) Each subcommittee is a part of its committee and is subject to the authority and direction of that committee and to its rules, so far as applicable.

(2)(A) In a committee or subcommittee—

(i) a motion to recess from day to day, or to recess subject to the call of the Chair (within 24 hours), shall be privileged; and

(ii) a motion to dispense with the first reading (in full) of a bill or resolution shall be privileged if printed copies are available.

(B) A motion accorded privilege under this subparagraph shall be decided without debate.

(b)(1) Each committee may conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under rule X. Subject to the adoption of expense resolutions as required by clause 6 of rule X, each committee may incur expenses, including travel expenses, in connection with such investigations and studies.

(2) A proposed investigative or oversight report shall be considered as read in committee if it has been available to the members for at least 24 hours (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day).

(3) A report of an investigation or study conducted jointly by more than one committee may be filed jointly, provided that each of the committees complies independently with all requirements for approval and filing of the report.

(4) After an adjournment sine die of the last regular session of a Congress, an investigative or oversight report may be filed with the Clerk at any time, provided that a member who gives timely notice of intention to file supplemental, minority, or additional views shall be entitled to not less than seven calendar days in which to submit such views for inclusion in the report.

(c) Each committee may have printed and bound such testimony and other data as may be presented at hearings held by the committee or its subcommittees. All costs of stenographic services and transcripts in connection with a meeting or hearing of a committee shall be paid from the applicable accounts of the House described in clause 1(k) (1) of rule X.

(d)(1) Not later than the 30th day after June 1 and December 1, a committee shall submit to the House a semiannual report on the activities of that committee.

(2) Such report shall include—

(A) separate sections summarizing the legislative and oversight activities of that committee under this rule and rule X during the applicable period;

(B) in the case of the first such report, a summary of the oversight plans submitted by the committee under clause 2(d) of rule X;

(C) a summary of the actions taken and recommendations made with respect to the oversight plans specified in subdivision (B);

(D) a summary of any additional oversight activities undertaken by that committee and any recommendations made or actions taken thereon; and

(E) a delineation of any hearings held pursuant to clauses 2(n), (o), or (p) of this rule.

(3) After an adjournment sine die of a regular session of a Congress, or after December 15, whichever occurs first, the chair of a committee may file the second or fourth semiannual report described in subparagraph (1) with the Clerk at any time and without approval of the committee, provided that—

(A) a copy of the report has been available to each member of the committee for at least seven calendar days; and

(B) the report includes any supplemental, minority, or additional views submitted by a member of the committee.

Adoption of written rules

2. (a)(1) Each standing committee shall adopt written rules governing its procedure. Such rules—

(A) shall be adopted in a meeting that is open to the public unless the committee, in open session and with a quorum present, determines by record vote that all or part of the meeting on that day shall be closed to the public;

(B) may not be inconsistent with the Rules of the House or with those provisions of law having the force

and effect of Rules of the House; and

(C) shall in any event incorporate all of the succeeding provisions of this clause to the extent applicable.

(2) Each committee shall make its rules publicly available in electronic form and submit such rules for publication in the Congressional Record not later than 30 days after the chair of the committee is elected in each odd-numbered year.

(3) A committee may adopt a rule providing that the chair be directed to offer a motion under clause 1 of rule XXII whenever the chair considers it appropriate.

Regular meeting days

(b) Each standing committee shall establish regular meeting days for the conduct of its business, which shall be not less frequent than monthly. Each such committee shall meet for the consideration of a bill or resolution pending before the committee or the transaction of other committee business on all regular meeting days fixed by the committee unless otherwise provided by written rule adopted by the committee.

Additional and special meetings

(c)(1) The chair of each standing committee may call and convene, as the chair considers necessary, additional and special meetings of the committee for the consideration of a bill or resolution pending before the

committee or for the conduct of other committee business, subject to such rules as the committee may adopt. The committee shall meet for such purpose under that call of the chair.

(2) Three or more members of a standing committee may file in the offices of the committee a written request that the chair call a special meeting of the committee. Such request shall specify the measure or matter to be considered. Immediately upon the filing of the request, the clerk of the committee shall notify the chair of the filing of the request. If the chair does not call the requested special meeting within three calendar days after the filing of the request (to be held within seven calendar days after the filing of the request) a majority of the members of the committee may file in the offices of the committee their written notice that a special meeting of the committee will be held. The written notice shall specify the date and hour of the special meeting and the measure or matter to be considered. The committee shall meet on that date and hour. Immediately upon the filing of the notice, the clerk of the committee shall notify all members of the committee that such special meeting will be held and inform them of its date and hour and the measure or matter to be considered. Only the measure or matter specified in that notice may be considered at that special meeting.

Temporary absence of chair

(d) A member of the majority party on each standing committee or subcommittee thereof shall be designated by the chair of the full committee as the vice chair of the committee or subcommittee, as the case may be, and shall preside during the absence of the chair from any meeting. If the chair and vice chair of a committee or subcommittee are not present at any meeting of the committee or subcommittee, the ranking majority member who is present shall preside at that meeting.

Committee records

(e)(1)(A) Each committee shall keep a complete record of all committee action which shall include—

(i) in the case of a meeting or hearing transcript, a substantially verbatim account of remarks actually made during the proceedings, subject only to technical, grammatical, and typographical corrections authorized by the person making the remarks involved; and

(ii) a record of the votes on any question on which a record vote is demanded.

(B) (i) Except as provided in subdivision (B)(ii) and subject to paragraph (k)(7), the result of each such record vote shall be made available by the committee for inspection by the public at reasonable times in its offices and also made publicly available in electronic form within 48 hours of such record vote. Information so available shall include a description of the amendment, motion, order, or other proposition, the name of each member

voting for and each member voting against such amendment, motion, order, or proposition, and the names of those members of the committee present but not voting.

(ii) The result of any record vote taken in executive session in the Committee on Ethics may not be made available for inspection by the public without an affirmative vote of a majority of the members of the committee.

(2)(A) Except as provided in subdivision (B), all committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the member serving as its chair. Such records shall be the property of the House, and each Member, Delegate, and the Resident Commissioner shall have access thereto.

(B) A Member, Delegate, or Resident Commissioner, other than members of the Committee on Ethics, may not have access to the records of that committee respecting the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House without the specific prior permission of that committee.

(3) Each committee shall include in its rules standards for availability of records of the committee delivered to the Archivist of the United States under rule VII. Such standards shall specify procedures for orders of the committee under clause 3(b)(3) and clause 4(b) of rule VII, including a requirement that nonavailability of a

record for a period longer than the period otherwise applicable under that rule shall be approved by vote of the committee.

(4) Each committee shall make its publications available in electronic form to the maximum extent feasible.

(5) To the maximum extent practicable, each committee shall—

(A) provide audio and video coverage of each hearing or meeting for the transaction of business in a manner that allows the public to easily listen to and view the proceedings; and

(B) maintain the recordings of such coverage in a manner that is easily accessible to the public.

(6) Not later than 24 hours after the adoption of any amendment to a measure or matter considered by a committee, the chair of such committee shall cause the text of each such amendment to be made publicly available in electronic form.

Prohibition against proxy voting

(f) A vote by a member of a committee or subcommittee with respect to any measure or matter may not be cast by proxy.

Open meetings and hearings

(g)(1) Each meeting for the transaction of business, including the markup of legislation, by a standing

committee or subcommittee thereof (other than the Committee on Ethics or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of the meeting on that day shall be in executive session because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, would tend to defame, degrade, or incriminate any person, or otherwise would violate a law or rule of the House. Persons, other than members of the committee and such noncommittee Members, Delegates, Resident Commissioner, congressional staff, or departmental representatives as the committee may authorize, may not be present at a business or markup session that is held in executive session. This subparagraph does not apply to open committee hearings, which are governed by clause 4(a)(1) of rule X or by subparagraph (2).

(2)(A) Each hearing conducted by a committee or subcommittee (other than the Committee on Ethics or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of that hearing on that day shall

be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would violate a law or rule of the House.

(B) Notwithstanding the requirements of subdivision (A), in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, a majority of those present may—

(i) agree to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would endanger national security, would compromise sensitive law enforcement information, or would violate clause 2(k)(5); or

(ii) agree to close the hearing as provided in clause 2(k)(5).

(C) A Member, Delegate, or Resident Commissioner may not be excluded from non—participatory attendance at a hearing of a committee or subcommittee (other than the Committee on Ethics or its subcommittees) unless the House by majority vote authorizes a particular committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearings to Members, Delegates, and the Resident Commissioner by the same procedures specified in this subparagraph for closing hearings to the public.

(D) The committee or subcommittee may vote by the same procedure described in this subparagraph to close one subsequent day of hearing, except that the Committee on Appropriations, the Committee on Armed Services, and the Permanent Select Committee on Intelligence, and the subcommittees thereof, may vote by the same procedure to close up to five additional, consecutive days of hearings.

(3)(A) The chair of a committee shall announce the date, place, and subject matter of—

(i) a committee hearing, which may not commence earlier than one week after such notice; or

(ii) a committee meeting, which may not commence earlier than the third day on which members have notice thereof.

(B) A hearing or meeting may begin sooner than specified in subdivision (A) in either of the following circumstances (in which case the chair shall make the announcement specified in subdivision (A) at the earliest possible time):

(i) the chair of the committee, with the concurrence of the ranking minority member, determines that there is good cause; or

(ii) the committee so determines by majority vote in the presence of the number of members required under the rules of the committee for the transaction of business.

(C) An announcement made under this subparagraph shall be published promptly in the Daily Digest and made publicly available in electronic form.

(D) This subparagraph and subparagraph (4) shall not apply to the Committee on Rules.

(4) At least 24 hours prior to the commencement of a meeting for the markup of legislation, or at the time of an announcement under subparagraph (3)(B) made within 24 hours before such meeting, the chair of the committee shall cause the text of such legislation to be made publicly available in electronic form.

(5) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof. In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redactions to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(6)(A) Except as provided in subdivision (B), a point of order does not lie with respect to a measure reported by a committee on the ground that hearings on such measure were not conducted in accordance with this clause.

(B) A point of order on the ground described in subdivision (A) may be made by a member of the committee that reported the measure if such point of order was timely made and improperly disposed of in the committee.

(7) This paragraph does not apply to hearings of the Committee on Appropriations under clause 4(a)(1) of rule X.

Quorum requirements

(h)(1) A measure or recommendation may not be reported by a committee unless a majority of the committee is actually present.

(2) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which may not be less than two.

(3) Each committee (other than the Committee on Appropriations, the Committee on the Budget, and the Committee on Ways and Means) may fix the number of its members to constitute a quorum for taking any action other than one for which the presence of a majority of the committee is otherwise required, which may not be less than one-third of the members.

(4)(A) Each committee may adopt a rule authorizing the chair of a committee or subcommittee—

(i) to postpone further proceedings when a record vote is ordered on the question of approving a measure or matter or on adopting an amendment; and

(ii) to resume proceedings on a postponed question at any time after reasonable notice.

(B) A rule adopted pursuant to this subparagraph shall provide that when proceedings resume on a postponed question, notwithstanding any intervening order for the previous question, an underlying proposition shall remain subject to further debate or amendment to the same extent as when the question was postponed.

Limitation on committee sittings

(i) A committee may not sit during a joint session of the House and Senate or during a recess when a joint meeting of the House and Senate is in progress.

Calling and questioning of witnesses

(j)(1) Whenever a hearing is conducted by a committee on a measure or matter, the minority members of the committee shall be entitled, upon request to the chair by a majority of them before the completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.

(2)(A) Subject to subdivisions (B) and (C), each committee shall apply the five-minute rule during the questioning of witnesses in a hearing until such time as each member of the committee who so desires has had an opportunity to question each witness.

(B) A committee may adopt a rule or motion permitting a specified number of its members to question a witness for longer than five minutes. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

(C) A committee may adopt a rule or motion permitting committee staff for its majority and minority party members to question a witness for equal specified periods. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

Hearing procedures

(k)(1) The chair at a hearing shall announce in an opening statement the subject of the hearing.

(2) A copy of the committee rules and of this clause shall be made available to each witness on request.

(3) Witnesses at hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(4) The chair may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

(5) Whenever it is asserted by a member of the committee that the evidence or testimony at a hearing may tend to defame, degrade, or incriminate any person, or it is asserted by a witness that the evidence or testimony that the witness would give at a hearing may tend to defame, degrade, or incriminate the witness—

(A) notwithstanding paragraph (g)(2), such testimony or evidence shall be presented in executive session if, in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, the committee determines by vote of a majority of those present that such evidence or testimony may tend to defame, degrade, or incriminate any person; and

(B) the committee shall proceed to receive such testimony in open session only if the committee, a majority being present, determines that such evidence or testimony will not tend to defame, degrade, or incriminate any person.

In either case the committee shall afford such person an opportunity voluntarily to appear as a witness, and receive

and dispose of requests from such person to subpoena additional witnesses.

(6) Except as provided in subparagraph (5), the chair shall receive and the committee shall dispose of requests to subpoena additional witnesses.

(7) Evidence or testimony taken in executive session, and proceedings conducted in executive session, may be released or used in public sessions only when authorized by the committee, a majority being present.

(8) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinence of testimony and evidence adduced at its hearing.

(9) A witness may obtain a transcript copy of the testimony of such witness given at a public session or, if given at an executive session, when authorized by the committee.

Supplemental, minority, or additional views

(1) If at the time of approval of a measure or matter by a committee (other than the Committee on Rules) a member of the committee gives notice of intention to file supplemental, minority, or additional views for inclusion in the report to the House thereon, that member shall be entitled to not less than two additional calendar days after the day of such notice (excluding Saturdays, Sundays, and legal holidays except when the House is in session on

such a day) to file such views, in writing and signed by that member, with the clerk of the committee.

Power to sit and act; subpoena power

(m)(1) For the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII), a committee or subcommittee is authorized (subject to subparagraph (3)(A))—

(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings as it considers necessary; and

(B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.

(2) The chair of the committee, or a member designated by the chair, may administer oaths to witnesses.

(3)(A) (i) Except as provided in subdivision (A)(ii), a subpoena may be authorized and issued by a committee or subcommittee under subparagraph (1)(B) in the conduct of an investigation or series of investigations or activities only when authorized by the committee or subcommittee, a majority being present. The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chair of the committee under such rules and under

such limitations as the committee may prescribe. Authorized subpoenas shall be signed by the chair of the committee or by a member designated by the committee.

(ii) In the case of a subcommittee of the Committee on Ethics, a subpoena may be authorized and issued only by an affirmative vote of a majority of its members.

(B) A subpoena duces tecum may specify terms of return other than at a meeting or hearing of the committee or subcommittee authorizing the subpoena.

(C) Compliance with a subpoena issued by a committee or subcommittee under subparagraph (1)(B) may be enforced only as authorized or directed by the House.

(n)(1) Each standing committee, or a subcommittee thereof, shall hold at least one hearing during each 120-day period following the establishment of the committee on the topic of waste, fraud, abuse, or mismanagement in Government programs which that committee may authorize.

(2) A hearing described in subparagraph (1) shall include a focus on the most egregious instances of waste, fraud, abuse, or mismanagement as documented by any report the committee has received from a Federal Office of the Inspector General or the Comptroller General of the United States.

(o) Each committee, or a subcommittee thereof, shall hold at least one hearing in any session in which the committee has received disclaimers of agency financial

statements from auditors of any Federal agency that the committee may authorize to hear testimony on such disclaimers from representatives of any such agency.

(p) Each standing committee, or a subcommittee thereof, shall hold at least one hearing on issues raised by reports issued by the Comptroller General of the United States indicating that Federal programs or operations that the committee may authorize are at high risk for waste, fraud, and mismanagement, known as the “high-risk list” or the “high-risk series.”

Committee on Ethics

3. (a) The Committee on Ethics has the following functions:

(1) The committee may recommend to the House from time to time such administrative actions as it may consider appropriate to establish or enforce standards of official conduct for Members, Delegates, the Resident Commissioner, officers, and employees of the House. A letter of reproof or other administrative action of the committee pursuant to an investigation under subparagraph (2) shall only be issued or implemented as a part of a report required by such subparagraph.

(2) The committee may investigate, subject to paragraph (b), an alleged violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House of the Code of Official Conduct or of a law, rule, regulation, or other standard of conduct

applicable to the conduct of such Member, Delegate, Resident Commissioner, officer, or employee in the performance of the duties or the discharge of the responsibilities of such individual. After notice and hearing (unless the right to a hearing is waived by the Member, Delegate, Resident Commissioner, officer, or employee), the committee shall report to the House its findings of fact and recommendations, if any, for the final disposition of any such investigation and such action as the committee may consider appropriate in the circumstances.

(3) The committee may report to the appropriate Federal or State authorities, either with the approval of the House or by an affirmative vote of two-thirds of the members of the committee, any substantial evidence of a violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House, of a law applicable to the performance of the duties or the discharge of the responsibilities of such individual that may have been disclosed in a committee investigation.

(4) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, Delegate, Resident Commissioner, officer, or employee. With appropriate deletions to ensure the privacy of the person concerned,

the committee may publish such opinion for the guidance of other Members, Delegates, the Resident Commissioner, officers, and employees of the House.

(5) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for a written waiver in exceptional circumstances with respect to clause 4 of rule XXIII.

(6)(A) The committee shall offer annual ethics training to each Member, Delegate, Resident Commissioner, officer, and employee of the House. Such training shall—

(i) involve the classes of employees for whom the committee determines such training to be appropriate; and

(ii) include such knowledge of the Code of Official Conduct and related House rules as may be determined appropriate by the committee.

(B) (i) A new officer or employee of the House shall receive training under this paragraph not later than 60 days after beginning service to the House.

(ii) Not later than January 31 of each year, each officer and employee of the House shall file a certification with the committee that the officer or employee attended ethics training in the last year as established by this subparagraph.

(b)(1)(A) Unless approved by an affirmative vote of a majority of its members, the Committee on Ethics may not report a resolution, report, recommendation, or advisory opinion relating to the official conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House, or, except as provided in subparagraph (2), undertake an investigation of such conduct.

(B) (i) Upon the receipt of information offered as a complaint that is in compliance with this rule and the rules of the committee, the chair and ranking minority member jointly may appoint members to serve as an investigative subcommittee.

(ii) The chair and ranking minority member of the committee jointly may gather additional information concerning alleged conduct that is the basis of a complaint or of information offered as a complaint until they have established an investigative subcommittee or either of them has placed on the agenda of the committee the issue of whether to establish an investigative subcommittee.

(2) Except in the case of an investigation undertaken by the committee on its own initiative, the committee may undertake an investigation relating to the official conduct of an individual Member, Delegate, Resident Commissioner, officer, or employee of the House only—

(A) upon receipt of information offered as a complaint, in writing and under oath, from a Member,

Delegate, or Resident Commissioner and transmitted to the committee by such Member, Delegate, or Resident Commissioner;

(B) upon receipt of information offered as a complaint, in writing and under oath, from a person not a Member, Delegate, or Resident Commissioner provided that a Member, Delegate, or Resident Commissioner certifies in writing to the committee that such Member, Delegate, or Resident Commissioner believes the information is submitted in good faith and warrants the review and consideration of the committee; or

(C) upon receipt of a report regarding a referral from the board of the Office of Congressional Ethics.

If a complaint is not disposed of within the applicable periods set forth in the rules of the Committee on Ethics, the chair and ranking minority member shall establish jointly an investigative subcommittee and forward the complaint, or any portion thereof, to that subcommittee for its consideration. However, if at any time during those periods either the chair or ranking minority member places on the agenda the issue of whether to establish an investigative subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

(3) The committee may not undertake an investigation of an alleged violation of a law, rule, regulation, or

standard of conduct that was not in effect at the time of the alleged violation. The committee may not undertake an investigation of such an alleged violation that occurred before the third previous Congress unless the committee determines that the alleged violation is directly related to an alleged violation that occurred in a more recent Congress.

(4) A member of the committee shall be ineligible to participate as a member of the committee in a committee proceeding relating to the member's official conduct. Whenever a member of the committee is ineligible to act as a member of the committee under the preceding sentence, the Speaker shall designate a Member, Delegate, or Resident Commissioner from the same political party as the ineligible member to act in any proceeding of the committee relating to that conduct.

(5) A member of the committee may seek disqualification from participating in an investigation of the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House upon the submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks to be disqualified. If the committee approves and accepts such affidavit of disqualification, the chair shall so notify the Speaker and request the Speaker to designate a Member, Delegate, or Resident

Commissioner from the same political party as the disqualifying member to act in any proceeding of the committee relating to that case.

(6) Information or testimony received, or the contents of a complaint or the fact of its filing, may not be publicly disclosed by any committee or staff member unless specifically authorized in each instance by a vote of the full committee.

(7) The committee shall have the functions designated in titles I and V of the Ethics in Government Act of 1978, in sections 7342, 7351, and 7353 of title 5, United States Code, and in clause 11(g)(4) of rule X.

(8)(A) Except as provided by subdivisions (B), (C), and (D), not later than 45 calendar days or 5 legislative days, whichever is later, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the chair of the Committee on Ethics shall make public the written report and findings of the board unless the chair and ranking member, acting jointly, decide or the committee votes to withhold such information for not more than one additional period of the same duration, in which case the chair shall—

(i) upon the termination of such additional period, make public the written report and findings; and

(ii) upon the day of such decision or vote, make a public statement that the committee has voted to extend the matter relating to the referral made by the board of the Office of Congressional Ethics regarding the Member, officer, or employee of the House who is the subject of the applicable referral.

At least one calendar day before the committee makes public any written report and findings of the board, the chair shall notify such board and the applicable Member, officer, or employee of that fact and transmit to such individual a copy of the statement on the committee's disposition of, and any committee report on, the matter.

(B) (i) Notwithstanding subdivision (A)(i), if the committee votes to dismiss a matter which is the subject of a referral from the board of the Office of Congressional Ethics, the committee is not required to make public the written report and findings described in such subdivision unless the committee's vote is inconsistent with the recommendation of the board. For purposes of the previous sentence, a vote by the committee to dismiss a matter is not inconsistent with a report from the board respecting the matter as unresolved due to a tie vote.

(ii) Notwithstanding subdivision (A)(ii), if the board transmits a report respecting any matter with a recommendation to dismiss or as unresolved due to a tie vote, and the committee votes to extend the matter for an additional period as provided in subdivision (A), the

committee is not required to make a public statement that the committee has voted to extend the matter.

(iii) Except as provided by subdivision (E), if the committee establishes an investigative subcommittee respecting any such matter, then the report and findings of the board shall not be made public until the conclusion of the investigative subcommittee process and the committee shall issue a public statement of the establishment of an investigative subcommittee, which statement shall include the name of the applicable Member, officer, or employee, and shall set forth the alleged violation. If any such investigative subcommittee does not conclude its review within one year after the board transmits a report respecting any matter, then the committee shall make public the report and upon the expiration of the Congress in which the report is made public, the committee shall make public any findings.

(C) (i) If, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the committee agrees to a request from an appropriate law enforcement or regulatory authority to defer taking action on the matter

(I) notwithstanding subdivision (A)(i), the committee is not required to make public the written report and

findings described in such subdivision, except that if the recommendation of the board with respect to the report is that the matter requires further review, the committee shall make public the written report but not the findings; and

(II) before the end of the first day (excluding Saturdays, Sundays, and public holidays) after the day that the committee agrees to the request, the committee shall make a public statement that it is deferring taking action on the matter at the request of such authority.

(ii) If, upon the expiration of the one-year period that begins on the date the committee makes the public statement described in item (i)(II), the committee has not acted on the matter, the committee shall make a new public statement that it is still deferring taking action on the matter, and shall make a new statement upon the expiration of each succeeding one-year period during which the committee has not acted on the matter.

(D) The committee may not receive any referral from the board of the Office of Congressional Ethics within 60 days before a Federal, State, or local election in which the subject of the referral is a candidate. The committee may delay any reporting requirement under this subparagraph that falls within that 60-day period until the end of such period and in that case, for purposes of subdivision (A), days within the 60-day period shall not be counted.

(E) If, at the close of any applicable period for a reporting requirement under this subparagraph with respect to a referral from the board of the Office of Congressional Ethics, the vote of the committee is a tie or the committee fails to act, the report and the findings of the board shall be made public by the committee, along with a public statement by the chair explaining the status of the matter.

(c)(1) Notwithstanding clause 2(g)(1) of rule XI, each meeting of the Committee on Ethics or a subcommittee thereof shall occur in executive session unless the committee or subcommittee, by an affirmative vote of a majority of its members, opens the meeting to the public.

(2) Notwithstanding clause 2(g)(2) of rule XI, each hearing of an adjudicatory subcommittee or sanction hearing of the Committee on Ethics shall be held in open session unless the committee or subcommittee, in open session by an affirmative vote of a majority of its members, closes all or part of the remainder of the hearing on that day to the public.

(d) Before a member, officer, or employee of the Committee on Ethics, including members of a subcommittee of the committee selected under clause 5(a)(4) of rule X and shared staff, may have access to information that is confidential under the rules of the committee, the following oath (or affirmation) shall be executed:

“I do solemnly swear (or affirm) that I will not disclose, to any person or entity outside the Committee on Ethics, any information received in the course of my service with the committee, except as authorized by the committee or in accordance with its rules.”

Copies of the executed oath shall be retained by the Clerk as part of the records of the House. This paragraph establishes a standard of conduct within the meaning of paragraph (a)(2). Breaches of confidentiality shall be investigated by the Committee on Ethics and appropriate action shall be taken.

(e)(1) If a complaint or information offered as a complaint is deemed frivolous by an affirmative vote of a majority of the members of the Committee on Ethics, the committee may take such action as it, by an affirmative vote of a majority of its members, considers appropriate in the circumstances.

(2) Complaints filed before the One Hundred Fifth Congress may not be deemed frivolous by the Committee on Ethics.

Committee agendas

(f) The committee shall adopt rules providing that the chair shall establish the agenda for meetings of the committee, but shall not preclude the ranking minority member from placing any item on the agenda.

Committee staff

(g)(1) The committee shall adopt rules providing that—

(A) the staff be assembled and retained as a professional, nonpartisan staff;

(B) each member of the staff shall be professional and demonstrably qualified for the position for which hired;

(C) the staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner;

(D) no member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election;

(E) no member of the staff or outside counsel may accept public speaking engagements or write for publication on any subject that is in any way related to the employment or duties with the committee of such individual without specific prior approval from the chair and ranking minority member; and

(F) no member of the staff or outside counsel may make public, unless approved by an affirmative vote of a majority of the members of the committee, any information, document, or other material that is confidential, derived from executive session, or classified and that is obtained during the course of employment with the committee.

(2) Only subdivisions (C), (E), and (F) of subparagraph (1) shall apply to shared staff.

(3)(A) All staff members shall be appointed by an affirmative vote of a majority of the members of the committee. Such vote shall occur at the first meeting of the membership of the committee during each Congress and as necessary during the Congress.

(B) Subject to the approval of the Committee on House Administration, the committee may retain counsel not employed by the House of Representatives whenever the committee determines, by an affirmative vote of a majority of the members of the committee, that the retention of outside counsel is necessary and appropriate.

(C) If the committee determines that it is necessary to retain staff members for the purpose of a particular investigation or other proceeding, then such staff shall be retained only for the duration of that particular investigation or proceeding.

(D) Outside counsel may be dismissed before the end of a contract between the committee and such counsel only by an affirmative vote of a majority of the members of the committee.

(4) In addition to any other staff provided for by law, rule, or other authority, with respect to the committee, the chair and ranking minority member each may appoint one individual as a shared staff member from the respective personal staff of the chair or ranking minority member to perform service for the committee. Such shared staff may assist the chair or ranking minority member on any

subcommittee on which the chair or ranking minority member serves.

Meetings and hearings

(h)(1) The committee shall adopt rules providing that—

(A) all meetings or hearings of the committee or any subcommittee thereof, other than any hearing held by an adjudicatory subcommittee or any sanction hearing held by the committee, shall occur in executive session unless the committee or subcommittee by an affirmative vote of a majority of its members opens the meeting or hearing to the public; and

(B) any hearing held by an adjudicatory subcommittee or any sanction hearing held by the committee shall be open to the public unless the committee or subcommittee by an affirmative vote of a majority of its members closes the hearing to the public.

Public disclosure

(i) The committee shall adopt rules providing that, unless otherwise determined by a vote of the committee, only the chair or ranking minority member, after consultation with each other, may make public statements regarding matters before the committee or any subcommittee thereof.

Requirements to constitute a complaint

(j) The committee shall adopt rules regarding complaints to provide that whenever information offered as a complaint is submitted to the committee, the chair and ranking minority member shall have 14 calendar days or five legislative days, whichever is sooner, to determine whether the information meets the requirements of the rules of the committee for what constitutes a complaint.

Duties of chair and ranking minority member regarding properly filed complaints

(k)(1) The committee shall adopt rules providing that whenever the chair and ranking minority member jointly determine that information submitted to the committee meets the requirements of the rules of the committee for what constitutes a complaint, they shall have 45 calendar days or five legislative days, whichever is later, after that determination (unless the committee by an affirmative vote of a majority of its members votes otherwise) to—

(A) recommend to the committee that it dispose of the complaint, or any portion thereof, in any manner that does not require action by the House, which may include dismissal of the complaint or resolution of the complaint by a letter to the Member, officer, or employee of the House against whom the complaint is made;

(B) establish an investigative subcommittee; or

(C) request that the committee extend the applicable 45-calendar day or five-legislative day period by one

additional 45-calendar day period when they determine more time is necessary in order to make a recommendation under subdivision (A).

(2) The committee shall adopt rules providing that if the chair and ranking minority member jointly determine that information submitted to the committee meets the requirements of the rules of the committee for what constitutes a complaint, and the complaint is not disposed of within the applicable time periods under subparagraph (1), then they shall establish an investigative subcommittee and forward the complaint, or any portion thereof, to that subcommittee for its consideration. However, if, at any time during those periods, either the chair or ranking minority member places on the agenda the issue of whether to establish an investigative subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

Duties of chair and ranking minority member regarding information not constituting a complaint

(1) The committee shall adopt rules providing that whenever the chair and ranking minority member jointly determine that information submitted to the committee does not meet the requirements of the rules of the committee for what constitutes a complaint, they may—

(1) return the information to the complainant with a statement that it fails to meet the requirements of the

rules of the committee for what constitutes a complaint;
or

(2) recommend to the committee that it authorize the establishment of an investigative subcommittee.

Investigative and adjudicatory subcommittees

(m) The committee shall adopt rules providing that—

(1)(A) an investigative subcommittee shall be composed of four Members (with equal representation from the majority and minority parties) whenever such a subcommittee is established pursuant to the rules of the committee;

(B) an adjudicatory subcommittee shall be composed of the members of the committee who did not serve on the pertinent investigative subcommittee (with equal representation from the majority and minority parties) whenever such a subcommittee is established pursuant to the rules of the committee; and

(C) notwithstanding any other provision of this clause, the chair and ranking minority member of the committee may consult with an investigative subcommittee either on their own initiative or on the initiative of the subcommittee, shall have access to information before a subcommittee with which they so consult, and shall not thereby be precluded from serving as full, voting members of any adjudicatory subcommittee;

(2) at the time of appointment, the chair shall designate one member of a subcommittee to serve as chair and the ranking minority member shall designate one member of the subcommittee to serve as the ranking minority member; and

(3) the chair and ranking minority member of the committee may serve as members of an investigative subcommittee, but may not serve as non-voting, ex officio members.

Standard of proof for adoption of statement of alleged violation

(n) The committee shall adopt rules to provide that an investigative subcommittee may adopt a statement of alleged violation only if it determines by an affirmative vote of a majority of the members of the subcommittee that there is substantial reason to believe that a violation of the Code of Official Conduct, or of a law, rule, regulation, or other standard of conduct applicable to the performance of official duties or the discharge of official responsibilities by a Member, officer, or employee of the House of Representatives, has occurred.

Subcommittee powers

(o)(1) The committee shall adopt rules providing that an investigative subcommittee or an adjudicatory subcommittee may authorize and issue subpoenas only

when authorized by an affirmative vote of a majority of the members of the subcommittee.

(2) The committee shall adopt rules providing that an investigative subcommittee may, upon an affirmative vote of a majority of its members, expand the scope of its investigation when approved by an affirmative vote of a majority of the members of the committee.

(3) The committee shall adopt rules to provide that—

(A) an investigative subcommittee may, upon an affirmative vote of a majority of its members, amend its statement of alleged violation anytime before the statement of alleged violation is transmitted to the committee; and

(B) if an investigative subcommittee amends its statement of alleged violation, the respondent shall be notified in writing and shall have 30 calendar days from the date of that notification to file an answer to the amended statement of alleged violation.

Due process rights of respondents

(p) The committee shall adopt rules to provide that—

(1) not less than 10 calendar days before a scheduled vote by an investigative subcommittee on a statement of alleged violation, the subcommittee shall provide the respondent with a copy of the statement of alleged violation it intends to adopt together with all evidence it intends to use to prove those charges which it intends to adopt, including documentary evidence, witness

testimony, memoranda of witness interviews, and physical evidence, unless the subcommittee by an affirmative vote of a majority of its members decides to withhold certain evidence in order to protect a witness; but if such evidence is withheld, the subcommittee shall inform the respondent that evidence is being withheld and of the count to which such evidence relates;

(2) neither the respondent nor the counsel of the respondent shall, directly or indirectly, contact the subcommittee or any member thereof during the period of time set forth in paragraph (1) except for the sole purpose of settlement discussions where counsel for the respondent and the subcommittee are present;

(3) if, at any time after the issuance of a statement of alleged violation, the committee or any subcommittee thereof determines that it intends to use evidence not provided to a respondent under paragraph (1) to prove the charges contained in the statement of alleged violation (or any amendment thereof), such evidence shall be made immediately available to the respondent, and it may be used in any further proceeding under the rules of the committee;

(4) evidence provided pursuant to paragraph (1) or (3) shall be made available to the respondent and the counsel of the respondent only after each agrees, in writing, that no document, information, or other

materials obtained pursuant to that paragraph shall be made public until—

(A) such time as a statement of alleged violation is made public by the committee if the respondent has waived the adjudicatory hearing; or

(B) the commencement of an adjudicatory hearing if the respondent has not waived an adjudicatory hearing;

but the failure of respondent and the counsel of the respondent to so agree in writing, and their consequent failure to receive the evidence, shall not preclude the issuance of a statement of alleged violation at the end of the period referred to in paragraph (1);

(5) a respondent shall receive written notice whenever—

(A) the chair and ranking minority member determine that information the committee has received constitutes a complaint;

(B) a complaint or allegation is transmitted to an investigative subcommittee;

(C) an investigative subcommittee votes to authorize its first subpoena or to take testimony under oath, whichever occurs first; or

(D) an investigative subcommittee votes to expand the scope of its investigation;

(6) whenever an investigative subcommittee adopts a statement of alleged violation and a respondent enters

into an agreement with that subcommittee to settle a complaint on which that statement is based, that agreement, unless the respondent requests otherwise, shall be in writing and signed by the respondent and respondent's counsel, the chair and ranking minority member of the subcommittee, and the outside counsel, if any;

(7) statements or information derived solely from a respondent or the counsel of a respondent during any settlement discussions between the committee or a subcommittee thereof and the respondent shall not be included in any report of the subcommittee or the committee or otherwise publicly disclosed without the consent of the respondent; and

(8) whenever a motion to establish an investigative subcommittee does not prevail, the committee shall promptly send a letter to the respondent informing the respondent of such vote.

Committee reporting requirements

(q) The committee shall adopt rules to provide that—

(1) whenever an investigative subcommittee does not adopt a statement of alleged violation and transmits a report to that effect to the committee, the committee may by an affirmative vote of a majority of its members transmit such report to the House of Representatives;

(2) whenever an investigative subcommittee adopts a statement of alleged violation, the respondent admits to

the violations set forth in such statement, the respondent waives the right to an adjudicatory hearing, and the respondent's waiver is approved by the committee—

(A) the subcommittee shall prepare a report for transmittal to the committee, a final draft of which shall be provided to the respondent not less than 15 calendar days before the subcommittee votes on whether to adopt the report;

(B) the respondent may submit views in writing regarding the final draft to the subcommittee within seven calendar days of receipt of that draft;

(C) the subcommittee shall transmit a report to the committee regarding the statement of alleged violation together with any views submitted by the respondent pursuant to subdivision (B), and the committee shall make the report together with the respondent's views available to the public before the commencement of any sanction hearing; and

(D) the committee shall by an affirmative vote of a majority of its members issue a report and transmit such report to the House of Representatives, together with the respondent's views previously submitted pursuant to subdivision (B) and any additional views respondent may submit for attachment to the final report; and

(3) members of the committee shall have not less than 72 hours to review any report transmitted to the committee by an investigative subcommittee before both the commencement of a sanction hearing and the committee vote on whether to adopt the report.

(r) Upon receipt of any written notification from the board of the Office of Congressional Ethics that the board is undertaking a review of any alleged conduct of any Member, officer, or employee of the House and if the committee is investigating such matter, the committee may at any time so notify the board and request that the board cease its review and refer the matter to the committee for its consideration. If at the end of the applicable time period (including any permissible extension) the committee has not reached a final resolution of the matter or has not referred the matter to the appropriate Federal or State authorities, the committee shall so notify the board of the Office of Congressional Ethics in writing. The committee may not request the same matter from the board more than one time.

Audio and visual coverage of committee proceedings

4. (a) The purpose of this clause is to provide a means, in conformity with acceptable standards of dignity, propriety, and decorum, by which committee hearings or committee meetings that are open to the public may be

covered by audio and visual means—

(1) for the education, enlightenment, and information of the general public, on the basis of accurate and impartial news coverage, regarding the operations, procedures, and practices of the House as a legislative and representative body, and regarding the measures, public issues, and other matters before the House and its committees, the consideration thereof, and the action taken thereon; and

(2) for the development of the perspective and understanding of the general public with respect to the role and function of the House under the Constitution as an institution of the Federal Government.

(b) In addition, it is the intent of this clause that radio and television tapes and television film of any coverage under this clause may not be used, or made available for use, as partisan political campaign material to promote or oppose the candidacy of any person for elective public office.

(c) It is, further, the intent of this clause that the general conduct of each meeting (whether of a hearing or otherwise) covered under authority of this clause by audio or visual means, and the personal behavior of the committee members and staff, other Government officials and personnel, witnesses, television, radio, and press media personnel, and the general public at the hearing or other meeting, shall be in strict conformity with and

observance of the acceptable standards of dignity, propriety, courtesy, and decorum traditionally observed by the House in its operations, and may not be such as to—

(1) distort the objects and purposes of the hearing or other meeting or the activities of committee members in connection with that hearing or meeting or in connection with the general work of the committee or of the House; or

(2) cast discredit or dishonor on the House, the committee, or a Member, Delegate, or Resident Commissioner or bring the House, the committee, or a Member, Delegate, or Resident Commissioner into disrepute.

(d) The coverage of committee hearings and meetings by audio and visual means shall be permitted and conducted only in strict conformity with the purposes, provisions, and requirements of this clause.

(e) Whenever a hearing or meeting conducted by a committee or subcommittee is open to the public, those proceedings shall be open to coverage by audio and visual means. A committee or subcommittee chair may not limit the number of television or still cameras to fewer than two representatives from each medium (except for legitimate space or safety considerations, in which case pool coverage shall be authorized).

(f) Each committee shall adopt written rules to govern its implementation of this clause. Such rules shall contain

provisions to the following effect:

(1) If audio or visual coverage of the hearing or meeting is to be presented to the public as live coverage, that coverage shall be conducted and presented without commercial sponsorship.

(2) The allocation among the television media of the positions or the number of television cameras permitted by a committee or subcommittee chair in a hearing or meeting room shall be in accordance with fair and equitable procedures devised by the Executive Committee of the Radio and Television Correspondents' Galleries.

(3) Television cameras shall be placed so as not to obstruct in any way the space between a witness giving evidence or testimony and any member of the committee or the visibility of that witness and that member to each other.

(4) Television cameras shall operate from fixed positions but may not be placed in positions that obstruct unnecessarily the coverage of the hearing or meeting by the other media.

(5) Equipment necessary for coverage by the television and radio media may not be installed in, or removed from, the hearing or meeting room while the committee is in session.

(6)(A) Except as provided in subdivision (B), floodlights, spotlights, strobelights, and flash—guns

may not be used in providing any method of coverage of the hearing or meeting.

(B) The television media may install additional lighting in a hearing or meeting room, without cost to the Government, in order to raise the ambient lighting level in a hearing or meeting room to the lowest level necessary to provide adequate television coverage of a hearing or meeting at the current state of the art of television coverage.

(7) If requests are made by more of the media than will be permitted by a committee or subcommittee chair for coverage of a hearing or meeting by still photography, that coverage shall be permitted on the basis of a fair and equitable pool arrangement devised by the Standing Committee of Press Photographers.

(8) Photographers may not position themselves between the witness table and the members of the committee at any time during the course of a hearing or meeting.

(9) Photographers may not place themselves in positions that obstruct unnecessarily the coverage of the hearing by the other media.

(10) Personnel providing coverage by the television and radio media shall be currently accredited to the Radio and Television Correspondents' Galleries.

(11) Personnel providing coverage by still photography shall be currently accredited to the Press

Photographers' Gallery.

(12) Personnel providing coverage by the television and radio media and by still photography shall conduct themselves and their coverage activities in an orderly and unobtrusive manner.

Pay of witnesses

5. Witnesses appearing before the House or any of its committees shall be paid the same per diem rate as established, authorized, and regulated by the Committee on House Administration for Members, Delegates, the Resident Commissioner, and employees of the House, plus actual expenses of travel to or from the place of examination. Such per diem may not be paid when a witness has been summoned at the place of examination.

Unfinished business of the session

6. All business of the House at the end of one session shall be resumed at the commencement of the next session of the same Congress in the same manner as if no adjournment had taken place.

RULE XII

RECEIPT AND REFERRAL OF MEASURES AND MATTERS

Messages

1. Messages received from the Senate, or from the President, shall be entered on the Journal and published in

the Congressional Record of the proceedings of that day.

Referral

2. (a) The Speaker shall refer each bill, resolution, or other matter that relates to a subject listed under a standing committee named in clause 1 of rule X in accordance with the provisions of this clause.

(b) The Speaker shall refer matters under paragraph (a) in such manner as to ensure to the maximum extent feasible that each committee that has jurisdiction under clause 1 of rule X over the subject matter of a provision thereof may consider such provision and report to the House thereon. Precedents, rulings, or procedures in effect before the Ninety-Fourth Congress shall be applied to referrals under this clause only to the extent that they will contribute to the achievement of the objectives of this clause.

(c) In carrying out paragraphs (a) and (b) with respect to the referral of a matter, the Speaker—

(1) shall designate a committee of primary jurisdiction (except where the Speaker determines that extraordinary circumstances justify review by more than one committee as though primary);

(2) may refer the matter to one or more additional committees for consideration in sequence, either initially or after the matter has been reported by the committee of primary jurisdiction;

(3) may refer portions of the matter reflecting different subjects and jurisdictions to one or more additional committees;

(4) may refer the matter to a special, ad hoc committee appointed by the Speaker with the approval of the House, and including members of the committees of jurisdiction, for the specific purpose of considering that matter and reporting to the House thereon;

(5) may subject a referral to appropriate time limitations; and

(6) may make such other provision as may be considered appropriate.

(d) A bill for the payment or adjudication of a private claim against the Government may not be referred to a committee other than the Committee on Foreign Affairs or the Committee on the Judiciary, except by unanimous consent.

Petitions, memorials, and private bills

3. If a Member, Delegate, or Resident Commissioner has a petition, memorial, or private bill to present, the Member, Delegate, or Resident Commissioner shall sign it, deliver it to the Clerk, and may specify the reference or disposition to be made thereof. Such petition, memorial, or private bill (except when judged by the Speaker to be obscene or insulting) shall be entered on the Journal with the name of the Member, Delegate, or Resident

Commissioner presenting it and shall be printed in the Congressional Record.

4. A private bill or private resolution (including an omnibus claim or pension bill), or amendment thereto, may not be received or considered in the House if it authorizes or directs—

(a) the payment of money for property damages, for personal injuries or death for which suit may be instituted under the Tort Claims Procedure provided in title 28, United States Code, or for a pension (other than to carry out a provision of law or treaty stipulation);

(b) the construction of a bridge across a navigable stream; or

(c) the correction of a military or naval record.

Prohibition on commemorations

5. (a) A bill or resolution, or an amendment thereto, may not be introduced or considered in the House if it establishes or expresses a commemoration.

(b) In this clause the term “commemoration” means a remembrance, celebration, or recognition for any purpose through the designation of a specified period of time.

Excluded matters

6. A petition, memorial, bill, or resolution excluded under this rule shall be returned to the Member, Delegate, or Resident Commissioner from whom it was received. A petition or private bill that has been inappropriately

referred may, by direction of the committee having possession of it, be properly referred in the manner originally presented. An erroneous reference of a petition or private bill under this clause does not confer jurisdiction on a committee to consider or report it.

Sponsorship

7. (a) Bills, memorials, petitions, and resolutions, endorsed with the names of Members, Delegates, or the Resident Commissioner introducing them, may be delivered to the Speaker to be referred. The titles and references of all bills, memorials, petitions, resolutions, and other documents referred under this rule shall be entered on the Journal and printed in the Congressional Record. An erroneous reference may be corrected by the House in accordance with rule X on any day immediately after the Pledge of Allegiance to the Flag by unanimous consent or motion. Such a motion shall be privileged if offered by direction of a committee to which the bill has been erroneously referred or by direction of a committee claiming jurisdiction and shall be decided without debate.

(b)(1) The sponsor of a public bill or public resolution may name cosponsors. The name of a cosponsor added after the initial printing of a bill or resolution shall appear in the next printing of the bill or resolution on the written request of the sponsor. Such a request may be submitted to the Speaker at any time until the last committee authorized to consider and report the bill or resolution

reports it to the House or is discharged from its consideration.

(2) The name of a cosponsor of a bill or resolution may be deleted by unanimous consent. The Speaker may entertain such a request only by the Member, Delegate, or Resident Commissioner whose name is to be deleted or by the sponsor of the bill or resolution, and only until the last committee authorized to consider and report the bill or resolution reports it to the House or is discharged from its consideration. The Speaker may not entertain a request to delete the name of the sponsor of a bill or resolution. A deletion shall be indicated by date in the next printing of the bill or resolution.

(3) The addition or deletion of the name of a cosponsor of a bill or resolution shall be entered on the Journal and printed in the Congressional Record of that day.

(4) A bill or resolution shall be reprinted on the written request of the sponsor. Such a request may be submitted to the Speaker only when 20 or more cosponsors have been added since the last printing of the bill or resolution.

(5) When a bill or resolution is introduced “by request,” those words shall be entered on the Journal and printed in the Congressional Record.

(c)(1) A bill or joint resolution may not be introduced unless the sponsor submits for printing in the Congressional Record a statement citing as specifically as practicable the power or powers granted to Congress in

the Constitution to enact the bill or joint resolution. The statement shall appear in a portion of the Record designated for that purpose and be made publicly available in electronic form by the Clerk.

(2) Before consideration of a Senate bill or joint resolution, the chair of a committee of jurisdiction may submit the statement required under subparagraph (1) as though the chair were the sponsor of the Senate bill or joint resolution.

Executive communications

8. Estimates of appropriations and all other communications from the executive departments intended for the consideration of any committees of the House shall be addressed to the Speaker for referral as provided in clause 2 of rule XIV.

RULE XIII

CALENDARS AND COMMITTEE REPORTS

Calendars

1. (a) All business reported by committees shall be referred to one of the following three calendars:

(1) A Calendar of the Committee of the Whole House on the state of the Union, to which shall be referred public bills and public resolutions raising revenue, involving a tax or charge on the people, directly or indirectly making appropriations of money or property

or requiring such appropriations to be made, authorizing payments out of appropriations already made, releasing any liability to the United States for money or property, or referring a claim to the Court of Claims.

(2) A House Calendar, to which shall be referred all public bills and public resolutions not requiring referral to the Calendar of the Committee of the Whole House on the state of the Union.

(3) A Private Calendar as provided in clause 5 of rule XV, to which shall be referred all private bills and private resolutions.

(b) There is established a Calendar of Motions to Discharge Committees as provided in clause 2 of rule XV.

Filing and printing of reports

2. (a)(1) Except as provided in subparagraph (2), all reports of committees (other than those filed from the floor) shall be delivered to the Clerk for printing and reference to the proper calendar under the direction of the Speaker in accordance with clause 1. The title or subject of each report shall be entered on the Journal and printed in the Congressional Record.

(2) A bill or resolution reported adversely (other than those filed as privileged) shall be laid on the table unless a committee to which the bill or resolution was referred requests at the time of the report its referral to an appropriate calendar under clause 1 or unless, within three

days thereafter, a Member, Delegate, or Resident Commissioner makes such a request.

(b)(1) It shall be the duty of the chair of each committee to report or cause to be reported promptly to the House a measure or matter approved by the committee and to take or cause to be taken steps necessary to bring the measure or matter to a vote.

(2) In any event, the report of a committee on a measure that has been approved by the committee shall be filed within seven calendar days (exclusive of days on which the House is not in session) after the day on which a written request for the filing of the report, signed by a majority of the members of the committee, has been filed with the clerk of the committee. The clerk of the committee shall immediately notify the chair of the filing of such a request. This subparagraph does not apply to a report of the Committee on Rules with respect to a rule, joint rule, or order of business of the House, or to the reporting of a resolution of inquiry addressed to the head of an executive department.

(c) All supplemental, minority, or additional views filed under clause 2(l) of rule XI by one or more members of a committee shall be included in, and shall be a part of, the report filed by the committee with respect to a measure or matter. When time guaranteed by clause 2(l) of rule XI has expired (or, if sooner, when all separate views have been received), the committee may arrange to file its

report with the Clerk not later than one hour after the expiration of such time. This clause and provisions of clause 2(1) of rule XI do not preclude the immediate filing or printing of a committee report in the absence of a timely request for the opportunity to file supplemental, minority, or additional views as provided in clause 2(1) of rule XI.

Content of reports

3. (a)(1) Except as provided in subparagraph (2), the report of a committee on a measure or matter shall be printed in a single volume that—

(A) shall include all supplemental, minority, or additional views that have been submitted by the time of the filing of the report; and

(B) shall bear on its cover a recital that any such supplemental, minority, or additional views (and any material submitted under paragraph (c)(3)) are included as part of the report.

(2) A committee may file a supplemental report for the correction of a technical error in its previous report on a measure or matter. A supplemental report only correcting errors in the depiction of record votes under paragraph (b) may be filed under this subparagraph and shall not be subject to the requirement in clause 4 or clause 6 concerning the availability of reports.

(b) With respect to each record vote on a motion to report a measure or matter of a public nature, and on any

amendment offered to the measure or matter, the total number of votes cast for and against, and the names of members voting for and against, shall be included in the committee report. The preceding sentence does not apply to votes taken in executive session by the Committee on Ethics.

(c) The report of a committee on a measure that has been approved by the committee shall include, separately set out and clearly identified, the following:

(1) Oversight findings and recommendations under clause 2(b)(1) of rule X.

(2) The statement required by section 308(a) of the Congressional Budget Act of 1974, except that an estimate of new budget authority shall include, when practicable, a comparison of the total estimated funding level for the relevant programs to the appropriate levels under current law.

(3) An estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 if timely submitted to the committee before the filing of the report.

(4) A statement of general performance goals and objectives, including outcome-related goals and objectives, for which the measure authorizes funding.

(d) Each report of a committee on a public bill or public joint resolution shall contain the following:

(1)(A) An estimate by the committee of the costs that would be incurred in carrying out the bill or joint resolution in the fiscal year in which it is reported and in each of the five fiscal years following that fiscal year (or for the authorized duration of any program authorized by the bill or joint resolution if less than five years);

(B) a comparison of the estimate of costs described in subdivision (A) made by the committee with any estimate of such costs made by a Government agency and submitted to such committee; and

(C) when practicable, a comparison of the total estimated funding level for the relevant programs with the appropriate levels under current law.

(2)(A) In subparagraph (1) the term “Government agency” includes any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or the government of the District of Columbia.

(B) Subparagraph (1) does not apply to the Committee on Appropriations, the Committee on House Administration, the Committee on Rules, or the Committee on Ethics, and does not apply when a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been included in the report under paragraph (c)(3).

(e)(1) Whenever a committee reports a bill or joint resolution proposing to repeal or amend a statute or part thereof, it shall include in its report or in an accompanying document—

(A) the text of a statute or part thereof that is proposed to be repealed; and

(B) a comparative print of any part of the bill or joint resolution proposing to amend the statute and of the statute or part thereof proposed to be amended, showing by appropriate typographical devices the omissions and insertions proposed.

(2) If a committee reports a bill or joint resolution proposing to repeal or amend a statute or part thereof with a recommendation that the bill or joint resolution be amended, the comparative print required by subparagraph (1) shall reflect the changes in existing law proposed to be made by the bill or joint resolution as proposed to be amended.

(f)(1) A report of the Committee on Appropriations on a general appropriation bill shall include—

(A) a concise statement describing the effect of any provision of the accompanying bill that directly or indirectly changes the application of existing law; and

(B) a list of all appropriations contained in the bill for expenditures not currently authorized by law for the period concerned (excepting classified intelligence or national security programs, projects, or activities),

along with a statement of the last year for which such expenditures were authorized, the level of expenditures authorized for that year, the actual level of expenditures for that year, and the level of appropriations in the bill for such expenditures.

(2) Whenever the Committee on Appropriations reports a bill or joint resolution including matter specified in clause 1(b)(2) or (3) of rule X, it shall include—

(A) in the bill or joint resolution, separate headings for “Rescissions” and “Transfers of Unexpended Balances”; and

(B) in the report of the committee, a separate section listing such rescissions and transfers.

(g) Whenever the Committee on Rules reports a resolution proposing to repeal or amend a standing rule of the House, it shall include in its report or in an accompanying document—

(1) the text of any rule or part thereof that is proposed to be repealed; and

(2) a comparative print of any part of the resolution proposing to amend the rule and of the rule or part thereof proposed to be amended, showing by appropriate typographical devices the omissions and insertions proposed.

(h)(1) It shall not be in order to consider a bill or joint resolution reported by the Committee on Ways and Means that proposes to amend the Internal Revenue Code of

1986 unless—

(A) the report includes a tax complexity analysis prepared by the Joint Committee on Internal Revenue Taxation in accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998; or

(B) the chair of the Committee on Ways and Means causes such a tax complexity analysis to be printed in the Congressional Record before consideration of the bill or joint resolution.

(2)(A) It shall not be in order to consider a bill or joint resolution reported by the Committee on Ways and Means that proposes to amend the Internal Revenue Code of 1986 unless—

(i) the report includes a macroeconomic impact analysis;

(ii) the report includes a statement from the Joint Committee on Internal Revenue Taxation explaining why a macroeconomic impact analysis is not calculable; or

(iii) the chair of the Committee on Ways and Means causes a macroeconomic impact analysis to be printed in the Congressional Record before consideration of the bill or joint resolution.

(B) In subdivision (A), the term “macroeconomic impact analysis” means—

- (i) an estimate prepared by the Joint Committee on Internal Revenue Taxation of the changes in economic output, employment, capital stock, and tax revenues expected to result from enactment of the proposal; and
- (ii) a statement from the Joint Committee on Internal Revenue Taxation identifying the critical assumptions and the source of data underlying that estimate.

Availability of reports

4. (a)(1) Except as specified in subparagraph (2), it shall not be in order to consider in the House a measure or matter reported by a committee until the third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which each report of a committee on that measure or matter has been available to Members, Delegates, and the Resident Commissioner.

(2) Subparagraph (1) does not apply to—

(A) a resolution providing a rule, joint rule, or order of business reported by the Committee on Rules considered under clause 6;

(B) a resolution providing amounts from the applicable accounts described in clause 1(k)(1) of rule X reported by the Committee on House Administration considered under clause 6 of rule X;

(C) a resolution presenting a question of the privileges of the House reported by any committee;

(D) a measure for the declaration of war, or the declaration of a national emergency, by Congress; and

(E) a measure providing for the disapproval of a decision, determination, or action by a Government agency that would become, or continue to be, effective unless disapproved or otherwise invalidated by one or both Houses of Congress. In this subdivision the term “Government agency” includes any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or of the government of the District of Columbia.

(b) A committee that reports a measure or matter shall make every reasonable effort to have its hearings thereon (if any) printed and available for distribution to Members, Delegates, and the Resident Commissioner before the consideration of the measure or matter in the House.

(c) A general appropriation bill reported by the Committee on Appropriations may not be considered in the House until the third calendar day (excluding Saturdays, Sundays, and legal holidays except when the House is in session on such a day) on which printed hearings of the Committee on Appropriations thereon have been available to Members, Delegates, and the Resident Commissioner.

Privileged reports, generally

5. (a) The following committees shall have leave to report at any time on the following matters, respectively:

(1) The Committee on Appropriations, on general appropriation bills and on joint resolutions continuing appropriations for a fiscal year after September 15 in the preceding fiscal year.

(2) The Committee on the Budget, on the matters required to be reported by such committee under titles III and IV of the Congressional Budget Act of 1974.

(3) The Committee on House Administration, on enrolled bills, on contested elections, on matters referred to it concerning printing for the use of the House or the two Houses, on expenditure of the applicable accounts of the House described in clause 1(k)(1) of rule X, and on matters relating to preservation and availability of noncurrent records of the House under rule VII.

(4) The Committee on Rules, on rules, joint rules, and the order of business.

(5) The Committee on Ethics, on resolutions recommending action by the House with respect to a Member, Delegate, Resident Commissioner, officer, or employee of the House as a result of an investigation by the committee relating to the official conduct of such Member, Delegate, Resident Commissioner, officer, or employee.

(b) A report filed from the floor as privileged under paragraph (a) may be called up as a privileged question by direction of the reporting committee, subject to any requirement concerning its availability to Members, Delegates, and the Resident Commissioner under clause 4 or concerning the timing of its consideration under clause 6.

Privileged reports by the Committee on Rules

6. (a) A report by the Committee on Rules on a rule, joint rule, or the order of business may not be called up for consideration on the same day it is presented to the House except—

(1) when so determined by a vote of two-thirds of the Members voting, a quorum being present;

(2) in the case of a resolution proposing only to waive a requirement of clause 4 or of clause 8 of rule XXII concerning the availability of reports; or

(3) during the last three days of a session of Congress.

(b) Pending the consideration of a report by the Committee on Rules on a rule, joint rule, or the order of business, the Speaker may entertain one motion that the House adjourn but may not entertain any other dilatory motion until the report shall have been disposed of.

(c) The Committee on Rules may not report a rule or order that would prevent the motion to recommit a bill or joint resolution from being made as provided in clause

2(b) of rule XIX, including a motion to recommit with instructions to report back an amendment otherwise in order, if offered by the Minority Leader or a designee, except with respect to a Senate bill or joint resolution for which the text of a House-passed measure has been substituted.

(d) The Committee on Rules shall present to the House reports concerning rules, joint rules, and the order of business, within three legislative days of the time when they are ordered. If such a report is not considered immediately, it shall be referred to the calendar. If such a report on the calendar is not called up by the member of the committee who filed the report within seven legislative days, any member of the committee may call it up as a privileged question on the day after the calendar day on which the member announces to the House intention to do so. The Speaker shall recognize a member of the committee who rises for that purpose.

(e) An adverse report by the Committee on Rules on a resolution proposing a special order of business for the consideration of a public bill or public joint resolution may be called up as a privileged question by a Member, Delegate, or Resident Commissioner on a day when it is in order to consider a motion to discharge committees under clause 2 of rule XV.

(f) If the House has adopted a resolution making in order a motion to consider a bill or resolution, and such a

motion has not been offered within seven calendar days thereafter, such a motion shall be privileged if offered by direction of all reporting committees having initial jurisdiction of the bill or resolution.

(g) Whenever the Committee on Rules reports a resolution providing for the consideration of a measure, it shall (to the maximum extent possible) specify in the resolution the object of any waiver of a point of order against the measure or against its consideration.

Resolutions of inquiry

7. A report on a resolution of inquiry addressed to the head of an executive department may be filed from the floor as privileged. If such a resolution is not reported to the House within 14 legislative days after its introduction, a motion to discharge a committee from its consideration shall be privileged.

RULE XIV

ORDER AND PRIORITY OF BUSINESS

1. The daily order of business (unless varied by the application of other rules and except for the disposition of matters of higher precedence) shall be as follows:

First. Prayer by the Chaplain.

Second. Reading and approval of the Journal, unless postponed under clause 8 of rule XX.

Third. The Pledge of Allegiance to the Flag.

Fourth. Correction of reference of public bills.

Fifth. Disposal of business on the Speaker's table as provided in clause 2.

Sixth. Unfinished business as provided in clause 3.

Seventh. The morning hour for the consideration of bills called up by committees as provided in clause 4.

Eighth. Motions that the House resolve into the Committee of the Whole House on the state of the Union subject to clause 5.

Ninth. Orders of the day.

2. Business on the Speaker's table shall be disposed of as follows:

(a) Messages from the President shall be referred to the appropriate committees without debate.

(b) Communications addressed to the House, including reports and communications from heads of departments and bills, resolutions, and messages from the Senate, may be referred to the appropriate committees in the same manner and with the same right of correction as public bills and public resolutions presented by Members, Delegates, or the Resident Commissioner.

(c) Motions to dispose of Senate amendments on the Speaker's table may be entertained as provided in clauses 1, 2, and 4 of rule XXII.

(d) Senate bills and resolutions substantially the same as House measures already favorably reported

and not required to be considered in the Committee of the Whole House on the state of the Union may be disposed of by motion. Such a motion shall be privileged if offered by direction of all reporting committees having initial jurisdiction of the House measure.

3. Consideration of unfinished business in which the House may have been engaged at an adjournment, except business in the morning hour and proceedings postponed under clause 8 of rule XX, shall be resumed as soon as the business on the Speaker's table is finished, and at the same time each day thereafter until disposed of. The consideration of all other unfinished business shall be resumed whenever the class of business to which it belongs shall be in order under the rules.

4. After the unfinished business has been disposed of, the Speaker shall call each standing committee in regular order and then select committees. Each committee when named may call up for consideration a bill or resolution reported by it on a previous day and on the House Calendar. If the Speaker does not complete the call of the committees before the House passes to other business, the next call shall resume at the point it left off, giving preference to the last bill or resolution under consideration. A committee that has occupied the call for two days may not call up another bill or resolution until the other committees have been called in their turn.

5. After consideration of bills or resolutions under clause 4 for one hour, it shall be in order, pending consideration thereof, to entertain a motion that the House resolve into the Committee of the Whole House on the state of the Union or, when authorized by a committee, that the House resolve into the Committee of the Whole House on the state of the Union to consider a particular bill. Such a motion shall be subject to only one amendment designating another bill. If such a motion is decided in the negative, another such motion may not be considered until the matter that was pending when such motion was offered is disposed of.

6. All questions relating to the priority of business shall be decided by a majority without debate.

RULE XV

BUSINESS IN ORDER ON SPECIAL DAYS

Suspensions

1. (a) A rule may not be suspended except by a vote of two-thirds of the Members voting, a quorum being present. The Speaker may not entertain a motion that the House suspend the rules except on Mondays, Tuesdays, and Wednesdays and during the last six days of a session of Congress.

(b) Pending a motion that the House suspend the rules, the Speaker may entertain one motion that the House

adjourn but may not entertain any other motion until the vote is taken on the suspension.

(c) A motion that the House suspend the rules is debatable for 40 minutes, one-half in favor of the motion and one-half in opposition thereto.

Discharge motions, second and fourth Mondays

2. (a) Motions to discharge committees shall be in order on the second and fourth Mondays of a month.

(b)(1) A Member may present to the Clerk a motion in writing to discharge—

(A) a committee from consideration of a public bill or public resolution that has been referred to it for 30 legislative days; or

(B) the Committee on Rules from consideration of a resolution that has been referred to it for seven legislative days and that proposes a special order of business for the consideration of a public bill or public resolution that has been reported by a standing committee or has been referred to a standing committee for 30 legislative days.

(2) Only one motion may be presented for a bill or resolution. A Member may not file a motion to discharge the Committee on Rules from consideration of a resolution providing for the consideration of more than one public bill or public resolution or admitting or effecting a nongermane amendment to a public bill or public resolution.

(c) A motion presented under paragraph (b) shall be placed in the custody of the Clerk, who shall arrange a convenient place for the signatures of Members. A signature may be withdrawn by a Member in writing at any time before a motion is entered on the Journal. The Clerk shall make the signatories a matter of public record, causing the names of the Members who have signed a discharge motion during a week to be published in a portion of the Congressional Record designated for that purpose on the last legislative day of the week and making cumulative lists of such names available each day for public inspection in an appropriate office of the House. The Clerk shall devise a means for making such lists available to offices of the House and to the public in electronic form. When a majority of the total membership of the House shall have signed the motion, it shall be entered on the Journal, published with the signatories thereto in the Record, and referred to the Calendar of Motions to Discharge Committees.

(d)(1) On the second and fourth Mondays of a month (except during the last six days of a session of Congress), immediately after the Pledge of Allegiance to the Flag, a motion to discharge that has been on the calendar for at least seven legislative days shall be privileged if called up by a Member whose signature appears thereon. When such a motion is called up, the House shall proceed to its consideration under this paragraph without intervening

motion except one motion to adjourn. Privileged motions to discharge shall have precedence in the order of their entry on the Journal.

(2) When a motion to discharge is called up, the bill or resolution to which it relates shall be read by title only. The motion is debatable for 20 minutes, one-half in favor of the motion and one-half in opposition thereto.

(e)(1) If a motion prevails to discharge the Committee on Rules from consideration of a resolution, the House shall immediately consider the resolution, pending which the Speaker may entertain one motion that the House adjourn but may not entertain any other dilatory motion until the resolution has been disposed of. If the resolution is adopted, the House shall immediately proceed to its execution.

(2) If a motion prevails to discharge a standing committee from consideration of a public bill or public resolution, a motion that the House proceed to the immediate consideration of such bill or resolution shall be privileged if offered by a Member whose signature appeared on the motion to discharge. The motion to proceed is not debatable. If the motion to proceed is adopted, the bill or resolution shall be considered immediately under the general rules of the House. If unfinished before adjournment of the day on which it is called up, the bill or resolution shall remain the unfinished business until it is disposed of. If the motion to proceed is

rejected, the bill or resolution shall be referred to the appropriate calendar, where it shall have the same status as if the committee from which it was discharged had duly reported it to the House.

(f)(1) When a motion to discharge originated under this clause has once been acted on by the House, it shall not be in order to entertain during the same session of Congress

(A) a motion to discharge a committee from consideration of that bill or resolution or of any other bill or resolution that, by relating in substance to or dealing with the same subject matter, is substantially the same; or

(B) a motion to discharge the Committee on Rules from consideration of a resolution providing a special order of business for the consideration of that bill or resolution or of any other bill or resolution that, by relating in substance to or dealing with the same subject matter, is substantially the same.

(2) A motion to discharge on the Calendar of Motions to Discharge Committees that is rendered out of order under subparagraph (1) shall be stricken from that calendar.

Adverse report by the Committee on Rules, second and fourth Mondays

3. An adverse report by the Committee on Rules on a resolution proposing a special order of business for the

consideration of a public bill or public joint resolution may be called up under clause 6(e) of rule XIII as a privileged question by a Member, Delegate, or Resident Commissioner on a day when it is in order to consider a motion to discharge committees under clause 2.

District of Columbia business, second and fourth Mondays

4. The second and fourth Mondays of a month shall be set apart for the consideration of such District of Columbia business as may be called up by the Committee on Oversight and Government Reform after the disposition of motions to discharge committees and after the disposal of such business on the Speaker's table as requires reference only.

Private Calendar, first and third Tuesdays

5. (a) On the first Tuesday of a month, the Speaker shall direct the Clerk to call the bills and resolutions on the Private Calendar after disposal of such business on the Speaker's table as requires reference only. If two or more Members, Delegates, or the Resident Commissioner object to the consideration of a bill or resolution so called, it shall be recommitted to the committee that reported it. No other business shall be in order before completion of the call of the Private Calendar on this day unless two-thirds of the Members voting, a quorum being present, agree to a motion that the House dispense with the call.

(b)(1) On the third Tuesday of a month, after the disposal of such business on the Speaker's table as requires reference only, the Speaker may direct the Clerk to call the bills and resolutions on the Private Calendar. Preference shall be given to omnibus bills containing the texts of bills or resolutions that have previously been objected to on a call of the Private Calendar. If two or more Members, Delegates, or the Resident Commissioner object to the consideration of a bill or resolution so called (other than an omnibus bill), it shall be recommitted to the committee that reported it. Two-thirds of the Members voting, a quorum being present, may adopt a motion that the House dispense with the call on this day.

(2) Omnibus bills shall be read for amendment by paragraph. No amendment shall be in order except to strike or to reduce amounts of money or to provide limitations. An item or matter stricken from an omnibus bill may not thereafter during the same session of Congress be included in an omnibus bill. Upon passage such an omnibus bill shall be resolved into the several bills and resolutions of which it is composed. The several bills and resolutions, with any amendments adopted by the House, shall be engrossed, when necessary, and otherwise considered as passed severally by the House as distinct bills and resolutions.

(c) The Speaker may not entertain a reservation of the right to object to the consideration of a bill or resolution

under this clause. A bill or resolution considered under this clause shall be considered in the House as in the Committee of the Whole. A motion to dispense with the call of the Private Calendar under this clause shall be privileged. Debate on such a motion shall be limited to five minutes in support and five minutes in opposition.

Calendar Call of Committees, Wednesdays

6. (a) On Wednesday of each week, business shall not be in order before completion of the call of those committees (except as provided by clause 4 of rule XIV) whose chair, or other member authorized by the committee, has announced to the House a request for such call on the preceding legislative day.

(b) A bill or resolution on either the House or the Union Calendar, except bills or resolutions that are privileged under the Rules of the House, may be called under this clause. A bill or resolution called up from the Union Calendar shall be considered in the Committee of the Whole House on the state of the Union without motion, subject to clause 3 of rule XVI. General debate on a measure considered under this clause shall be confined to the measure and may not exceed two hours equally divided between a proponent and an opponent.

(c) This clause does not apply during the last two weeks of a session of Congress.

RULE XVI

MOTIONS AND AMENDMENTS

Motions

1. Every motion entertained by the Speaker shall be reduced to writing on the demand of a Member, Delegate, or Resident Commissioner and, unless it is withdrawn the same day, shall be entered on the Journal with the name of the Member, Delegate, or Resident Commissioner offering it. A dilatory motion may not be entertained by the Speaker.

Withdrawal

2. When a motion is entertained, the Speaker shall state it or cause it to be read aloud by the Clerk before it is debated. The motion then shall be in the possession of the House but may be withdrawn at any time before a decision or amendment thereon.

Question of consideration

3. When a motion or proposition is entertained, the question, “Will the House now consider it?” may not be put unless demanded by a Member, Delegate, or Resident Commissioner.

Precedence of motions

4. (a) When a question is under debate, only the following motions may be entertained (which shall have

precedence in the following order):

- (1) To adjourn.
- (2) To lay on the table.
- (3) For the previous question.
- (4) To postpone to a day certain.
- (5) To refer.
- (6) To amend.
- (7) To postpone indefinitely.

(b) A motion to adjourn, to lay on the table, or for the previous question shall be decided without debate. A motion to postpone to a day certain, to refer, or to postpone indefinitely, being decided, may not be allowed again on the same day at the same stage of the question.

(c)(1) It shall be in order at any time for the Speaker, in the discretion of the Speaker, to entertain a motion—

(A) that the Speaker be authorized to declare a recess; or

(B) that when the House adjourns it stand adjourned to a day and time certain.

(2) Either motion shall be of equal privilege with the motion to adjourn and shall be decided without debate.

Divisibility

5. (a) Except as provided in paragraph (b), a question shall be divided on the demand of a Member, Delegate, or Resident Commissioner before the question is put if it includes propositions so distinct in substance that, one being taken away, a substantive proposition remains.

(b)(1) A motion or resolution to elect members to a standing committee of the House, or to a joint standing committee, is not divisible.

(2) A resolution or order reported by the Committee on Rules providing a special order of business is not divisible.

(c) A motion to strike and insert is not divisible, but rejection of a motion to strike does not preclude another motion to amend.

Amendments

6. When an amendable proposition is under consideration, a motion to amend and a motion to amend that amendment shall be in order, and it also shall be in order to offer a further amendment by way of substitute for the original motion to amend, to which one amendment may be offered but which may not be voted on until the original amendment is perfected. An amendment may be withdrawn in the House at any time before a decision or amendment thereon. An amendment to the title of a bill or resolution shall not be in order until after its passage or adoption and shall be decided without debate.

Germaneness

7. No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.

Readings

8. Bills and joint resolutions are subject to readings as follows:

(a) A first reading is in full when the bill or joint resolution is first considered.

(b) A second reading occurs only when the bill or joint resolution is read for amendment in a Committee of the Whole House on the state of the Union under clause 5 of rule XVIII.

(c) A third reading precedes passage when the Speaker states the question: “Shall the bill [or joint resolution] be engrossed [when applicable] and read a third time?” If that question is decided in the affirmative, then the bill or joint resolution shall be read the final time by title and then the question shall be put on its passage.

RULE XVII

DECORUM AND DEBATE

Decorum

1. (a) A Member, Delegate, or Resident Commissioner who desires to speak or deliver a matter to the House shall rise and respectfully address the Speaker and, on being recognized, may address the House from any place on the floor. When invited by the Chair, a Member, Delegate, or Resident Commissioner may speak from the Clerk’s desk.

(b) Remarks in debate (which may include references to the Senate or its Members) shall be confined to the question under debate, avoiding personality.

Recognition

2. When two or more Members, Delegates, or the Resident Commissioner rise at once, the Speaker shall name the Member, Delegate, or Resident Commissioner who is first to speak. A Member, Delegate, or Resident Commissioner may not occupy more than one hour in debate on a question in the House or in the Committee of the Whole House on the state of the Union except as otherwise provided in this rule.

Managing debate

3. (a) The Member, Delegate, or Resident Commissioner who calls up a measure may open and close debate thereon. When general debate extends beyond one day, that Member, Delegate, or Resident Commissioner shall be entitled to one hour to close without regard to the time used in opening.

(b) Except as provided in paragraph (a), a Member, Delegate, or Resident Commissioner may not speak more than once to the same question without leave of the House.

(c) A manager of a measure who opposes an amendment thereto is entitled to close controlled debate thereon.

Call to order

4. (a) If a Member, Delegate, or Resident Commissioner, in speaking or otherwise, transgresses the Rules of the House, the Speaker shall, or a Member, Delegate, or Resident Commissioner may, call to order the offending Member, Delegate, or Resident Commissioner, who shall immediately sit down unless permitted on motion of another Member, Delegate, or the Resident Commissioner to explain. If a Member, Delegate, or Resident Commissioner is called to order, the Member, Delegate, or Resident Commissioner making the call to order shall indicate the words excepted to, which shall be taken down in writing at the Clerk's desk and read aloud to the House.

(b) The Speaker shall decide the validity of a call to order. The House, if appealed to, shall decide the question without debate. If the decision is in favor of the Member, Delegate, or Resident Commissioner called to order, the Member, Delegate, or Resident Commissioner shall be at liberty to proceed, but not otherwise. If the case requires it, an offending Member, Delegate, or Resident Commissioner shall be liable to censure or such other punishment as the House may consider proper. A Member, Delegate, or Resident Commissioner may not be held to answer a call to order, and may not be subject to the censure of the House therefor, if further debate or other business has intervened.

Comportment

5. When the Speaker is putting a question or addressing the House, a Member, Delegate, or Resident Commissioner may not walk out of or across the Hall. When a Member, Delegate, or Resident Commissioner is speaking, a Member, Delegate, or Resident Commissioner may not pass between the person speaking and the Chair. During the session of the House, a Member, Delegate, or Resident Commissioner may not wear a hat or remain by the Clerk's desk during the call of the roll or the counting of ballots. A person on the floor of the House may not smoke or use a mobile electronic device that impairs decorum. The Sergeant-at-Arms is charged with the strict enforcement of this clause.

Exhibits

6. When the use of an exhibit in debate is objected to by a Member, Delegate, or Resident Commissioner, the Chair, in the discretion of the Chair, may submit the question of its use to the House without debate.

Galleries

7. During a session of the House, it shall not be in order for a Member, Delegate, or Resident Commissioner to introduce to or to bring to the attention of the House an occupant in the galleries of the House. The Speaker may not entertain a request for the suspension of this rule by unanimous consent or otherwise.

Congressional Record

8. (a) The Congressional Record shall be a substantially verbatim account of remarks made during the proceedings of the House, subject only to technical, grammatical, and typographical corrections authorized by the Member, Delegate, or Resident Commissioner making the remarks.

(b) Unparliamentary remarks may be deleted only by permission or order of the House.

(c) This clause establishes a standard of conduct within the meaning of clause 3(a)(2) of rule XI.

Secret sessions

9. When confidential communications are received from the President, or when the Speaker or a Member, Delegate, or Resident Commissioner informs the House that such individual has communications that such individual believes ought to be kept secret for the present, the House shall be cleared of all persons except the Members, Delegates, Resident Commissioner, and officers of the House for the reading of such communications, and debates and proceedings thereon, unless otherwise ordered by the House.

RULE XVIII

THE COMMITTEE OF THE WHOLE HOUSE ON THE STATE OF THE UNION

Resolving into the Committee of the Whole

1. Whenever the House resolves into the Committee of the Whole House on the state of the Union, the Speaker shall leave the chair after appointing a Member as Chair to preside. In case of disturbance or disorderly conduct in the galleries or lobby, the Chair may cause the same to be cleared.

2. (a) Except as provided in paragraph (b) and in clause 6 of rule XV, the House resolves into the Committee of the Whole House on the state of the Union by motion. When such a motion is entertained, the Speaker shall put the question without debate: “Shall the House resolve itself into the Committee of the Whole House on the state of the Union for consideration of this matter?”, naming it.

(b) After the House has adopted a resolution reported by the Committee on Rules providing a special order of business for the consideration of a measure in the Committee of the Whole House on the state of the Union, the Speaker may at any time, when no question is pending before the House, declare the House resolved into the Committee of the Whole for the consideration of that measure without intervening motion, unless the special order of business provides otherwise.

Measures requiring initial consideration in the Committee of the Whole

3. All public bills, resolutions, or Senate amendments (as provided in clause 3 of rule XXII) involving a tax or charge on the people, raising revenue, directly or

indirectly making appropriations of money or property or requiring such appropriations to be made, authorizing payments out of appropriations already made, releasing any liability to the United States for money or property, or referring a claim to the Court of Claims, shall be first considered in the Committee of the Whole House on the state of the Union. A bill, resolution, or Senate amendment that fails to comply with this clause is subject to a point of order against its consideration.

Order of business

4. (a) Subject to subparagraph (b) business on the calendar of the Committee of the Whole House on the state of the Union may be taken up in regular order, or in such order as the Committee may determine, unless the measure to be considered was determined by the House at the time of resolving into the Committee of the Whole.

(b) Motions to resolve into the Committee of the Whole for consideration of bills and joint resolutions making general appropriations have precedence under this clause.

Reading for amendment

5. (a) Before general debate commences on a measure in the Committee of the Whole House on the state of the Union, it shall be read in full. When general debate is concluded or closed by order of the House, the measure under consideration shall be read for amendment. A Member, Delegate, or Resident Commissioner who offers

an amendment shall be allowed five minutes to explain it, after which the Member, Delegate, or Resident Commissioner who shall first obtain the floor shall be allowed five minutes to speak in opposition to it. There shall be no further debate thereon, but the same privilege of debate shall be allowed in favor of and against any amendment that may be offered to an amendment. An amendment, or an amendment to an amendment, may be withdrawn by its proponent only by the unanimous consent of the Committee of the Whole.

(b) When a Member, Delegate, or Resident Commissioner offers an amendment in the Committee of the Whole House on the state of the Union, the Clerk shall promptly transmit five copies of the amendment to the majority committee table and five copies to the minority committee table. The Clerk also shall deliver at least one copy of the amendment to the majority cloakroom and at least one copy to the minority cloakroom.

Quorum and voting

6. (a) A quorum of a Committee of the Whole House on the state of the Union is 100 Members. The first time that a Committee of the Whole finds itself without a quorum during a day, the Chair shall invoke the procedure for a quorum call set forth in clause 2 of rule XX, unless the Chair elects to invoke an alternate procedure set forth in clause 3 or clause 4(a) of rule XX. If a quorum appears, the Committee of the Whole shall continue its business. If

a quorum does not appear, the Committee of the Whole shall rise, and the Chair shall report the names of absentees to the House.

(b)(1) The Chair may refuse to entertain a point of order that a quorum is not present during general debate.

(2) After a quorum has once been established on a day, the Chair may entertain a point of order that a quorum is not present only when the Committee of the Whole House on the state of the Union is operating under the five-minute rule and the Chair has put the pending proposition to a vote.

(3) Upon sustaining a point of order that a quorum is not present, the Chair may announce that, following a regular quorum call under paragraph (a), the minimum time for electronic voting on the pending question shall be five minutes.

(c) When ordering a quorum call in the Committee of the Whole House on the state of the Union, the Chair may announce an intention to declare that a quorum is constituted at any time during the quorum call when the Chair determines that a quorum has appeared. If the Chair interrupts the quorum call by declaring that a quorum is constituted, proceedings under the quorum call shall be considered as vacated, and the Committee of the Whole shall continue its sitting and resume its business.

(d) A quorum is not required in the Committee of the Whole House on the state of the Union for adoption of a

motion that the Committee rise.

(e) In the Committee of the Whole House on the state of the Union, the Chair shall order a recorded vote on a request supported by at least 25 Members.

(f) In the Committee of the Whole House on the state of the Union, the Chair may reduce to not less than two minutes the minimum time for electronic voting without any intervening business or debate on any or all pending amendments after a record vote has been taken on the first pending amendment.

(g) The Chair may postpone a request for a recorded vote on any amendment. The Chair may resume proceedings on a postponed request at any time. The Chair may reduce to not less than two minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes.

Dispensing with the reading of an amendment

7. It shall be in order in the Committee of the Whole House on the state of the Union to move that the Committee of the Whole dispense with the reading of an amendment that has been printed in the bill or resolution as reported by a committee, or an amendment that a Member, Delegate, or Resident Commissioner has caused

to be printed in the Congressional Record. Such a motion shall be decided without debate.

Closing debate

8. (a) Subject to paragraph (b) at any time after the Committee of the Whole House on the state of the Union has begun five-minute debate on amendments to any portion of a bill or resolution, it shall be in order to move that the Committee of the Whole close all debate on that portion of the bill or resolution or on the pending amendments only. Such a motion shall be decided without debate. The adoption of such a motion does not preclude further amendment, to be decided without debate.

(b) If the Committee of the Whole House on the state of the Union closes debate on any portion of a bill or resolution before there has been debate on an amendment that a Member, Delegate, or Resident Commissioner has caused to be printed in the Congressional Record at least one day before its consideration, the Member, Delegate, or Resident Commissioner who caused the amendment to be printed in the Record shall be allowed five minutes to explain it, after which the Member, Delegate, or Resident Commissioner who shall first obtain the floor shall be allowed five minutes to speak in opposition to it. There shall be no further debate thereon.

(c) Material submitted for printing in the Congressional Record under this clause shall indicate the full text of the proposed amendment, the name of the Member, Delegate,

or Resident Commissioner proposing it, the number of the bill or resolution to which it will be offered, and the point in the bill or resolution or amendment thereto where the amendment is intended to be offered. The amendment shall appear in a portion of the Record designated for that purpose. Amendments to a specified measure submitted for printing in that portion of the Record shall be numbered in the order printed.

Striking the enacting clause

9. A motion that the Committee of the Whole House on the state of the Union rise and report a bill or resolution to the House with the recommendation that the enacting or resolving clause be stricken shall have precedence of a motion to amend, and, if carried in the House, shall constitute a rejection of the bill or resolution. Whenever a bill or resolution is reported from the Committee of the Whole with such adverse recommendation and the recommendation is rejected by the House, the bill or resolution shall stand recommitted to the Committee of the Whole without further action by the House. Before the question of concurrence is submitted, it shall be in order to move that the House refer the bill or resolution to a committee, with or without instructions. If a bill or resolution is so referred, then when it is again reported to the House it shall be referred to the Committee of the Whole without debate.

Concurrent resolution on the budget

10. (a) At the conclusion of general debate in the Committee of the Whole House on the state of the Union on a concurrent resolution on the budget under section 305(a) of the Congressional Budget Act of 1974, the concurrent resolution shall be considered as read for amendment.

(b) It shall not be in order in the House or in the Committee of the Whole House on the state of the Union to consider an amendment to a concurrent resolution on the budget, or an amendment thereto, unless the concurrent resolution, as amended by such amendment or amendments—

(1) would be mathematically consistent except as limited by paragraph (c); and

(2) would contain all the matter set forth in paragraphs (1) through (5) of section 301(a) of the Congressional Budget Act of 1974.

(c)(1) Except as specified in subparagraph (2), it shall not be in order in the House or in the Committee of the Whole House on the state of the Union to consider an amendment to a concurrent resolution on the budget, or an amendment thereto, that proposes to change the amount of the appropriate level of the public debt set forth in the concurrent resolution, as reported.

(2) Amendments to achieve mathematical consistency under section 305(a)(5) of the Congressional Budget Act

of 1974, if offered by direction of the Committee on the Budget, may propose to adjust the amount of the appropriate level of the public debt set forth in the concurrent resolution, as reported, to reflect changes made in other figures contained in the concurrent resolution.

Applicability of Rules of the House

11. The Rules of the House are the rules of the Committee of the Whole House on the state of the Union so far as applicable.

RULE XIX

MOTIONS FOLLOWING THE AMENDMENT STAGE

Previous question

1. (a) There shall be a motion for the previous question, which, being ordered, shall have the effect of cutting off all debate and bringing the House to a direct vote on the immediate question or questions on which it has been ordered. Whenever the previous question has been ordered on an otherwise debatable question on which there has been no debate, it shall be in order to debate that question for 40 minutes, equally divided and controlled by a proponent of the question and an opponent. The previous question may be moved and ordered on a single question, on a series of questions allowable under the rules, or on an amendment or amendments, or may embrace all authorized motions or amendments and

include the bill or resolution to its passage, adoption, or rejection.

(b) Incidental questions of order arising during the pendency of a motion for the previous question shall be decided, whether on appeal or otherwise, without debate.

(c) Notwithstanding paragraph (a), when the previous question is operating to adoption or passage of a measure pursuant to a special order of business, the Chair may postpone further consideration of such measure in the House to such time as may be designated by the Speaker.

Recommit

2. (a) After the previous question has been ordered on passage or adoption of a measure, or pending a motion to that end, it shall be in order to move that the House recommit (or commit, as the case may be) the measure, with or without instructions, to a standing or select committee. For such a motion to recommit, the Speaker shall give preference in recognition to a Member, Delegate, or Resident Commissioner who is opposed to the measure.

(b)(1) Except as provided in paragraph (c), a motion that the House recommit a bill or joint resolution on which the previous question has been ordered to passage shall be debatable for 10 minutes equally divided between the proponent and an opponent.

(2) A motion to recommit a bill or joint resolution may include instructions only in the form of a direction to

report an amendment or amendments back to the House forthwith.

(c) On demand of the floor manager for the majority, it shall be in order to debate the motion for one hour equally divided and controlled by the proponent and an opponent.

Reconsideration

3. When a motion has been carried or lost, it shall be in order on the same or succeeding day for a Member on the prevailing side of the question to enter a motion for the reconsideration thereof. The entry of such a motion shall take precedence over all other questions except the consideration of a conference report or a motion to adjourn, and may not be withdrawn after such succeeding day without the consent of the House. Once entered, a motion may be called up for consideration by any Member. During the last six days of a session of Congress, such a motion shall be disposed of when entered.

4. A bill, petition, memorial, or resolution referred to a committee, or reported therefrom for printing and recommitment, may not be brought back to the House on a motion to reconsider.

RULE XX

VOTING AND QUORUM CALLS

1. (a) The House shall divide after the Speaker has put a question to a vote by voice as provided in clause 6 of rule I if the Speaker is in doubt or division is demanded. Those in favor of the question shall first rise from their seats to be counted, and then those opposed.

(b) If a Member, Delegate, or Resident Commissioner requests a recorded vote, and that request is supported by at least one-fifth of a quorum, the vote shall be taken by electronic device unless the Speaker invokes another procedure for recording votes provided in this rule. A recorded vote taken in the House under this paragraph shall be considered a vote by the yeas and nays.

(c) In case of a tie vote, a question shall be lost.

2. (a) Unless the Speaker directs otherwise, the Clerk shall conduct a record vote or quorum call by electronic device. In such a case the Clerk shall enter on the Journal and publish in the Congressional Record, in alphabetical order in each category, the names of Members recorded as voting in the affirmative, the names of Members recorded as voting in the negative, and the names of Members answering present as if they had been called in the manner provided in clause 3. Except as otherwise permitted under clause 8 or 9 of this rule or under clause 6 of rule XVIII, the minimum time for a record vote or quorum call by electronic device shall be 15 minutes.

(b) When the electronic voting system is inoperable or is not used, the Speaker or Chair may direct the Clerk to

conduct a record vote or quorum call as provided in clause 3 or 4.

3. The Speaker may direct the Clerk to conduct a record vote or quorum call by call of the roll. In such a case the Clerk shall call the names of Members, alphabetically by surname. When two or more have the same surname, the name of the State (and, if necessary to distinguish among Members from the same State, the given names of the Members) shall be added. After the roll has been called once, the Clerk shall call the names of those not recorded, alphabetically by surname. Members appearing after the second call, but before the result is announced, may vote or announce a pair.

4. (a) The Speaker may direct a record vote or quorum call to be conducted by tellers. In such a case the tellers named by the Speaker shall record the names of the Members voting on each side of the question or record their presence, as the case may be, which the Clerk shall enter on the Journal and publish in the Congressional Record. Absentees shall be noted, but the doors may not be closed except when ordered by the Speaker. The minimum time for a record vote or quorum call by tellers shall be 15 minutes.

(b) On the demand of a Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote shall be noted by the Clerk, entered on the Journal, reported to the

Speaker with the names of the Members voting, and be counted and announced in determining the presence of a quorum to do business.

5. (a) In the absence of a quorum, a majority comprising at least 15 Members, which may include the Speaker, may compel the attendance of absent Members.

(b) Subject to clause 7(b) a majority described in paragraph (a) may order the Sergeant-at-Arms to send officers appointed by the Sergeant-at-Arms to arrest those Members for whom no sufficient excuse is made and shall secure and retain their attendance. The House shall determine on what condition they shall be discharged. Unless the House otherwise directs, the Members who voluntarily appear shall be admitted immediately to the Hall of the House and shall report their names to the Clerk to be entered on the Journal as present.

(c)(1) If the House should be without a quorum due to catastrophic circumstances, then—

(A) until there appear in the House a sufficient number of Representatives to constitute a quorum among the whole number of the House, a quorum in the House shall be determined based upon the provisional number of the House; and

(B) the provisional number of the House, as of the close of the call of the House described in subparagraph (3)(C), shall be the number of Representatives responding to that call of the House.

(2) If a Representative counted in determining the provisional number of the House thereafter ceases to be a Representative, or if a Representative not counted in determining the provisional number of the House thereafter appears in the House, the provisional number of the House shall be adjusted accordingly.

(3) For the purposes of subparagraph (1), the House shall be considered to be without a quorum due to catastrophic circumstances if, after a motion under paragraph (a) has been disposed of and without intervening adjournment, each of the following occurs in the stated sequence:

(A) A call of the House (or a series of calls of the House) is closed after aggregating a period in excess of 72 hours (excluding time the House is in recess) without producing a quorum.

(B) The Speaker—

(i) with the Majority Leader and the Minority Leader, receives from the Sergeant-at-Arms (or a designee) a catastrophic quorum failure report, as described in subparagraph (4);

(ii) consults with the Majority Leader and the Minority Leader on the content of that report; and

(iii) announces the content of that report to the House.

(C) A further call of the House (or a series of calls of the House) is closed after aggregating a period in

excess of 24 hours (excluding time the House is in recess) without producing a quorum.

(4)(A) For purposes of subparagraph (3), a catastrophic quorum failure report is a report advising that the inability of the House to establish a quorum is attributable to catastrophic circumstances involving natural disaster, attack, contagion, or similar calamity rendering Representatives incapable of attending the proceedings of the House.

(B) Such report shall specify the following:

(i) The number of vacancies in the House and the names of former Representatives whose seats are vacant.

(ii) The names of Representatives considered incapacitated.

(iii) The names of Representatives not incapacitated but otherwise incapable of attending the proceedings of the House.

(iv) The names of Representatives unaccounted for.

(C) Such report shall be prepared on the basis of the most authoritative information available after consultation with the Attending Physician to the Congress and the Clerk (or their respective designees) and pertinent public health and law enforcement officials.

(D) Such report shall be updated every legislative day for the duration of any proceedings under or in reliance on

this paragraph. The Speaker shall make such updates available to the House.

(5) An announcement by the Speaker under subparagraph (3)(B)(iii) shall not be subject to appeal.

(6) Subparagraph (1) does not apply to a proposal to create a vacancy in the representation from any State in respect of a Representative not incapacitated but otherwise incapable of attending the proceedings of the House.

(7) For purposes of this paragraph:

(A) The term “provisional number of the House” means the number of Representatives upon which a quorum will be computed in the House until Representatives sufficient in number to constitute a quorum among the whole number of the House appear in the House.

(B) The term “whole number of the House” means the number of Representatives chosen, sworn, and living whose membership in the House has not been terminated by resignation or by the action of the House.

(d) Upon the death, resignation, expulsion, disqualification, removal, or swearing of a Member, the whole number of the House shall be adjusted accordingly. The Speaker shall announce the adjustment to the House. Such an announcement shall not be subject to appeal. In the case of a death, the Speaker may lay before the House

such documentation from Federal, State, or local officials as the Speaker deems pertinent.

6. (a) When a quorum fails to vote on a question, a quorum is not present, and objection is made for that cause (unless the House shall adjourn)—

(1) there shall be a call of the House;

(2) the Sergeant-at-Arms shall proceed forthwith to bring in absent Members; and

(3) the yeas and nays on the pending question shall at the same time be considered as ordered.

(b) The Clerk shall record Members by the yeas and nays on the pending question, using such procedure as the Speaker may invoke under clause 2, 3, or 4. Each Member arrested under this clause shall be brought by the Sergeant-at-Arms before the House, whereupon the Member shall be noted as present, discharged from arrest, and given an opportunity to vote; and such vote shall be recorded. If those voting on the question and those who are present and decline to vote together make a majority of the House, the Speaker shall declare that a quorum is constituted, and the pending question shall be decided as the requisite majority of those voting shall have determined. Thereupon further proceedings under the call shall be considered as dispensed with.

(c) At any time after Members have had the requisite opportunity to respond by the yeas and nays ordered under this clause, but before a result has been announced,

a motion that the House adjourn shall be in order if seconded by a majority of those present, to be ascertained by actual count by the Speaker. If the House adjourns on such a motion, all proceedings under this clause shall be considered as vacated.

7. (a) The Speaker may not entertain a point of order that a quorum is not present unless a question has been put to a vote.

(b) Subject to paragraph (c) the Speaker may recognize a Member, Delegate, or Resident Commissioner to move a call of the House at any time. When a quorum is established pursuant to a call of the House, further proceedings under the call shall be considered as dispensed with unless the Speaker recognizes for a motion to compel attendance of Members under clause 5(b).

(c) A call of the House shall not be in order after the previous question is ordered unless the Speaker determines by actual count that a quorum is not present.

Postponement of proceedings

8. (a)(1) When a recorded vote is ordered, or the yeas and nays are ordered, or a vote is objected to under clause 6—

(A) on any of the questions specified in subparagraph (2), the Speaker may postpone further proceedings to a designated place in the legislative schedule within two additional legislative days; and

(B) on the question of agreeing to the Speaker's approval of the Journal, the Speaker may postpone further proceedings to a designated place in the legislative schedule on that legislative day.

(2) The questions described in subparagraph (1) are as follows:

(A) The question of passing a bill or joint resolution.

(B) The question of adopting a resolution or concurrent resolution.

(C) The question of agreeing to a motion to instruct managers on the part of the House (except that proceedings may not resume on such a motion under clause 7(c) of rule XXII if the managers have filed a report in the House).

(D) The question of agreeing to a conference report.

(E) The question of ordering the previous question on a question described in subdivision (A), (B), (C), or (D).

(F) The question of agreeing to a motion to suspend the rules.

(G) The question of agreeing to a motion to reconsider or the question of agreeing to a motion to lay on the table a motion to reconsider.

(H) The question of agreeing to an amendment reported from the Committee of the Whole.

(b) At the time designated by the Speaker for further proceedings on questions postponed under paragraph (a),

the Speaker shall resume proceedings on each postponed question.

(c) The Speaker may reduce to five minutes the minimum time for electronic voting on a question postponed under this clause, or on a question incidental thereto, that follows another electronic vote without intervening business, so long as the minimum time for electronic voting on the first in any series of questions is 15 minutes.

(d) If the House adjourns on a legislative day designated for further proceedings on questions postponed under this clause without disposing of such questions, then on the next legislative day the unfinished business is the disposition of such questions.

Five-minute votes

9. The Speaker may reduce to five minutes the minimum time for electronic voting on any question arising without intervening business after an electronic vote on another question if notice of possible five-minute voting for a given series of votes was issued before the preceding electronic vote.

Automatic yeas and nays

10. The yeas and nays shall be considered as ordered when the Speaker puts the question on passage of a bill or joint resolution, or on adoption of a conference report, making general appropriations, or increasing Federal

income tax rates (within the meaning of clause 5 of rule XXI), or on final adoption of a concurrent resolution on the budget or conference report thereon.

Ballot votes

11. In a case of ballot for election, a majority of the votes shall be necessary to an election. When there is not such a majority on the first ballot, the process shall be repeated until a majority is obtained. In all balloting blanks shall be rejected, may not be counted in the enumeration of votes, and may not be reported by the tellers.

RULE XXI

RESTRICTIONS ON CERTAIN BILLS

Reservation of certain points of order

1. At the time a general appropriation bill is reported, all points of order against provisions therein shall be considered as reserved.

General appropriation bills and amendments

2. (a)(1) An appropriation may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, for an expenditure not previously authorized by law, except to continue appropriations for

public works and objects that are already in progress.

(2) A reappropriation of unexpended balances of appropriations may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, except to continue appropriations for public works and objects that are already in progress. This subparagraph does not apply to transfers of unexpended balances within the department or agency for which they were originally appropriated that are reported by the Committee on Appropriations.

(b) A provision changing existing law may not be reported in a general appropriation bill, including a provision making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation, except germane provisions that retrench expenditures by the reduction of amounts of money covered by the bill (which may include those recommended to the Committee on Appropriations by direction of a legislative committee having jurisdiction over the subject matter) and except rescissions of appropriations contained in appropriation Acts.

(c) An amendment to a general appropriation bill shall not be in order if changing existing law, including an amendment making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation. Except as

provided in paragraph (d), an amendment proposing a limitation not specifically contained or authorized in existing law for the period of the limitation shall not be in order during consideration of a general appropriation bill.

(d) After a general appropriation bill has been read for amendment, a motion that the Committee of the Whole House on the state of the Union rise and report the bill to the House with such amendments as may have been adopted shall, if offered by the Majority Leader or a designee, have precedence over motions to amend the bill. If such a motion to rise and report is rejected or not offered, amendments proposing limitations not specifically contained or authorized in existing law for the period of the limitation or proposing germane amendments that retrench expenditures by reductions of amounts of money covered by the bill may be considered.

(e) A provision other than an appropriation designated an emergency under section 251(b)(2) or section 252(e) of the Balanced Budget and Emergency Deficit Control Act, a rescission of budget authority, or a reduction in direct spending or an amount for a designated emergency may not be reported in an appropriation bill or joint resolution containing an emergency designation under section 251(b)(2) or section 252(e) of such Act and may not be in order as an amendment thereto.

(f) During the reading of an appropriation bill for amendment in the Committee of the Whole House on the

state of the Union, it shall be in order to consider en bloc amendments proposing only to transfer appropriations among objects in the bill without increasing the levels of budget authority or outlays in the bill. When considered en bloc under this paragraph, such amendments may amend portions of the bill not yet read for amendment (following disposition of any points of order against such portions) and are not subject to a demand for division of the question in the House or in the Committee of the Whole.

3. It shall not be in order to consider a general appropriation bill or joint resolution, or conference report thereon, that—

(a) provides spending authority derived from receipts deposited in the Highway Trust Fund (excluding any transfers from the General Fund of the Treasury); or

(b) reduces or otherwise limits the accruing balances of the Highway Trust Fund,

for any purpose other than for those activities authorized for the highway or mass transit categories.

Appropriations on legislative bills

4. A bill or joint resolution carrying an appropriation may not be reported by a committee not having jurisdiction to report appropriations, and an amendment proposing an appropriation shall not be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A point of order

against an appropriation in such a bill, joint resolution, or amendment thereto may be raised at any time during pendency of that measure for amendment.

Tax and tariff measures and amendments

5. (a)(1) A bill or joint resolution carrying a tax or tariff measure may not be reported by a committee not having jurisdiction to report tax or tariff measures, and an amendment in the House or proposed by the Senate carrying a tax or tariff measure shall not be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A point of order against a tax or tariff measure in such a bill, joint resolution, or amendment thereto may be raised at any time during pendency of that measure for amendment.

(2) For purposes of paragraph (1), a tax or tariff measure includes an amendment proposing a limitation on funds in a general appropriation bill for the administration of a tax or tariff.

Passage of tax rate increases

(b) A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present. In this paragraph the term “Federal income tax rate increase” means any amendment to subsection (a), (b), (c), (d), or (e) of section 1, or to

section 11(b) or 55(b), of the Internal Revenue Code of 1986, that imposes a new percentage as a rate of tax and thereby increases the amount of tax imposed by any such section.

Consideration of retroactive tax rate increases

(c) It shall not be in order to consider a bill, joint resolution, amendment, or conference report carrying a retroactive Federal income tax rate increase. In this paragraph—

(1) the term “Federal income tax rate increase” means any amendment to subsection (a), (b), (c), (d), or (e) of section 1, or to section 11(b) or 55(b), of the Internal Revenue Code of 1986, that imposes a new percentage as a rate of tax and thereby increases the amount of tax imposed by any such section; and

(2) a Federal income tax rate increase is retroactive if it applies to a period beginning before the enactment of the provision.

Designation of public works

6. It shall not be in order to consider a bill, joint resolution, amendment, or conference report that provides for the designation or redesignation of a public work in honor of an individual then serving as a Member, Delegate, Resident Commissioner, or Senator.

7. It shall not be in order to consider a concurrent resolution on the budget, or an amendment thereto, or a

conference report thereon that contains reconciliation directives under section 310 of the Congressional Budget Act of 1974 that specify changes in law such that the reconciliation legislation reported pursuant to such directives would cause an increase in net direct spending (as such term is defined in clause 10) for the period covered by such concurrent resolution.

8. With respect to measures considered pursuant to a special order of business, points of order under title III of the Congressional Budget Act of 1974 shall operate without regard to whether the measure concerned has been reported from committee. Such points of order shall operate with respect to (as the case may be)—

(a) the form of a measure recommended by the reporting committee where the statute uses the term “as reported” (in the case of a measure that has been so reported);

(b) the form of the measure made in order as an original bill or joint resolution for the purpose of amendment; or

(c) the form of the measure on which the previous question is ordered directly to passage.

9. (a) It shall not be in order to consider—

(1) a bill or joint resolution reported by a committee unless the report includes a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the bill or in the report (and the name of any

Member, Delegate, or Resident Commissioner who submitted a request to the committee for each respective item included in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits;

(2) a bill or joint resolution not reported by a committee unless the chair of each committee of initial referral has caused a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the bill (and the name of any Member, Delegate, or Resident Commissioner who submitted a request to the committee for each respective item included in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits to be printed in the Congressional Record prior to its consideration;

(3) an amendment to a bill or joint resolution to be offered at the outset of its consideration for amendment by a member of a committee of initial referral as designated in a report of the Committee on Rules to accompany a resolution prescribing a special order of business unless the proponent has caused a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the amendment (and the name of any Member, Delegate, or Resident Commissioner who submitted a request to the proponent for each respective item included in such list) or a statement that

the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits to be printed in the Congressional Record prior to its consideration; or

(4) a conference report to accompany a bill or joint resolution unless the joint explanatory statement prepared by the managers on the part of the House and the managers on the part of the Senate includes a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the conference report or joint statement (and the name of any Member, Delegate, Resident Commissioner, or Senator who submitted a request to the House or Senate committees of jurisdiction for each respective item included in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits.

(b) It shall not be in order to consider a conference report to accompany a regular general appropriation bill unless the joint explanatory statement prepared by the managers on the part of the House and the managers on the part of the Senate includes—

(1) a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the conference report or joint statement (and the name of any Member, Delegate, Resident Commissioner, or Senator who submitted a request to the House or Senate committees

of jurisdiction for each respective item included in such list) that were neither committed to the conference committee by either House nor in a report of a committee of either House on such bill or on a companion measure; or

(2) a statement that the proposition contains no such congressional earmarks, limited tax benefits, or limited tariff benefits.

(c) It shall not be in order to consider a rule or order that waives the application of paragraph (a) or (b). As disposition of a point of order under this paragraph or paragraph (b), the Chair shall put the question of consideration with respect to the rule or order or conference report, as applicable. The question of consideration shall be debatable for 10 minutes by the Member initiating the point of order and for 10 minutes by an opponent, but shall otherwise be decided without intervening motion except one that the House adjourn.

(d) In order to be cognizable by the Chair, a point of order raised under paragraph (a) may be based only on the failure of a report, submission to the Congressional Record, or joint explanatory statement to include a list required by paragraph (a) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits.

(e) For the purpose of this clause, the term “congressional earmark” means a provision or report

language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

(f) For the purpose of this clause, the term “limited tax benefit” means—

(1) any revenue-losing provision that—

(A) provides a Federal tax deduction, credit, exclusion, or preference to 10 or fewer beneficiaries under the Internal Revenue Code of 1986, and

(B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; or

(2) any Federal tax provision which provides one beneficiary temporary or permanent transition relief from a change to the Internal Revenue Code of 1986.

(g) For the purpose of this clause, the term “limited tariff benefit” means a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

10. (a)(1) Except as provided in paragraphs (b) and (c), it shall not be in order to consider a bill or joint resolution, or an amendment thereto or a conference report thereon, if the provisions of such measure have the net effect of increasing mandatory spending for the period of either—

(A) the current year, the budget year, and the four fiscal years following that budget year; or

(B) the current year, the budget year, and the nine fiscal years following that budget year.

(2) For the purpose of this clause, the terms “budget year” and “current year” have the meanings specified in section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985, and the term “mandatory spending” has the meaning of “direct spending” specified in such section 250 except that such term shall also include provisions in appropriation Acts that make outyear modifications to substantive law as described in section 3(4)(C) of the Statutory Pay-As-You-Go Act of 2010.

(b) If a bill or joint resolution, or an amendment thereto, is considered pursuant to a special order of the House directing the Clerk to add as new matter at the end of such bill or joint resolution the entire text of a separate measure or measures as passed by the House, the new matter proposed to be added shall be included in the evaluation under paragraph (a) of the bill, joint resolution, or amendment.

(c)(1) Except as provided in subparagraph (2), the evaluation under paragraph (a) shall exclude a provision expressly designated as an emergency for the Statutory Pay-As-You-Go Act of 2010, in the case of a point of order under this clause against consideration of—

(A) a bill or joint resolution;

(B) an amendment made in order as original text by a special order of business;

(C) a conference report; or

(D) an amendment between the Houses.

(2) In the case of an amendment (other than one specified in subparagraph (1)) to a bill or joint resolution, the evaluation under paragraph (a) shall give no cognizance to any designation of emergency.

11. It shall not be in order to consider a bill or joint resolution which has not been reported by a committee until the third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which such measure has been available to Members, Delegates, and the Resident Commissioner.

RULE XXII

HOUSE AND SENATE RELATIONS

Senate amendments

1. A motion to disagree to Senate amendments to a House proposition and to request or agree to a conference with the Senate, or a motion to insist on House amendments to a Senate proposition and to request or agree to a conference with the Senate, shall be privileged in the discretion of the Speaker if offered by direction of the primary committee and of all reporting committees that had initial referral of the proposition.

2. A motion to dispose of House bills with Senate amendments not requiring consideration in the Committee of the Whole House on the state of the Union shall be privileged.

3. Except as permitted by clause 1, before the stage of disagreement, a Senate amendment to a House bill or resolution shall be subject to the point of order that it must first be considered in the Committee of the Whole House on the state of the Union if, originating in the House, it would be subject to such a point under clause 3 of rule XVIII.

4. When the stage of disagreement has been reached on a bill or resolution with House or Senate amendments, a motion to dispose of any amendment shall be privileged.

5. (a) Managers on the part of the House may not agree to a Senate amendment described in paragraph (b) unless specific authority to agree to the amendment first is given by the House by a separate vote with respect thereto. If specific authority is not granted, the Senate amendment

shall be reported in disagreement by the conference committee back to the two Houses for disposition by separate motion.

(b) The managers on the part of the House may not agree to a Senate amendment described in paragraph (a) that—

(1) would violate clause 2(a)(1) or (c) of rule XXI if originating in the House; or

(2) proposes an appropriation on a bill other than a general appropriation bill.

6. A Senate amendment carrying a tax or tariff measure in violation of clause 5(a) of rule XXI may not be agreed to.

Conference reports; amendments reported in disagreement

7. (a) The presentation of a conference report shall be in order at any time except during a reading of the Journal or the conduct of a record vote, a vote by division, or a quorum call.

(b)(1) Subject to subparagraph (2) the time allotted for debate on a motion to instruct managers on the part of the House shall be equally divided between the majority and minority parties.

(2) If the proponent of a motion to instruct managers on the part of the House and the Member, Delegate, or Resident Commissioner of the other party identified under subparagraph (1) both support the motion, one-third of the

time for debate thereon shall be allotted to a Member, Delegate, or Resident Commissioner who opposes the motion on demand of that Member, Delegate, or Resident Commissioner.

(c)(1) A motion to instruct managers on the part of the House, or a motion to discharge all managers on the part of the House and to appoint new conferees, shall be privileged after a conference committee has been appointed for 20 calendar days and 10 legislative days without making a report, but only on the day after the calendar day on which the Member, Delegate, or Resident Commissioner offering the motion announces to the House intention to do so and the form of the motion.

(2) The Speaker may designate a time in the legislative schedule on that legislative day for consideration of a motion described in subparagraph (1).

(3) During the last six days of a session of Congress, a motion under subparagraph (1) shall be privileged after a conference committee has been appointed for 36 hours without making a report and the proponent meets the notice requirement in subparagraph (1).

(d) Instructions to conferees in a motion to instruct or in a motion to recommit to conference may not include argument.

(e) Each conference report to the House shall be printed as a report of the House. Each such report shall be accompanied by a joint explanatory statement prepared

jointly by the managers on the part of the House and the managers on the part of the Senate. The joint explanatory statement shall be sufficiently detailed and explicit to inform the House of the effects of the report on the matters committed to conference.

8. (a)(1) Except as specified in subparagraph (2), it shall not be in order to consider a conference report until

(A) the third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which the conference report and the accompanying joint explanatory statement have been available to Members, Delegates, and the Resident Commissioner in the Congressional Record; and

(B) copies of the conference report and the accompanying joint explanatory statement have been available to Members, Delegates, and the Resident Commissioner for at least two hours.

(2) Subparagraph (1)(A) does not apply during the last six days of a session of Congress.

(b)(1) Except as specified in subparagraph (2), it shall not be in order to consider a motion to dispose of a Senate amendment reported in disagreement by a conference committee until—

(A) the third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which the report in

disagreement and any accompanying statement have been available to Members, Delegates, and the Resident Commissioner in the Congressional Record; and

(B) copies of the report in disagreement and any accompanying statement, together with the text of the Senate amendment, have been available to Members, Delegates, and the Resident Commissioner for at least two hours.

(2) Subparagraph (1)(A) does not apply during the last six days of a session of Congress.

(3) During consideration of a Senate amendment reported in disagreement by a conference committee on a general appropriation bill, a motion to insist on disagreement to the Senate amendment shall be preferential to any other motion to dispose of that amendment if the original motion offered by the floor manager proposes to change existing law and the motion to insist is offered before debate on the original motion by the chair of the committee having jurisdiction of the subject matter of the amendment or a designee. Such a preferential motion shall be separately debatable for one hour equally divided between its proponent and the proponent of the original motion. The previous question shall be considered as ordered on the preferential motion to its adoption without intervening motion.

(c) A conference report or a Senate amendment reported in disagreement by a conference committee that has been

available as provided in paragraph (a) or (b) shall be considered as read when called up.

(d)(1) Subject to subparagraph (2), the time allotted for debate on a conference report or on a motion to dispose of a Senate amendment reported in disagreement by a conference committee shall be equally divided between the majority and minority parties.

(2) If the floor manager for the majority and the floor manager for the minority both support the conference report or motion, one-third of the time for debate thereon shall be allotted to a Member, Delegate, or Resident Commissioner who opposes the conference report or motion on demand of that Member, Delegate, or Resident Commissioner.

(e) Under clause 6(a)(2) of rule XIII, a resolution proposing only to waive a requirement of this clause concerning the availability of reports to Members, Delegates, and the Resident Commissioner may be considered by the House on the same day it is reported by the Committee on Rules.

9. Whenever a disagreement to an amendment has been committed to a conference committee, the managers on the part of the House may propose a substitute that is a germane modification of the matter in disagreement. The introduction of any language presenting specific additional matter not committed to the conference committee by either House does not constitute a germane

modification of the matter in disagreement. Moreover, a conference report may not include matter not committed to the conference committee by either House and may not include a modification of specific matter committed to the conference committee by either or both Houses if that modification is beyond the scope of that specific matter as committed to the conference committee.

10. (a)(1) A Member, Delegate, or Resident Commissioner may raise a point of order against nongermane matter, as specified in subparagraph (2), before the commencement of debate on—

(A) a conference report;

(B) a motion that the House recede from its disagreement to a Senate amendment reported in disagreement by a conference committee and concur therein, with or without amendment; or

(C) a motion that the House recede from its disagreement to a Senate amendment on which the stage of disagreement has been reached and concur therein, with or without amendment.

(2) A point of order against nongermane matter is one asserting that a proposition described in subparagraph (1) contains specified matter that would violate clause 7 of rule XVI if it were offered in the House as an amendment to the underlying measure in the form it was passed by the House.

(b) If a point of order under paragraph (a) is sustained, a motion that the House reject the nongermane matter identified by the point of order shall be privileged. Such a motion is debatable for 40 minutes, one-half in favor of the motion and one-half in opposition thereto.

(c) After disposition of a point of order under paragraph (a) or a motion to reject under paragraph (b), any further points of order under paragraph (a) not covered by a previous point of order, and any consequent motions to reject under paragraph (b), shall be likewise disposed of.

(d)(1) If a motion to reject under paragraph (b) is adopted, then after disposition of all points of order under paragraph (a) and any consequent motions to reject under paragraph (b), the conference report or motion, as the case may be, shall be considered as rejected and the matter remaining in disagreement shall be disposed of under subparagraph (2) or (3), as the case may be.

(2) After the House has adopted one or more motions to reject nongermane matter contained in a conference report under the preceding provisions of this clause—

(A) if the conference report accompanied a House measure amended by the Senate, the pending question shall be whether the House shall recede and concur in the Senate amendment with an amendment consisting of so much of the conference report as was not rejected; and

(B) if the conference report accompanied a Senate measure amended by the House, the pending question shall be whether the House shall insist further on the House amendment.

(3) After the House has adopted one or more motions to reject nongermane matter contained in a motion that the House recede and concur in a Senate amendment, with or without amendment, the following motions shall be privileged and shall have precedence in the order stated:

(A) A motion that the House recede and concur in the Senate amendment with an amendment in writing then available on the floor.

(B) A motion that the House insist on its disagreement to the Senate amendment and request a further conference with the Senate.

(C) A motion that the House insist on its disagreement to the Senate amendment.

(e) If, on a division of the question on a motion described in paragraph (a)(1)(B) or (C), the House agrees to recede, then a Member, Delegate, or Resident Commissioner may raise a point of order against nongermane matter, as specified in paragraph (a)(2), before the commencement of debate on concurring in the Senate amendment, with or without amendment. A point of order under this paragraph shall be disposed of according to the preceding provisions of this clause in the same manner as a point of order under paragraph (a).

11. It shall not be in order to consider a conference report to accompany a bill or joint resolution that proposes to amend the Internal Revenue Code of 1986 unless—

(a) the joint explanatory statement of the managers includes a tax complexity analysis prepared by the Joint Committee on Internal Revenue Taxation in accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998; or

(b) the chair of the Committee on Ways and Means causes such a tax complexity analysis to be printed in the Congressional Record before consideration of the conference report.

12. (a)(1) Subject to subparagraph (2), a meeting of each conference committee shall be open to the public.

(2) In open session of the House, a motion that managers on the part of the House be permitted to close to the public a meeting or meetings of their conference committee shall be privileged, shall be decided without debate, and shall be decided by the yeas and nays.

(3) In conducting conferences with the Senate, managers on the part of the House should endeavor to ensure—

(A) that meetings for the resolution of differences between the two Houses occur only under circumstances in which every manager on the part of

the House has notice of the meeting and a reasonable opportunity to attend;

(B) that all provisions on which the two Houses disagree are considered as open to discussion at any meeting of a conference committee; and

(C) that papers reflecting a conference agreement are held inviolate to change without renewal of the opportunity of all managers on the part of the House to reconsider their decisions to sign or not to sign the agreement.

(4) Managers on the part of the House shall be provided a unitary time and place with access to at least one complete copy of the final conference agreement for the purpose of recording their approval (or not) of the final conference agreement by placing their signatures (or not) on the sheets prepared to accompany the conference report and joint explanatory statement of the managers.

(b) A point of order that a conference committee failed to comply with paragraph (a) may be raised immediately after the conference report is read or considered as read. If such a point of order is sustained, the conference report shall be considered as rejected, the House shall be considered to have insisted on its amendments or on disagreement to the Senate amendments, as the case may be, and to have requested a further conference with the Senate, and the Speaker may appoint new conferees without intervening motion.

13. It shall not be in order to consider a conference report the text of which differs in any way, other than clerical, from the text that reflects the action of the conferees on all of the differences between the two Houses, as recorded by their placement of their signatures (or not) on the sheets prepared to accompany the conference report and joint explanatory statement of the managers.

RULE XXIII

CODE OF OFFICIAL CONDUCT

There is hereby established by and for the House the following code of conduct, to be known as the “Code of Official Conduct”:

1. A Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House.

2. A Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof.

3. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of

influence improperly exerted from the position of such individual in Congress.

4. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept gifts except as provided by clause 5 of rule XXV.

5. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept an honorarium for a speech, a writing for publication, or other similar activity, except as otherwise provided under rule XXV.

6. A Member, Delegate, or Resident Commissioner—

(a) shall keep the campaign funds of such individual separate from the personal funds of such individual;

(b) may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures; and

(c) except as provided in clause 1(b) of rule XXIV, may not expend funds from a campaign account of such individual that are not attributable to bona fide campaign or political purposes.

7. A Member, Delegate, or Resident Commissioner shall treat as campaign contributions all proceeds from testimonial dinners or other fund-raising events.

8. (a) A Member, Delegate, Resident Commissioner, or officer of the House may not retain an employee who does not perform duties for the offices of the employing

authority commensurate with the compensation such employee receives.

(b) In the case of a committee employee who works under the direct supervision of a member of the committee other than a chair, the chair may require that such member affirm in writing that the employee has complied with clause 8(a) (subject to clause 9 of rule X) as evidence of compliance by the chair with this clause and with clause 9 of rule X.

(c)(1) Except as specified in subparagraph (2)—

(A) a Member, Delegate, or Resident Commissioner may not retain the spouse of such individual in a paid position; and

(B) an employee of the House may not accept compensation for work for a committee on which the spouse of such employee serves as a member.

(2) Subparagraph (1) shall not apply in the case of a spouse whose pertinent employment predates the One Hundred Seventh Congress.

9. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not discharge and may not refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the race, color, religion, sex (including marital or parental status), disability, age, or national origin of such individual, but may take into

consideration the domicile or political affiliation of such individual.

10. A Member, Delegate, or Resident Commissioner who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which such individual is a member, and a Member should refrain from voting on any question at a meeting of the House or of the Committee of the Whole House on the state of the Union, unless or until judicial or executive proceedings result in reinstatement of the presumption of the innocence of such Member or until the Member is reelected to the House after the date of such conviction.

11. A Member, Delegate, or Resident Commissioner may not authorize or otherwise allow an individual, group, or organization not under the direction and control of the House to use the words "Congress of the United States," "House of Representatives," or "Official Business," or any combination of words thereof, on any letterhead or envelope.

12. (a) Except as provided in paragraph (b), an employee of the House who is required to file a report under rule XXVI may not participate personally and substantially as an employee of the House in a contact with an agency of the executive or judicial branches of Government with respect to nonlegislative matters

affecting any nongovernmental person in which the employee has a significant financial interest.

(b) Paragraph (a) does not apply if an employee first advises the employing authority of such employee of a significant financial interest described in paragraph (a) and obtains from such employing authority a written waiver stating that the participation of the employee in the activity described in paragraph (a) is necessary. A copy of each such waiver shall be filed with the Committee on Ethics.

13. Before a Member, Delegate, Resident Commissioner, officer, or employee of the House may have access to classified information, the following oath (or affirmation) shall be executed:

“I do solemnly swear (or affirm) that I will not disclose any classified information received in the course of my service with the House of Representatives, except as authorized by the House of Representatives or in accordance with its Rules.”

Copies of the executed oath (or affirmation) shall be retained by the Clerk as part of the records of the House. The Clerk shall make the signatories a matter of public record, causing the names of each Member, Delegate, or Resident Commissioner who has signed the oath during a week (if any) to be published in a portion of the Congressional Record designated for that purpose on the last legislative day of the week and making cumulative

lists of such names available each day for public inspection in an appropriate office of the House.

14. A Member, Delegate, or Resident Commissioner may not, with the intent to influence on the basis of partisan political affiliation an employment decision or employment practice of any private entity—

(a) take or withhold, or offer or threaten to take or withhold, an official act; or

(b) influence, or offer or threaten to influence, the official act of another.

15. (a) Except as provided in paragraph (b), a Member, Delegate, or Resident Commissioner may not use personal funds, official funds, or campaign funds for a flight on an aircraft.

(b) Paragraph (a) does not apply if—

(1) the aircraft is operated by an air carrier or commercial operator certificated by the Federal Aviation Administration and the flight is required to be conducted under air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority and the flight is required to be conducted under air carrier safety rules;

(2) the aircraft is owned or leased by a Member, Delegate, Resident Commissioner or a family member of a Member, Delegate, or Resident Commissioner (including an aircraft owned by an entity that is not a

public corporation in which the Member, Delegate, Resident Commissioner or a family member of a Member, Delegate, or Resident Commissioner has an ownership interest, provided that such Member, Delegate, or Resident Commissioner does not use the aircraft any more than the Member, Delegate, Resident Commissioner, or family member's proportionate share of ownership allows);

(3) the flight consists of the personal use of an aircraft by a Member, Delegate, or Resident Commissioner that is supplied by an individual on the basis of personal friendship; or

(4) the aircraft is operated by an entity of the Federal government or an entity of the government of any State.

(c) In this clause—

(1) the term “campaign funds” includes funds of any political committee under the Federal Election Campaign Act of 1971, without regard to whether the committee is an authorized committee of the Member, Delegate, or Resident Commissioner involved under such Act;

(2) the term “family member” means an individual who is related to the Member, Delegate, or Resident Commissioner, as father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law; and

(3) the term “on the basis of personal friendship” has the same meaning as in clause 5 of rule XXV and shall be determined as under clause 5(a)(3)(D)(ii) of rule XXV.

16. A Member, Delegate, or Resident Commissioner may not condition the inclusion of language to provide funding for a congressional earmark, a limited tax benefit, or a limited tariff benefit in any bill or joint resolution (or an accompanying report) or in any conference report on a bill or joint resolution (including an accompanying joint explanatory statement of managers) on any vote cast by another Member, Delegate, or Resident Commissioner. For purposes of this clause and clause 17, the terms “congressional earmark,” “limited tax benefit,” and “limited tariff benefit” shall have the meanings given them in clause 9 of rule XXI.

17. (a) A Member, Delegate, or Resident Commissioner who requests a congressional earmark, a limited tax benefit, or a limited tariff benefit in any bill or joint resolution (or an accompanying report) or in any conference report on a bill or joint resolution (or an accompanying joint statement of managers) shall provide a written statement to the chair and ranking minority member of the committee of jurisdiction, including—

(1) the name of the Member, Delegate, or Resident Commissioner;

(2) in the case of a congressional earmark, the name and address of the intended recipient or, if there is no specifically intended recipient, the intended location of the activity;

(3) in the case of a limited tax or tariff benefit, identification of the individual or entities reasonably anticipated to benefit, to the extent known to the Member, Delegate, or Resident Commissioner;

(4) the purpose of such congressional earmark or limited tax or tariff benefit; and

(5) a certification that the Member, Delegate, or Resident Commissioner or spouse has no financial interest in such congressional earmark or limited tax or tariff benefit.

(b) Each committee shall maintain the information transmitted under paragraph (a), and the written disclosures for any congressional earmarks, limited tax benefits, or limited tariff benefits included in any measure reported by the committee or conference report filed by the chair of the committee or any subcommittee thereof shall be open for public inspection.

18. (a) In this Code of Official Conduct, the term “officer or employee of the House” means an individual whose compensation is disbursed by the Chief Administrative Officer.

(b) An individual whose services are compensated by the House pursuant to a consultant contract shall be

considered an employee of the House for purposes of clauses 1, 2, 3, 4, 8, 9, and 13 of this rule. An individual whose services are compensated by the House pursuant to a consultant contract may not lobby the contracting committee or the members or staff of the contracting committee on any matter. Such an individual may lobby other Members, Delegates, or the Resident Commissioner or staff of the House on matters outside the jurisdiction of the contracting committee. In the case of such an individual who is a member or employee of a firm, partnership, or other business organization, the other members and employees of the firm, partnership, or other business organization shall be subject to the same restrictions on lobbying that apply to the individual under this paragraph.

RULE XXIV

LIMITATIONS ON USE OF OFFICIAL FUNDS

Limitations on use of official and unofficial accounts

1. (a) Except as provided in paragraph (b), a Member, Delegate, or Resident Commissioner may not maintain, or have maintained for the use of such individual, an unofficial office account. Funds may not be paid into an unofficial office account.

(b)(1) Except as provided in subparagraph (2), a Member, Delegate, or Resident Commissioner may defray

official expenses with funds of the principal campaign committee of such individual under the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.).

(2) The funds specified in subparagraph (1) may not be used to defray official expenses for mail or other communications, compensation for services, office space, office furniture, office equipment, or any associated information technology services (excluding handheld communications devices).

2. Notwithstanding any other provision of this rule, if an amount from the Official Expenses Allowance of a Member, Delegate, or Resident Commissioner is paid into the House Recording Studio revolving fund for telecommunications satellite services, the Member, Delegate, or Resident Commissioner may accept reimbursement from nonpolitical entities in that amount for transmission to the Clerk for credit to the Official Expenses Allowance.

3. In this rule the term “unofficial office account” means an account or repository in which funds are received for the purpose of defraying otherwise unreimbursed expenses allowable under section 162(a) of the Internal Revenue Code of 1986 as ordinary and necessary in the operation of a congressional office, and includes a newsletter fund referred to in section 527(g) of the Internal Revenue Code of 1986.

Limitations on use of the frank

4. A Member, Delegate, or Resident Commissioner shall mail franked mail under section 3210(d) of title 39, United States Code at the most economical rate of postage practicable.

5. Before making a mass mailing, a Member, Delegate, or Resident Commissioner shall submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether the proposed mailing is in compliance with applicable provisions of law, rule, or regulation.

6. A mass mailing that is otherwise frankable by a Member, Delegate, or Resident Commissioner under the provisions of section 3210(e) of title 39, United States Code, is not frankable unless the cost of preparing and printing it is defrayed exclusively from funds made available in an appropriation Act.

7. A Member, Delegate, or Resident Commissioner may not send a mass mailing outside the congressional district from which elected.

8. In the case of a Member, Delegate, or Resident Commissioner, a mass mailing is not frankable under section 3210 of title 39, United States Code, when it is postmarked less than 90 days before the date of a primary or general election (whether regular, special, or runoff) in which such individual is a candidate for public office. If the mail matter is of a type that is not customarily

postmarked, the date on which it would have been postmarked, if it were of a type customarily postmarked, applies.

9. In this rule the term “mass mailing” means, with respect to a session of Congress, a mailing of newsletters or other pieces of mail with substantially identical content (whether such pieces of mail are deposited singly or in bulk, or at the same time or different times), totaling more than 500 pieces of mail in that session, except that such term does not include a mailing—

(a) of matter in direct response to a communication from a person to whom the matter is mailed;

(b) from a Member, Delegate, or Resident Commissioner to other Members, Delegates, the Resident Commissioner, or Senators, or to Federal, State, or local government officials; or

(c) of a news release to the communications media.

Prohibition on use of funds by Members not elected to succeeding Congress

10. Funds from the applicable accounts described in clause 1(k)(1) of rule X, including funds from committee expense resolutions, and funds in any local currencies owned by the United States may not be made available for travel by a Member, Delegate, Resident Commissioner, or Senator after the date of a general election in which such individual was not elected to the succeeding Congress or, in the case of a Member, Delegate, or Resident

Commissioner who is not a candidate in a general election, after the earlier of the date of such general election or the adjournment sine die of the last regular session of the Congress.

RULE XXV

LIMITATIONS ON OUTSIDE EARNED INCOME AND ACCEPTANCE OF GIFTS

Outside earned income; honoraria

1. (a) Except as provided by paragraph (b), a Member, Delegate, Resident Commissioner, officer, or employee of the House may not—

(1) have outside earned income attributable to a calendar year that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year; or

(2) receive any honorarium, except that an officer or employee of the House who is paid at a rate less than 120 percent of the minimum rate of basic pay for GS–15 of the General Schedule may receive an honorarium unless the subject matter is directly related to the official duties of the individual, the payment is made because of the status of the individual with the House, or the person offering the honorarium has interests that may be substantially affected by the performance or nonperformance of the official duties of the individual.

(b) In the case of an individual who becomes a Member, Delegate, Resident Commissioner, officer, or employee of the House, such individual may not have outside earned income attributable to the portion of a calendar year that occurs after such individual becomes a Member, Delegate, Resident Commissioner, officer, or employee that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year multiplied by a fraction, the numerator of which is the number of days the individual is a Member, Delegate, Resident Commissioner, officer, or employee during that calendar year and the denominator of which is 365.

(c) A payment in lieu of an honorarium that is made to a charitable organization on behalf of a Member, Delegate, Resident Commissioner, officer, or employee of the House may not be received by that Member, Delegate, Resident Commissioner, officer, or employee. Such a payment may not exceed \$2,000 or be made to a charitable organization from which the Member, Delegate, Resident Commissioner, officer, or employee or a parent, sibling, spouse, child, or dependent relative of the Member, Delegate, Resident Commissioner, officer, or employee, derives a financial benefit.

2. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not—

(a) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity that provides professional services involving a fiduciary relationship except for the practice of medicine;

(b) permit the name of such individual to be used by such a firm, partnership, association, corporation, or other entity;

(c) receive compensation for practicing a profession that involves a fiduciary relationship except for the practice of medicine;

(d) serve for compensation as an officer or member of the board of an association, corporation, or other entity; or

(e) receive compensation for teaching, without the prior notification and approval of the Committee on Ethics.

Copyright royalties

3. (a) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive an advance payment on copyright royalties. This paragraph does not prohibit a literary agent, researcher, or other individual (other than an individual employed by the House or a relative of a Member, Delegate, Resident Commissioner, officer, or employee) working on behalf of a Member, Delegate, Resident Commissioner, officer, or employee with respect to a publication from receiving an

advance payment of a copyright royalty directly from a publisher and solely for the benefit of that literary agent, researcher, or other individual.

(b) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive copyright royalties under a contract entered into on or after January 1, 1996, unless that contract is first approved by the Committee on Ethics as complying with the requirement of clause 4(d)(1)(E) (that royalties are received from an established publisher under usual and customary contractual terms).

Definitions

4. (a)(1) In this rule, except as provided in subparagraph (2), the term “officer or employee of the House” means an individual (other than a Member, Delegate, or Resident Commissioner) whose pay is disbursed by the Chief Administrative Officer, who is paid at a rate equal to or greater than 120 percent of the minimum rate of basic pay for GS–15 of the General Schedule, and who is so employed for more than 90 days in a calendar year.

(2)(A) When used with respect to an honorarium, the term “officer or employee of the House” means an individual (other than a Member, Delegate, or Resident Commissioner) whose salary is disbursed by the Chief Administrative Officer.

(B) When used in clause 5 of this rule, the terms “officer” and “employee” have the same meanings as in rule XXIII.

(b) In this rule the term “honorarium” means a payment of money or a thing of value for an appearance, speech, or article (including a series of appearances, speeches, or articles) by a Member, Delegate, Resident Commissioner, officer, or employee of the House, excluding any actual and necessary travel expenses incurred by that Member, Delegate, Resident Commissioner, officer, or employee (and one relative) to the extent that such expenses are paid or reimbursed by any other person. The amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not so paid or reimbursed.

(c) In this rule the term “travel expenses” means, with respect to a Member, Delegate, Resident Commissioner, officer, or employee of the House, or a relative of such Member, Delegate, Resident Commissioner, officer, or employee, the cost of transportation, and the cost of lodging and meals while away from the residence or principal place of employment of such individual.

(d)(1) In this rule the term “outside earned income” means, with respect to a Member, Delegate, Resident Commissioner, officer, or employee of the House, wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually

rendered, but does not include—

(A) the salary of a Member, Delegate, Resident Commissioner, officer, or employee;

(B) any compensation derived by a Member, Delegate, Resident Commissioner, officer, or employee of the House for personal services actually rendered before the adoption of this rule or before such individual became a Member, Delegate, Resident Commissioner, officer, or employee;

(C) any amount paid by, or on behalf of, a Member, Delegate, Resident Commissioner, officer, or employee of the House to a tax-qualified pension, profit-sharing, or stock bonus plan and received by such individual from such a plan;

(D) in the case of a Member, Delegate, Resident Commissioner, officer, or employee of the House engaged in a trade or business in which such individual or the family of such individual holds a controlling interest and in which both personal services and capital are income-producing factors, any amount received by the Member, Delegate, Resident Commissioner, officer, or employee, so long as the personal services actually rendered by such individual in the trade or business do not generate a significant amount of income; or

(E) copyright royalties received from established publishers under usual and customary contractual terms; and

(2) outside earned income shall be determined without regard to community property law.

(e) In this rule the term “charitable organization” means an organization described in section 170(c) of the Internal Revenue Code of 1986.

Gifts

5. (a)(1)(A) (i) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift except as provided in this clause.

(ii) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift from a registered lobbyist or agent of a foreign principal or from a private entity that retains or employs registered lobbyists or agents of a foreign principal except as provided in subparagraph (3) of this paragraph.

(B) (i) A Member, Delegate, Resident Commissioner, officer, or employee of the House may accept a gift (other than cash or cash equivalent) not prohibited by subdivision (A)(ii) that the Member, Delegate, Resident Commissioner, officer, or employee reasonably and in good faith believes to have a value of less than \$50 and a cumulative value from one source during a calendar year of less than \$100. A gift having a value of less than \$10 does not count toward the \$100 annual limit. The value of perishable food sent to an office shall be allocated among the individual recipients and not to the Member, Delegate,

or Resident Commissioner. Formal recordkeeping is not required by this subdivision, but a Member, Delegate, Resident Commissioner, officer, or employee of the House shall make a good faith effort to comply with this subdivision.

(ii) A gift of a ticket to a sporting or entertainment event shall be valued at the face value of the ticket or, in the case of a ticket without a face value, at the highest cost of a ticket with a face value for the event. The price printed on a ticket to an event shall be deemed its face value only if it also is the price at which the issuer offers that ticket for sale to the public.

(2)(A) In this clause the term “gift” means a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(B) (i) A gift to a family member of a Member, Delegate, Resident Commissioner, officer, or employee of the House, or a gift to any other individual based on that individual’s relationship with the Member, Delegate, Resident Commissioner, officer, or employee, shall be considered a gift to the Member, Delegate, Resident Commissioner, officer, or employee if it is given with the knowledge and acquiescence of the Member, Delegate,

Resident Commissioner, officer, or employee and the Member, Delegate, Resident Commissioner, officer, or employee has reason to believe the gift was given because of the official position of such individual.

(ii) If food or refreshment is provided at the same time and place to both a Member, Delegate, Resident Commissioner, officer, or employee of the House and the spouse or dependent thereof, only the food or refreshment provided to the Member, Delegate, Resident Commissioner, officer, or employee shall be treated as a gift for purposes of this clause.

(3) The restrictions in subparagraph (1) do not apply to the following:

(A) Anything for which the Member, Delegate, Resident Commissioner, officer, or employee of the House pays the market value, or does not use and promptly returns to the donor.

(B) A contribution, as defined in section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) that is lawfully made under that Act, a lawful contribution for election to a State or local government office, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

(C) A gift from a relative as described in section 109(16) of title I of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(16)).

(D) (i) Anything provided by an individual on the basis of a personal friendship unless the Member, Delegate, Resident Commissioner, officer, or employee of the House has reason to believe that, under the circumstances, the gift was provided because of the official position of such individual and not because of the personal friendship.

(ii) In determining whether a gift is provided on the basis of personal friendship, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall consider the circumstances under which the gift was offered, such as:

(I) The history of the relationship of such individual with the individual giving the gift, including any previous exchange of gifts between them.

(II) Whether to the actual knowledge of such individual the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift.

(III) Whether to the actual knowledge of such individual the individual who gave the gift also gave the same or similar gifts to other Members, Delegates, the Resident Commissioners, officers, or employees of the House.

(E) Except as provided in paragraph (e)(3), a contribution or other payment to a legal expense fund

established for the benefit of a Member, Delegate, Resident Commissioner, officer, or employee of the House that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Ethics.

(F) A gift from another Member, Delegate, Resident Commissioner, officer, or employee of the House or Senate.

(G) Food, refreshments, lodging, transportation, and other benefits—

(i) resulting from the outside business or employment activities of the Member, Delegate, Resident Commissioner, officer, or employee of the House (or other outside activities that are not connected to the duties of such individual as an officeholder), or of the spouse of such individual, if such benefits have not been offered or enhanced because of the official position of such individual and are customarily provided to others in similar circumstances;

(ii) customarily provided by a prospective employer in connection with bona fide employment discussions; or

(iii) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fundraising or campaign event sponsored by such organization.

(H) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

(I) Informational materials that are sent to the office of the Member, Delegate, Resident Commissioner, officer, or employee of the House in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.

(J) Awards or prizes that are given to competitors in contests or events open to the public, including random drawings.

(K) Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, nonmonetary awards presented in recognition of public service (and associated food, refreshments, and entertainment provided in the presentation of such degrees and awards).

(L) Training (including food and refreshments furnished to all attendees as an integral part of the training) if such training is in the interest of the House.

(M) Bequests, inheritances, and other transfers at death.

(N) An item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute.

(O) Anything that is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

(P) A gift of personal hospitality (as defined in section 109(14) of the Ethics in Government Act) of an individual other than a registered lobbyist or agent of a foreign principal.

(Q) Free attendance at an event permitted under subparagraph (4).

(R) Opportunities and benefits that are—

(i) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration;

(ii) offered to members of a group or class in which membership is unrelated to congressional employment;

(iii) offered to members of an organization, such as an employees' association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;

(iv) offered to a group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

(v) in the form of loans from banks and other financial institutions on terms generally available to the public; or

(vi) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

(S) A plaque, trophy, or other item that is substantially commemorative in nature and that is intended for presentation.

(T) Anything for which, in an unusual case, a waiver is granted by the Committee on Ethics.

(U) Food or refreshments of a nominal value offered other than as a part of a meal.

(V) Donations of products from the district or State that the Member, Delegate, or Resident Commissioner represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any single recipient.

(W) An item of nominal value such as a greeting card, baseball cap, or a T-shirt.

(4)(A) A Member, Delegate, Resident Commissioner, officer, or employee of the House may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the

sponsor of the event, if—

(i) the Member, Delegate, Resident Commissioner, officer, or employee of the House participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the official position of such individual; or

(ii) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, Delegate, Resident Commissioner, officer, or employee of the House.

(B) A Member, Delegate, Resident Commissioner, officer, or employee of the House who attends an event described in subdivision (A) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual.

(C) A Member, Delegate, Resident Commissioner, officer, or employee of the House, or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging may not be accepted in connection with the event unless—

(i) all of the net proceeds of the event are for the benefit of an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;

(ii) reimbursement for the transportation and lodging in connection with the event is paid by such organization; and

(iii) the offer of free attendance at the event is made by such organization.

(D) In this paragraph the term “free attendance” may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. The term does not include entertainment collateral to the event, nor does it include food or refreshments taken other than in a group setting with all or substantially all other attendees.

(5) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept a gift the value of which exceeds \$250 on the basis of the personal friendship exception in subparagraph (3)(D) unless the Committee on Ethics issues a written determination that such exception applies. A determination under this subparagraph is not required for gifts given on the basis of the family relationship exception in subparagraph (3)(C).

(6) When it is not practicable to return a tangible item because it is perishable, the item may, at the discretion of the recipient, be given to an appropriate charity or destroyed.

(b)(1)(A) A reimbursement (including payment in kind) to a Member, Delegate, Resident Commissioner, officer, or employee of the House for necessary transportation, lodging, and related expenses for travel to a meeting, speaking engagement, factfinding trip, or similar event in connection with the duties of such individual as an officeholder shall be considered as a reimbursement to the House and not a gift prohibited by this clause when it is from a private source other than a registered lobbyist or agent of a foreign principal or a private entity that retains or employs registered lobbyists or agents of a foreign principal (except as provided in subdivision (C)), if the Member, Delegate, Resident Commissioner, officer, or employee—

(i) in the case of an employee, receives advance authorization, from the Member, Delegate, Resident Commissioner, or officer under whose direct supervision the employee works, to accept reimbursement; and

(ii) discloses the expenses reimbursed or to be reimbursed and the authorization to the Clerk within 15 days after the travel is completed.

(B) For purposes of subdivision (A), events, the activities of which are substantially recreational in nature, are not considered to be in connection with the duties of a Member, Delegate, Resident Commissioner, officer, or employee of the House as an officeholder.

(C) A reimbursement (including payment in kind) to a Member, Delegate, Resident Commissioner, officer, or employee of the House for any purpose described in subdivision (A) also shall be considered as a reimbursement to the House and not a gift prohibited by this clause (without regard to whether the source retains or employs registered lobbyists or agents of a foreign principal) if it is, under regulations prescribed by the Committee on Ethics to implement this provision—

(i) directly from an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965; or

(ii) provided only for attendance at or participation in a one-day event (exclusive of travel time and an overnight stay).

Regulations prescribed to implement this provision may permit a two-night stay when determined by the committee on a case-by-case basis to be practically required to participate in the one-day event.

(2) Each advance authorization to accept reimbursement shall be signed by the Member, Delegate, Resident Commissioner, or officer of the House under whose direct supervision the employee works and shall include—

(A) the name of the employee;

(B) the name of the person who will make the reimbursement;

(C) the time, place, and purpose of the travel; and

(D) a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.

(3) Each disclosure made under subparagraph (1)(A) shall be signed by the Member, Delegate, Resident Commissioner, or officer (in the case of travel by that Member, Delegate, Resident Commissioner, or officer) or by the Member, Delegate, Resident Commissioner, or officer under whose direct supervision the employee works (in the case of travel by an employee) and shall include—

(A) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;

(B) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;

(C) a good faith estimate of total meal expenses reimbursed or to be reimbursed;

(D) a good faith estimate of the total of other expenses reimbursed or to be reimbursed;

(E) a determination that all such expenses are necessary transportation, lodging, and related expenses as defined in subparagraph (4);

(F) a description of meetings and events attended; and

(G) in the case of a reimbursement to a Member, Delegate, Resident Commissioner, or officer, a determination that the travel was in connection with the duties of such individual as an officeholder and would not create the appearance that the Member, Delegate, Resident Commissioner, or officer is using public office for private gain.

(4) In this paragraph the term “necessary transportation, lodging, and related expenses”—

(A) includes reasonable expenses that are necessary for travel for a period not exceeding four days within the United States or seven days exclusive of travel time outside of the United States unless approved in advance by the Committee on Ethics;

(B) is limited to reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments, including reimbursement for necessary transportation, whether or not such transportation occurs within the periods described in subdivision (A);

(C) does not include expenditures for recreational activities, nor does it include entertainment other than that provided to all attendees as an integral part of the event, except for activities or entertainment otherwise permissible under this clause; and

(D) may include travel expenses incurred on behalf of a relative of the Member, Delegate, Resident

Commissioner, officer, or employee.

(5) The Clerk of the House shall make all advance authorizations, certifications, and disclosures filed pursuant to this paragraph available for public inspection as soon as possible after they are received.

(c)(1)(A) Except as provided in subdivision (B), a Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept a reimbursement (including payment in kind) for transportation, lodging, or related expenses for a trip on which the traveler is accompanied on any segment by a registered lobbyist or agent of a foreign principal.

(B) Subdivision (A) does not apply to a trip for which the source of reimbursement is an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965.

(2) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept a reimbursement (including payment in kind) for transportation, lodging, or related expenses under the exception in paragraph (b)(1)(C)(ii) of this clause for a trip that is financed in whole or in part by a private entity that retains or employs registered lobbyists or agents of a foreign principal unless any involvement of a registered lobbyist or agent of a foreign principal in the planning, organization, request, or arrangement of the trip is de

minimis under rules prescribed by the Committee on Ethics to implement paragraph (b)(1)(C) of this clause.

(3) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept a reimbursement (including payment in kind) for transportation, lodging, or related expenses for a trip (other than a trip permitted under paragraph (b)(1)(C) of this clause) if such trip is in any part planned, organized, requested, or arranged by a registered lobbyist or agent of a foreign principal.

(d) A Member, Delegate, Resident Commissioner, officer, or employee of the House shall, before accepting travel otherwise permissible under paragraph (b)(1) of this clause from any private source—

(1) provide to the Committee on Ethics before such trip a written certification signed by the source or (in the case of a corporate person) by an officer of the source—

(A) that the trip will not be financed in any part by a registered lobbyist or agent of a foreign principal;

(B) that the source either—

(i) does not retain or employ registered lobbyists or agents of a foreign principal; or

(ii) is an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965; or

(iii) certifies that the trip meets the requirements specified in rules prescribed by the Committee on Ethics to implement paragraph (b)(1)(C)(ii) of this clause and specifically details the extent of any involvement of a registered lobbyist or agent of a foreign principal in the planning, organization, request, or arrangement of the trip considered to qualify as de minimis under such rules;

(C) that the source will not accept from another source any funds earmarked directly or indirectly for the purpose of financing any aspect of the trip;

(D) that the traveler will not be accompanied on any segment of the trip by a registered lobbyist or agent of a foreign principal (except in the case of a trip for which the source of reimbursement is an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965); and

(E) that (except as permitted in paragraph (b)(1)(C) of this clause) the trip will not in any part be planned, organized, requested, or arranged by a registered lobbyist or agent of a foreign principal; and

(2) after the Committee on Ethics has promulgated the regulations mandated in paragraph (i)(1)(B) of this clause, obtain the prior approval of the committee for such trip.

(e) A gift prohibited by paragraph (a)(1) includes the following:

(1) Anything provided by a registered lobbyist or an agent of a foreign principal to an entity that is maintained or controlled by a Member, Delegate, Resident Commissioner, officer, or employee of the House.

(2) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal on the basis of a designation, recommendation, or other specification of a Member, Delegate, Resident Commissioner, officer, or employee of the House (not including a mass mailing or other solicitation directed to a broad category of persons or entities), other than a charitable contribution permitted by paragraph (f).

(3) A contribution or other payment by a registered lobbyist or an agent of a foreign principal to a legal expense fund established for the benefit of a Member, Delegate, Resident Commissioner, officer, or employee of the House.

(4) A financial contribution or expenditure made by a registered lobbyist or an agent of a foreign principal relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of Members, Delegates,

the Resident Commissioner, officers, or employees of the House.

(f)(1) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal in lieu of an honorarium to a Member, Delegate, Resident Commissioner, officer, or employee of the House is not considered a gift under this clause if it is reported as provided in subparagraph (2).

(2) A Member, Delegate, Resident Commissioner, officer, or employee who designates or recommends a contribution to a charitable organization in lieu of an honorarium described in subparagraph (1) shall report within 30 days after such designation or recommendation to the Clerk—

(A) the name and address of the registered lobbyist who is making the contribution in lieu of an honorarium;

(B) the date and amount of the contribution; and

(C) the name and address of the charitable organization designated or recommended by the Member, Delegate, or Resident Commissioner.

The Clerk shall make public information received under this subparagraph as soon as possible after it is received.

(g) In this clause—

(1) the term “registered lobbyist” means a lobbyist registered under the Federal Regulation of Lobbying

Act or any successor statute;

(2) the term “agent of a foreign principal” means an agent of a foreign principal registered under the Foreign Agents Registration Act; and

(3) the terms “officer” and “employee” have the same meanings as in rule XXIII.

(h) All the provisions of this clause shall be interpreted and enforced solely by the Committee on Ethics. The Committee on Ethics is authorized to issue guidance on any matter contained in this clause.

(i)(1) Not later than 45 days after the date of adoption of this paragraph and at annual intervals thereafter, the Committee on Ethics shall develop and revise, as necessary—

(A) guidelines on judging the reasonableness of an expense or expenditure for purposes of this clause, including the factors that tend to establish—

(i) a connection between a trip and official duties;

(ii) the reasonableness of an amount spent by a sponsor;

(iii) a relationship between an event and an officially connected purpose; and

(iv) a direct and immediate relationship between a source of funding and an event; and

(B) regulations describing the information it will require individuals subject to this clause to submit to the committee in order to obtain the prior approval of

the committee for any travel covered by this clause, including any required certifications.

(2) In developing and revising guidelines under subparagraph (1)(A), the committee shall take into account the maximum per diem rates for official Government travel published annually by the General Services Administration, the Department of State, and the Department of Defense.

Claims against the Government

6. A person may not be an officer or employee of the House, or continue in its employment, if acting as an agent for the prosecution of a claim against the Government or if interested in such claim, except as an original claimant or in the proper discharge of official duties.

7. A Member, Delegate, or Resident Commissioner shall prohibit all staff employed by that Member, Delegate, or Resident Commissioner (including staff in personal, committee, and leadership offices) from making any lobbying contact (as defined in section 3 of the Lobbying Disclosure Act of 1995) with that individual's spouse if that spouse is a lobbyist under the Lobbying Disclosure Act of 1995 or is employed or retained by such a lobbyist for the purpose of influencing legislation.

8. During the dates on which the national political party to which a Member (including a Delegate or Resident Commissioner) belongs holds its convention to nominate

a candidate for the office of President or Vice President, the Member may not participate in an event honoring that Member, other than in the capacity as a candidate for such office, if such event is directly paid for by a registered lobbyist under the Lobbying Disclosure Act of 1995 or a private entity that retains or employs such a registered lobbyist.

RULE XXVI

FINANCIAL DISCLOSURE

1. The Clerk shall send a copy of each report filed with the Clerk under title I of the Ethics in Government Act of 1978 within the seven-day period beginning on the date on which the report is filed to the Committee on Ethics. By August 1 of each year, the Clerk shall compile all such reports sent to the Clerk by Members within the period beginning on January 1 and ending on June 15 of each year and have them printed as a House document, which shall be made available to the public.

2. For the purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be considered Rules of the House as they pertain to Members, Delegates, the Resident Commissioner, officers, and employees of the House.

3. Members of the board of the Office of Congressional Ethics shall file annual financial disclosure reports with

the Clerk of the House on or before May 15 of each calendar year after any year in which they perform the duties of that position. Such reports shall be on a form prepared by the Clerk that is substantially similar to form 450 of the Office of Government Ethics. The Clerk shall send a copy of each such report filed with the Clerk within the seven-day period beginning on the date on which the report is filed to the Committee on Ethics and shall have them printed as a House document and made available to the public pursuant to clause 1.

[Pertinent provisions of Title I of the Ethics in Government Act of 1978 (5 U.S.C. App. §§ 101–111) follow:]

TITLE I—FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

Persons Required to File

SEC. 101. (a) Within thirty days of assuming the position of an officer or employee described in subsection (f), an individual shall file a report containing the information described in section 102(b) unless the individual has left another position described in subsection (f) within thirty days prior to assuming such new position or has already filed a report under this title with respect to nomination for the new position or as a candidate for the position. * * *

(c) Within thirty days of becoming a candidate as defined in section 301 of the Federal Campaign Act of 1971, in a calendar year for nomination or election to the office of President, Vice President, or Member of Congress, or on or before May 15 of that calendar year, whichever is later, but in no event later than 30 days before the election, and on or before May 15 of each successive year an individual continues to be a candidate, an individual other than an incumbent President, Vice President, or Member of Congress shall file a report containing the information described in section 102(b). Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar

years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

(d) Any individual who is an officer or employee described in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 102(a).

(e) Any individual who occupies a position described in subsection (f) shall, on or before the thirtieth day after termination of employment in such position, file a report containing the information described in section 102(a) covering the preceding calendar year if the report required by subsection (d) has not been filed and covering the portion of the calendar year in which such termination occurs up to the date the individual left such office or position, unless such individual has accepted employment in another position described in subsection (f).

(f) The officers and employees referred to in subsections (a), (d), and (e) are—
* * *

(9) a Member of Congress as defined under section 109(12);

(10) an officer or employee of the Congress as defined under section 109(13); * * *

(g)(1) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the supervising ethics office for each branch, but the total of such extensions shall not exceed ninety days. * * *

(h) The provisions of subsections (a), (b), and (e) shall not apply to an individual who, as determined by the designated agency ethics official or Secretary concerned (or in the case of a Presidential appointee under subsection (b), the Director of the Office of Government Ethics), the congressional ethics committees, or the Judicial Conference, is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year, except that if such individual performs the duties of his office or position for more than sixty days in a calendar year—

(1) the report required by subsections (a) and (b) shall be filed within fifteen days of the sixtieth day, and

(2) the report required by subsection (e) shall be filed as provided in such subsection.

(i) The supervising ethics office for each branch may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position less than one hundred and thirty days in a calendar year, but only if the supervising ethics office determines that—

(1) such individual is not a full-time employee of the Government,

(2) such individual is able to provide services specially needed by the Government,

(3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) public financial disclosure by such individual is not necessary in the circumstances.

Contents of Reports

SEC. 102. (a) Each report filed pursuant to section 101 (d) and (e) shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating \$200 or more in value and, effective January 1, 1991, the source, date, and amount of payments made to charitable organizations in lieu of honoraria, and the reporting individual shall simultaneously file with the applicable supervising ethics office, on a confidential basis, a corresponding list of recipients of all such payments, together with the dates and amounts of such payments.

(B) The source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds \$200 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within:

- (i) not more than \$1,000,
- (ii) greater than \$1,000 but not more than \$2,500,
- (iii) greater than \$2,500 but not more than \$5,000,
- (iv) greater than \$5,000 but not more than \$15,000,
- (v) greater than \$15,000 but not more than \$50,000,
- (vi) greater than \$50,000 but not more than \$100,000,
- (vii) greater than \$100,000 but not more than \$1,000,000,
- (viii) greater than \$1,000,000 but not more than \$5,000,000, or
- (ix) greater than \$5,000,000.

(2)(A) The identity of the source, a brief description, and the value of all gifts aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or \$250, whichever is greater, received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or

entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of \$100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

(B) The identity of the source and a brief description (including a travel itinerary, dates, and nature of expenses provided) of reimbursements received from any source aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or \$250, whichever is greater, and received during the preceding calendar year.

(C) In an unusual case, a gift need not be aggregated under subparagraph (A) if a publicly available request for a waiver is granted.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds \$1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a spouse, or by a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse, or any deposits aggregating \$5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a spouse, or a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse which exceed \$10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds \$10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year exceeds \$1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6)(A) The identity of all positions held on or before the date of filing during the current calendar year (and, for the first report filed by an individual, during the two-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This subparagraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

(B) If any person, other than the United States Government, paid a nonelected reporting individual compensation in excess of \$5,000 in any of the two calendar years prior to the calendar year during which the individual files his first report under this title, the individual shall include in the report—

- (i) the identity of each source of such compensation; and
- (ii) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.

The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(8) The category of the total cash value of any interest of the reporting individual in a qualified blind trust, unless the trust instrument was executed prior to July 24, 1995 and precludes the beneficiary from receiving information on the total cash value of any interest in the qualified blind trust.

(b)(1) Each report filed pursuant to subsections (a), (b), and (c) of section 101 shall include a full and complete statement with respect to the information required by—

(A) paragraph (1) of subsection (a) for the year of filing and the preceding calendar year,

(B) paragraphs (3) and (4) of subsection (a) as of the date specified in the report but which is less than thirty-one days before the filing date, and

(C) paragraphs (6) and (7) of subsection (a) as of the filing date but for periods described in such paragraphs.

(2)(A) In lieu of filling out one or more schedules of a financial disclosure form, an individual may supply the required information in an alternative format, pursuant to either rules adopted by the supervising ethics office for the branch in which such individual serves or pursuant to a specific written determination by such office for a reporting individual.

(B) In lieu of indicating the category of amount or value of any item contained in any report filed under this title, a reporting individual may indicate the exact dollar amount of such item.

(c) In the case of any individual described in section 101(e), any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

(d)(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4), (5), and (8) of subsection (a) are as follows:

(A) not more than \$15,000;

(B) greater than \$15,000 but not more than \$50,000;

(C) greater than \$50,000 but not more than \$100,000;

(D) greater than \$100,000 but not more than \$250,000;

(E) greater than \$250,000 but not more than \$500,000;

(F) greater than \$500,000 but not more than \$1,000,000;

(G) greater than \$1,000,000 but not more than \$5,000,000;

(H) greater than \$5,000,000 but not more than \$25,000,000;

(I) greater than \$25,000,000 but not more than \$50,000,000; and

(J) greater than \$50,000,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full

and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(e)(1) Except as provided in the last sentence of this paragraph, each report required by section 101 shall also contain information listed in paragraphs (1) through (5) of subsection (a) of this section respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed \$1,000 and the source and amount of any honoraria received by a spouse, except that, with respect to earned income (other than honoraria), if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) All information required to be reported in subsection (a)(1)(B) with respect to income derived by a spouse or dependent child from any asset held by the spouse or dependent child and reported pursuant to subsection (a)(3).

(C) In the case of any gifts received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment and a brief description and the value of other gifts.

(D) In the case of any reimbursements received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of each such reimbursement.

(E) In the case of items described in paragraphs (3) through (5) of subsection (a), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse's or dependent child's sole financial interest or responsibility and

which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

(F) For purposes of this section, categories with amounts or values greater than \$1,000,000 set forth in sections 102(a)(1)(B) and 102(d)(1) shall apply to the income, assets, or liabilities of spouses and dependent children only if the income, assets, or liabilities are held jointly with the reporting individual. All other income, assets, or liabilities of the spouse or dependent children required to be reported under this section in an amount or value greater than \$1,000,000 shall be categorized only as an amount or value greater than \$1,000,000.

Reports required by subsections (a), (b), and (c) of section 101 shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(f)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3));

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any dependent child, and

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of; or

(C) an entity described under the provisions of paragraph (8), but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust or other entity under subsection (a)(1)(B) of this section.

(3) For purpose of this subsection, the term “qualified blind trust” includes any trust in which a reporting individual, his spouse, or any minor or dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

(A)(i) The trustee of the trust and any other entity designated in the trust instrument to perform fiduciary duties is a financial institution, an attorney, a certified public accountant, a broker, or an investment advisor who—

(I) is independent of and not associated with any interested party so that the trustee or other person cannot be controlled or influenced in the administration of the trust by any interested party;

(II) is not and has not been an employee of or affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(III) is not a relative of any interested party.

(ii) Any officer or employee of a trustee or other entity who is involved in the management or control of the trust—

(I) is independent of and not associated with any interested party so that such officer or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(II) is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(III) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than \$1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust

income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1) of this section, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office.

(E) For purposes of this subsection, "interested party" means a reporting individual, his spouse, and any minor or dependent child; "broker" has the meaning set forth in section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4)); and "investment adviser" includes any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts.

(F) Any trust qualified by a supervising ethics office before the effective date of title II of the Ethics Reform Act of 1989 shall continue to be governed by the law and regulations in effect immediately before such effective date.

(4)(A) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of any applicable conflict of interest statutes, regulations, or rules of the Federal Government (including section 208 of title 18, United States Code), until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than \$1,000.

(B)(i) The provisions of subparagraph (A) shall not apply with respect to a trust created for the benefit of a reporting individual, or the spouse, dependent child, or minor child of such a person, if the supervising ethics office for such reporting individual finds that—

(I) the assets placed in the trust consist of a well-diversified portfolio of readily marketable securities;

(II) none of the assets consist of securities of entities having substantial activities in the area of the reporting individual's primary area of responsibility;

(III) the trust instrument prohibits the trustee, notwithstanding the provisions of paragraph (3)(C) (iii) and (iv) of this subsection, from making public or informing any interested party of the sale of any securities;

(IV) the trustee is given power of attorney, notwithstanding the provisions of paragraph (3)(C)(v) of this subsection, to prepare on behalf of any interested party the personal income tax returns and similar returns which may contain information relating to the trust; and

(V) except as otherwise provided in this paragraph, the trust instrument provides (or in the case of a trust established prior to the effective date of this Act which by its terms does not permit amendment, the trustee, the reporting individual, and any other interested party agree in writing) that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A). * * *

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d) of this section.

This subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (d) of this section.

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of this section of each such asset.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 105 and the provisions of that section shall apply with respect to such documents and lists.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6)(A) A trustee of a qualified blind trust shall not knowingly and willfully, or negligently, (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or (iv) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly and willfully, or negligently, (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) of this subsection or (ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed \$10,000.

(ii) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions

of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed \$5,000.

(7) Any trust may be considered to be a qualified blind trust if—

(A) the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph;

(B) a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time of approval by the supervising ethics office, including the category of value of each asset as determined under subsection (d) of this section, are filed with such office and made available to the public as provided under paragraph (5)(D) of this subsection; and

(C) the supervising ethics office determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations.

(8) A reporting individual shall not be required to report the financial interests held by a widely held investment fund (whether such fund is a mutual fund, regulated investment company, pension or deferred compensation plan, or other investment fund), if—

(A)(i) the fund is publicly traded; or

(ii) the assets of the fund are widely diversified; and

(B) the reporting individual neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

(h) A report filed pursuant to subsection (a), (d), or (e) of section 101 need not contain the information described in subparagraphs (A), (B), and (C) of subsection (a)(2) with respect to gifts and reimbursements received in a period when the reporting individual was not an officer or employee of the Federal Government.

(i) A reporting individual shall not be required under this title to report—

(1) financial interests in or income derived from—

(A) any retirement system under title 5, United States Code (including the Thrift Savings Plan under subchapter III of chapter 84 of such title);

or

(B) any other retirement system maintained by the United States for officers or employees of the United States, including the President, or for members of the uniformed services; or

(2) benefits received under the Social Security Act.

Filing of Reports

SEC. 103. (a) Except as otherwise provided in this section, the reports required under this title shall be filed by the reporting individual with the designated agency ethics official at the agency by which he is employed (or in the case of an individual described in section 101(e), was employed) or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official. * * *

(g) Each supervising Ethics Office shall develop and make available forms for reporting the information required by this title.

(h)(1) The reports required under this title shall be filed by a reporting individual with—

(A)(i)(I) the Clerk of the House of Representatives, in the case of a Representative in Congress, a Delegate to Congress, the Resident Commissioner from Puerto Rico, an officer or employee of the Congress whose compensation is disbursed by the Clerk of the House of Representatives, an officer or employee of the Architect of the Capitol, United States Capitol Police, the United States Botanic Garden, the Congressional Budget Office, the Government Printing Office, the Library of Congress, or the Copyright Royalty Tribunal (including any individual terminating service, under section 101(e), in any office or position referred to in this subclause), or an individual described in section 101(c) who is a candidate for nomination or election as a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico; * * *

(ii) in the case of an officer or employee of the Congress as described under section 101(f)(10) who is employed by an agency or commission established in the legislative branch after the date of the enactment of the Ethics Reform Act of 1989—

(I) the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, as designated in the statute establishing such agency or commission; or

(II) if such statute does not designate such committee, the Secretary of the Senate for agencies and commissions established in even numbered

calendar years, and the Clerk of the House of Representatives for agencies and commissions established in odd numbered calendar years;
* * *

(2) The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such committee.

(i) A copy of each report filed under this title by a Member or an individual who is a candidate for the office of Member shall be sent by the Clerk of the House of Representatives or Secretary of the Senate, as the case may be, to the appropriate State officer designated under section 316(a) of the Federal Election Campaign Act of 1971 of the State represented by the Member or in which the individual is a candidate, as the case may be, within the 30-day period beginning on the day the report is filed with the Clerk or Secretary.

(j)(1) A copy of each report filed under this title with the Clerk of the House of Representatives shall be sent by the Clerk to the Committee on Standards of Official Conduct of the House of Representatives within the 7-day period beginning on the day the report is filed. * * *

(k) In carrying out their responsibilities under this title with respect to candidates for office, the Clerk of the House of Representatives and the Secretary of the Senate shall avail themselves of the assistance of the Federal Election Commission. The Commission shall make available to the Clerk and the Secretary on a regular basis a complete list of names and addresses of all candidates registered with the Commission, and shall cooperate and coordinate its candidate information and notification program with the Clerk and the Secretary to the greatest extent possible.

Failure to File or Filing False Reports

SEC. 104. (a)(1) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102. The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed \$50,000.

(2)(A) It shall be unlawful for any person to knowingly and willfully—

(i) falsify any information that such person is required to report under section 102; and

(ii) fail to file or report any information that such person is required to report under section 102.

(B) Any person who—

(i) violates subparagraph (A)(i) shall be fined under title 18, United States Code, imprisoned for not more than 1 year, or both; and

(ii) violates subparagraph (A)(ii) shall be fined under title 18, United States Code.

(b) The head of each agency, each Secretary concerned, the Director of the Office of Government Ethics, each congressional ethics committee, or the Judicial Conference, as the case may be, shall refer to the Attorney General the name of any individual which such official or committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported.

(c) The President, the Vice President, the Secretary concerned, the head of each agency, the Office of Personnel Management, a congressional ethics committee, and the Judicial Conference of the United States, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.

(d)(1) Any individual who files a report required to be filed under this title more than 30 days after the later of—

(A) the date such report is required to be filed pursuant to the provisions of this title and the rules and regulations promulgated thereunder; or

(B) if a filing extension is granted to such individual under section 101(g), the last day of the filing extension period, shall, at the direction of and pursuant to regulations issued by the supervising ethics office, pay a filing fee of \$200. All such fees shall be deposited in the miscellaneous receipts of the Treasury. The authority under this paragraph to direct the payment of a filing fee may be delegated by the supervising ethics office in the executive branch to other agencies in the executive branch.

(2) The supervising ethics office may waive the filing fee under this subsection in extraordinary circumstances.

Custody of and Public Access to Reports

SEC. 105. (a) Each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall make available to the public, in accordance with subsection (b), each report filed under this title with such agency or office or with the Clerk or the Secretary of the Senate. * * *

(b)(1) Except as provided in the second sentence of this subsection, each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the

House of Representatives, and the Secretary of the Senate shall, within thirty days after any report is received under this title by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be, permit inspection of such report by or furnish a copy of such report to any person requesting such inspection or copy. With respect to any report required to be filed by May 15 of any year, such report shall be made available for public inspection within 30 calendar days after May 15 of such year or within 30 days of the date of filing of such a report for which an extension is granted pursuant to section 101(g). The agency, office, Clerk, or Secretary of the Senate, as the case may be may require a reasonable fee to be paid in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(2) Notwithstanding paragraph (1), a report may not be made available under this section to any person nor may any copy thereof be provided under this section to any person except upon a written application by such person stating—

(A) that person's name, occupation and address;

(B) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(C) that such person is aware of the prohibitions on the obtaining or use of the report.

Any such application shall be made available to the public throughout the period during which the report is made available to the public.

(3)(A) This section does not require the immediate and unconditional availability of reports filed by an individual described in section 109(8) or 109(10) of this Act if a finding is made by the Judicial Conference, in consultation with United States Marshall Service, that revealing personal and sensitive information could endanger that individual.

(B) A report may be redacted pursuant to this paragraph only—

(i) to the extent necessary to protect the individual who filed the report; and

(ii) for as long as the danger to such individual exists.

(C) The Administrative Office of the United States Courts shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate an annual report with respect to the operation of this paragraph including—

(i) the total number of reports redacted pursuant to this paragraph;

(ii) the total number of individuals whose reports have been redacted pursuant to this paragraph; and

(iii) the types of threats against individuals whose reports are redacted, if appropriate.

(D) The Judicial Conference, in consultation with the Department of Justice, shall issue regulations setting forth the circumstances under which redaction is appropriate under this paragraph and the procedures for redaction.

(E) This paragraph shall expire on December 31, 2005, and apply to filings through calendar year 2005.

(c)(1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1) of this subsection. The court in which such action is brought may assess against such person a penalty in any amount not to exceed \$10,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

(d) Any report filed with or transmitted to an agency or supervising ethics office or to the Clerk of the House of Representatives or the Secretary of the Senate pursuant to this title shall be retained by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be. Such report shall be made available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 101(b) and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 101(c) and was not subsequently elected, such reports shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President, Vice President, or as a Member of Congress, unless needed in an ongoing investigation.

Review of Reports

SEC. 106. (a)(1) Each designated agency ethics official or Secretary concerned shall make provisions to ensure that each report filed with him under this title is reviewed within sixty days after the date of such filing, except that the Director of the Office of Government Ethics shall review only those reports required to be

transmitted to him under this title within sixty days after the date of transmittal.

(2) Each congressional ethics committee and the Judicial Conference shall make provisions to ensure that each report filed under this title is reviewed within sixty days after the date of such filing.

(b)(1) If after reviewing any report under subsection (a), the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by the congressional ethics committee, or a person designated by the Judicial Conference, as the case may be, is of the opinion that on the basis of information contained in such report the individual submitting such report is in compliance with applicable laws and regulations, he shall state such opinion on the report, and shall sign such report.

(2) If the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by the congressional ethics committee, or a person designated by the Judicial Conference, after reviewing any report under subsection (a)—

(A) believes additional information is required to be submitted, he shall notify the individual submitting such report what additional information is required and the time by which it must be submitted, or

(B) is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, afford a reasonable opportunity for a written or oral response, and after consideration of such response, reach an opinion as to whether or not, on the basis of information submitted, the individual is in compliance with such laws and regulations.

(3) If the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by a congressional ethics committee, or a person designated by the Judicial Conference, reaches an opinion under paragraph (2)(B) that an individual is not in compliance with applicable laws and regulations, the official or committee shall notify the individual of that opinion and, after an opportunity for personal consultation (if practicable), determine and notify the individual of which steps, if any, would in the opinion of such official or committee be appropriate for assuring compliance with such laws and regulations and the date by which such steps should be taken. Such steps may include, as appropriate—

(A) divestiture,

(B) restitution,

(C) the establishment of a blind trust,

(D) request for an exemption under section 208(b) of title 18, United States Code, or

(E) voluntary request for transfer, reassignment, limitation of duties, or resignation.

The use of any such steps shall be in accordance with such rules or regulations as the supervising ethics office may prescribe.

(4) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by an individual in a position in the executive branch (other than in the Foreign Service or the uniformed services), appointment to which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

(5) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by a member of the Foreign Service or the uniformed services, the Secretary concerned shall take appropriate action.

(6) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by any other officer or employee, the matter shall be referred to the head of the appropriate agency, the congressional ethics committee, or the Judicial Conference, for appropriate action; except that in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken.

(7) Each supervising ethics office may render advisory opinions interpreting this title within its respective jurisdiction. Notwithstanding any other provision of law, the individual to whom a public advisory opinion is rendered in accordance with this paragraph, and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any penalty or sanction provided by this title.

Confidential Reports and Other Additional Requirements

SEC. 107. (a)(1) Each supervising ethics office may require officers and employees under its jurisdiction (including special Government employees as defined in section 202 of title 18, United States Code) to file confidential financial disclosure reports, in such form as the supervising ethics office may prescribe. The information required to be reported under this subsection by the officers and employees of any department or agency shall be set forth in rules or regulations prescribed by the supervising ethics office, and may be less extensive than otherwise required by this title, or more extensive when determined by the supervising ethics office to be necessary and appropriate in light of sections 202

through 209 of title 18, United States Code, regulations promulgated thereunder, or the authorized activities of such officers or employees. Any individual required to file a report pursuant to section 101 shall not be required to file a confidential report pursuant to this subsection, except with respect to information which is more extensive than information otherwise required by this title. Subsections (a), (b), and (d) of section 105 shall not apply with respect to any such report.

(2) Any information required to be provided by an individual under this subsection shall be confidential and shall not be disclosed to the public.

(3) Nothing in this subsection exempts any individual otherwise covered by the requirement to file a public financial disclosure report under this title from such requirement.

(b) The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

(c) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law, Executive order, rule, or regulation.

Authority of Comptroller General

SEC. 108. (a) The Comptroller General shall have access to financial disclosure reports filed under this title for the purposes of carrying out his statutory responsibilities.

(b) No later than December 31, 1992, and regularly thereafter, the Comptroller General shall conduct a study to determine whether the provisions of this title are being carried out effectively.

Definitions

SEC. 109. For the purposes of this title, the term—

(1) “congressional ethics committees” means the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives;

(2) “dependent child” means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who

—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986;

(3) “designated agency ethics official” means an officer or employee who is designated to administer the provisions of this title within an agency; * * *

(5) “gift” means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(D) food and beverages which are not consumed in connection with a gift of overnight lodging;

(E) communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

(F) consumable products provided by home-State businesses to the offices of a reporting individual who is an elected official, if those products are intended for consumption by persons other than such reporting individual;

(6) “honoraria” has the meaning given such term in section 505 of this Act;

(7) “income” means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust; * * *

(11) “legislative branch” includes—

(A) the Architect of the Capitol;

(B) the Botanic Gardens;

(C) the Congressional Budget Office;

(D) the Government Accountability Office;

(E) the Government Printing Office;

(F) the Library of Congress;

(G) the United States Capitol Police;

(H) the Office of Technology Assessment; and

(I) any other agency, entity, office, or commission established in the legislative branch;

(12) “Member of Congress” means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

(13) “officer or employee of the Congress” means—

(A) any individual described under subparagraph (B), other than a Member of Congress or the Vice President, whose compensation is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives;

(B)(i) each officer or employee of the legislative branch (except any officer or employee of the Government Accountability Office) who, for at least 60 days, occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule;

(ii) each officer or employee of the Government Accountability Office who, for at least 60 consecutive days, occupies a position for which the rate of basic pay, minus the amount of locality pay that would have been authorized under section 5304 of title 5, United States Code (had the officer or employee been paid under the General Schedule) for the locality within which the position of such officer or employee is located (as determined by the Comptroller General), is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule; and

(iii) at least one principal assistant designated for purposes of this paragraph by each Member who does not have an employee who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule;

(14) “personal hospitality of any individual” means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(15) “reimbursement” means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(16) “relative” means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancée of the reporting individual; * * *

(18) “supervising ethics office” means—

(A) the Senate Committee on Ethics of the Senate, for Senators, officers and employees of the Senate, and other officers or employees of the legislative branch required to file financial disclosure reports with the Secretary of the Senate pursuant to section 103(h) of this title;

(B) the Committee on Standards of Official Conduct of the House of Representatives, for Members, officers and employees of the House of Representatives and other officers or employees of the legislative branch required to file financial disclosure reports with the Clerk of the House of Representatives pursuant to section 103(h) of this title;

(C) the Judicial Conference for judicial officers and judicial employees; and

(D) the Office of Government Ethics for all executive branch officers and employees; and

(19) “value” means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual.

Notice of Actions Taken to Comply with Ethics Agreements

SEC. 110. (a) In any case in which an individual agrees with that individual’s designated agency ethics official, the Office of Government Ethics, a Senate confirmation committee, a congressional ethics committee, or the Judicial Conference, to take any action to comply with this Act or any other law or regulation governing conflicts of interest of, or establishing standards of conduct applicable with respect to, officers or employees of the Government, that individual shall notify in writing the designated agency ethics official, the Office of Government Ethics, the appropriate committee of the Senate, the congressional ethics committee, or the Judicial Conference, as the case may be, of any action taken by the individual pursuant to that agreement. Such notification shall be made not later than the date specified in the agreement by which action by the individual

must be taken, or not later than three months after the date of the agreement, if no date for action is so specified.

(b) If an agreement described in subsection (a) requires that the individual recuse himself or herself from particular categories of agency or other official action, the individual shall reduce to writing those subjects regarding which the recusal agreement will apply and the process by which it will be determined whether the individual must recuse himself or herself in a specific instance. An individual shall be considered to have complied with the requirements of subsection (a) with respect to such recusal agreement if such individual files a copy of the document setting forth the information described in the preceding sentence with such individual's designated agency ethics official or the appropriate supervising ethics office within the time prescribed in the last sentence of subsection (a).

Administration of Provisions

SEC. 111. The provisions of this title shall be administered by * * *

(2) the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives, as appropriate, with regard to officers and employees described in paragraphs (9) and (10) of section 101(f). * * *

RULE XXVII

DISCLOSURE BY MEMBERS AND STAFF OF EMPLOYMENT NEGOTIATIONS

1. A Member, Delegate, or Resident Commissioner shall not directly negotiate or have any agreement of future employment or compensation, unless such Member, Delegate, or Resident Commissioner, within 3 business days after the commencement of such negotiation or agreement of future employment or compensation, files with the Committee on Ethics a statement, which must be signed by the Member, Delegate, or Resident Commissioner, regarding such

negotiations or agreement, including the name of the private entity or entities involved in such negotiations or agreement, and the date such negotiations or agreement commenced.

2. An officer or an employee of the House earning in excess of 75 percent of the salary paid to a Member shall notify the Committee on Ethics that such individual is negotiating or has any agreement of future employment or compensation.

3. The disclosure and notification under this rule shall be made within 3 business days after the commencement of such negotiation or agreement of future employment or compensation.

4. A Member, Delegate, or Resident Commissioner, and an officer or employee to whom this rule applies, shall recuse himself or herself from any matter in which there is a conflict of interest or an appearance of a conflict for that Member, Delegate, Resident Commissioner, officer, or employee under this rule and shall notify the Committee on Ethics of such recusal. A Member, Delegate, or Resident Commissioner making such recusal shall, upon such recusal, submit to the Clerk for public disclosure the statement of disclosure under clause 1 with respect to which the recusal was made.

RULE XXVIII

(RESERVED.)

RULE XXIX

GENERAL PROVISIONS

1. The provisions of law that constituted the Rules of the House at the end of the previous Congress shall govern the House in all cases to which they are applicable, and the rules of parliamentary practice comprised by Jefferson's Manual shall govern the House in all cases to which they are applicable and in which they are not inconsistent with the Rules and orders of the House.

2. In these rules words importing one gender include the other as well.

3. If a measure or matter is publicly available in electronic form at a location designated by the Committee on House Administration, it shall be considered as having been available to Members, Delegates, and the Resident Commissioner for purposes of these rules.

4. Authoritative guidance from the Committee on the Budget concerning the impact of a legislative proposition on the levels of new budget authority, outlays, direct pending, new entitlement authority and revenues may be provided by the chair of the committee.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit WW

RULES OF THE HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

RULE I

THE SPEAKER

Approval of the Journal

1. The Speaker shall take the Chair on every legislative day precisely at the hour to which the House last adjourned and immediately call the House to order. Having examined and approved the Journal of the last day's proceedings, the Speaker shall announce to the House approval thereof. The Speaker's approval of the Journal shall be deemed agreed to unless a Member, Delegate, or Resident Commissioner demands a vote thereon. If such a vote is decided in the affirmative, it shall not be subject to a motion to reconsider. If such a vote is decided in the negative, then one motion that the Journal be read shall be privileged, shall be decided without debate, and shall not be subject to a motion to reconsider.

Preservation of order

2. The Speaker shall preserve order and decorum and, in case of disturbance or disorderly conduct in the

galleries or in the lobby, may cause the same to be cleared.

Control of Capitol facilities

3. Except as otherwise provided by rule or law, the Speaker shall have general control of the Hall of the House, the corridors and passages in the part of the Capitol assigned to the use of the House, and the disposal of unappropriated rooms in that part of the Capitol.

Signature of documents

4. The Speaker shall sign all acts and joint resolutions passed by the two Houses and all writs, warrants, and subpoenas of, or issued by order of, the House. The Speaker may sign enrolled bills and joint resolutions whether or not the House is in session.

Questions of order

5. The Speaker shall decide all questions of order, subject to appeal by a Member, Delegate, or Resident Commissioner. On such an appeal a Member, Delegate, or Resident Commissioner may not speak more than once without permission of the House.

Form of a question

6. The Speaker shall rise to put a question but may state it sitting. The Speaker shall put a question in this form: “Those in favor (of the question), say ‘Aye.’”; and after

the affirmative voice is expressed, “Those opposed, say ‘No.’”. After a vote by voice under this clause, the Speaker may use such voting procedures as may be invoked under rule XX.

Discretion to vote

7. The Speaker is not required to vote in ordinary legislative proceedings, except when such vote would be decisive or when the House is engaged in voting by ballot.

Speaker pro tempore

8. (a) The Speaker may appoint a Member to perform the duties of the Chair. Except as specified in paragraph (b), such an appointment may not extend beyond three legislative days.

(b)(1) In the case of illness, the Speaker may appoint a Member to perform the duties of the Chair for a period not exceeding 10 days, subject to the approval of the House. If the Speaker is absent and has omitted to make such an appointment, then the House shall elect a Speaker pro tempore to act during the absence of the Speaker.

(2) With the approval of the House, the Speaker may appoint a Member to act as Speaker pro tempore only to sign enrolled bills and joint resolutions for a specified period of time.

(3)(A) In the case of a vacancy in the Office of Speaker, the next Member on the list described in subdivision (B) shall act as Speaker pro tempore until the election of a

Speaker or a Speaker pro tempore. Pending such election the Member acting as Speaker pro tempore may exercise such authorities of the Office of Speaker as may be necessary and appropriate to that end.

(B) As soon as practicable after the election of the Speaker and whenever appropriate thereafter, the Speaker shall deliver to the Clerk a list of Members in the order in which each shall act as Speaker pro tempore under subdivision (A).

(C) For purposes of subdivision (A), a vacancy in the Office of Speaker may exist by reason of the physical inability of the Speaker to discharge the duties of the office.

Other responsibilities

9. The Speaker, in consultation with the Minority Leader, shall develop through an appropriate entity of the House a system for drug testing in the House. The system may provide for the testing of a Member, Delegate, Resident Commissioner, officer, or employee of the House, and otherwise shall be comparable in scope to the system for drug testing in the executive branch pursuant to Executive Order 12564 (Sept. 15, 1986). The expenses of the system may be paid from applicable accounts of the House for official expenses.

Designation of travel

10. The Speaker may designate a Member, Delegate, Resident Commissioner, officer, or employee of the House to travel on the business of the House within or without the United States, whether the House is meeting, has recessed, or has adjourned. Expenses for such travel may be paid from applicable accounts of the House described in clause 1(k)(1) of rule X on vouchers approved and signed solely by the Speaker.

Committee appointment

11. The Speaker shall appoint all select, joint, and conference committees ordered by the House. At any time after an original appointment, the Speaker may remove Members, Delegates, or the Resident Commissioner from, or appoint additional Members, Delegates, or the Resident Commissioner to, a select or conference committee. In appointing Members, Delegates, or the Resident Commissioner to conference committees, the Speaker shall appoint no less than a majority who generally supported the House position as determined by the Speaker, shall name those who are primarily responsible for the legislation, and shall, to the fullest extent feasible, include the principal proponents of the major provisions of the bill or resolution passed or adopted by the House.

Recess and Convening Authorities

12. (a) To suspend the business of the House for a short time when no question is pending before the House, the

Speaker may declare a recess subject to the call of the Chair.

(b)(1) To suspend the business of the House when notified of an imminent threat to its safety, the Speaker may declare an emergency recess subject to the call of the Chair.

(2) To suspend the business of the Committee of the Whole House on the state of the Union when notified of an imminent threat to its safety, the chair of the Committee of the Whole may declare an emergency recess subject to the call of the Chair.

(c) During any recess or adjournment of not more than three days, if the Speaker is notified by the Sergeant-at-Arms of an imminent impairment of the place of reconvening at the time previously appointed, then the Speaker may, in consultation with the Minority Leader—

(1) postpone the time for reconvening within the limits of clause 4, section 5, article I of the Constitution and notify Members accordingly; or

(2) reconvene the House before the time previously appointed solely to declare the House in recess within the limits of clause 4, section 5, article I of the Constitution and notify Members accordingly.

(d) The Speaker may convene the House in a place at the seat of government other than the Hall of the House whenever, in the opinion of the Speaker, the public interest shall warrant it.

RULE II

OTHER OFFICERS AND OFFICIALS

Elections

1. There shall be elected at the commencement of each Congress, to continue in office until their successors are chosen and qualified, a Clerk, a Sergeant-at-Arms, a Chief Administrative Officer, and a Chaplain. Each of these officers shall take an oath to support the Constitution of the United States, and for the true and faithful exercise of the duties of the office to the best of the knowledge and ability of the officer, and to keep the secrets of the House. Each of these officers shall appoint all of the employees of the department concerned provided for by law. The Clerk, Sergeant-at-Arms, and Chief Administrative Officer may be removed by the House or by the Speaker.

Clerk

2. (a) At the commencement of the first session of each Congress, the Clerk shall call the Members, Delegates, and Resident Commissioner to order and proceed to record their presence by States in alphabetical order, either by call of the roll or by use of the electronic voting system. Pending the election of a Speaker or Speaker pro tempore, the Clerk shall preserve order and decorum and decide all questions of order, subject to appeal by a Member, Delegate, or Resident Commissioner.

(b) At the commencement of every regular session of Congress, the Clerk shall make and cause to be delivered to each Member, Delegate, and the Resident Commissioner a list of the reports that any officer or Department is required to make to Congress, citing the law or resolution in which the requirement may be contained and placing under the name of each officer the list of reports required to be made by such officer.

(c) The Clerk shall—

(1) note all questions of order, with the decisions thereon, the record of which shall be appended to the Journal of each session;

(2) enter on the Journal the hour at which the House adjourns;

(3) complete the distribution of the Journal to Members, Delegates, and the Resident Commissioner, together with an accurate and complete index, as soon as possible after the close of a session; and

(4) send a copy of the Journal to the executive of and to each branch of the legislature of every State as may be requested by such State officials.

(d)(1) The Clerk shall attest and affix the seal of the House to all writs, warrants, and subpoenas issued by order of the House and certify the passage of all bills and joint resolutions.

(2) The Clerk shall examine all bills, amendments, and joint resolutions after passage by the House and, in

cooperation with the Senate, examine all bills and joint resolutions that have passed both Houses to see that they are correctly enrolled and forthwith present those bills and joint resolutions that originated in the House to the President in person after their signature by the Speaker and the President of the Senate, and report to the House the fact and date of their presentment.

(e) The Clerk shall cause the calendars of the House to be distributed each legislative day.

(f) The Clerk shall—

(1) retain in the library at the Office of the Clerk for the use of the Members, Delegates, Resident Commissioner, and officers of the House, and not to be withdrawn therefrom, two copies of all the books and printed documents deposited there; and

(2) deliver to any Member, Delegate, or the Resident Commissioner an extra copy of each document requested by that Member, Delegate, or Resident Commissioner that has been printed by order of either House of Congress in any Congress in which the Member, Delegate, or Resident Commissioner served.

(g) The Clerk shall provide for the temporary absence or disability of the Clerk by designating an official in the Office of the Clerk to sign all papers that may require the official signature of the Clerk and to perform all other official acts that the Clerk may be required to perform under the rules and practices of the House, except such

official acts as are provided for by statute. Official acts performed by the designated official shall be under the name of the Clerk. The designation shall be in writing and shall be laid before the House and entered on the Journal.

(h) The Clerk may receive messages from the President and from the Senate at any time when the House is in recess or adjournment.

(i)(1) The Clerk shall supervise the staff and manage the office of a Member, Delegate, or Resident Commissioner who has died, resigned, or been expelled until a successor is elected. The Clerk shall perform similar duties in the event that a vacancy is declared by the House in any congressional district because of the incapacity of the person representing such district or other reason. When acting as a supervisory authority over such staff, the Clerk shall have authority to terminate employees and, with the approval of the Committee on House Administration, may appoint such staff as is required to operate the office until a successor is elected.

(2) For 60 days following the death of a former Speaker, the Clerk shall maintain on the House payroll, and shall supervise in the same manner, staff appointed under House Resolution 1238, Ninety-first Congress (as enacted into permanent law by chapter VIII of the Supplemental Appropriations Act, 1971) (2 U.S.C. 31b–5).

(j) In addition to any other reports required by the Speaker or the Committee on House Administration, the Clerk shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or on December 31 on the financial and operational status of each function under the jurisdiction of the Clerk. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

(k) The Clerk shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

Sergeant-at-Arms

3. (a) The Sergeant-at-Arms shall attend the House during its sittings and maintain order under the direction of the Speaker or other presiding officer. The Sergeant-at-Arms shall execute the commands of the House, and all processes issued by authority thereof, directed to the Sergeant-at-Arms by the Speaker.

(b) The symbol of the Office of the Sergeant-at-Arms shall be the mace, which shall be borne by the Sergeant-at-Arms while enforcing order on the floor.

(c) The Sergeant-at-Arms shall enforce strictly the rules relating to the privileges of the Hall of the House and be

responsible to the House for the official conduct of employees of the Office of the Sergeant-at-Arms.

(d) The Sergeant-at-Arms may not allow a person to enter the room over the Hall of the House during its sittings and, from 15 minutes before the hour of the meeting of the House each day until 10 minutes after adjournment, shall see that the floor is cleared of all persons except those privileged to remain.

(e) In addition to any other reports required by the Speaker or the Committee on House Administration, the Sergeant-at-Arms shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or on December 31 on the financial and operational status of each function under the jurisdiction of the Sergeant-at-Arms. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

(f) The Sergeant-at-Arms shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

Chief Administrative Officer

4. (a) The Chief Administrative Officer shall have operational and financial responsibility for functions as assigned by the Committee on House Administration and

shall be subject to the oversight of the Committee on House Administration.

(b) In addition to any other reports required by the Committee on House Administration, the Chief Administrative Officer shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or December 31 on the financial and operational status of each function under the jurisdiction of the Chief Administrative Officer. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

(c) The Chief Administrative Officer shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

Chaplain

5. The Chaplain shall offer a prayer at the commencement of each day's sitting of the House.

Office of Inspector General

6. (a) There is established an Office of Inspector General.

(b) The Inspector General shall be appointed for a Congress by the Speaker, the Majority Leader, and the Minority Leader, acting jointly.

(c) Subject to the policy direction and oversight of the Committee on House Administration, the Inspector General shall only—

(1) provide audit, investigative, and advisory services to the House and joint entities in a manner consistent with government-wide standards;

(2) inform the officers or other officials who are the subject of an audit of the results of that audit and suggesting appropriate curative actions;

(3) simultaneously notify the Speaker, the Majority Leader, the Minority Leader, and the chair and ranking minority member of the Committee on House Administration in the case of any financial irregularity discovered in the course of carrying out responsibilities under this clause;

(4) simultaneously submit to the Speaker, the Majority Leader, the Minority Leader, and the chair and ranking minority member of the Committee on Appropriations and the Committee on House Administration a report of each audit conducted under this clause; and

(5) report to the Committee on Ethics information involving possible violations by a Member, Delegate, Resident Commissioner, officer, or employee of the House of any rule of the House or of any law applicable to the performance of official duties or the discharge of official responsibilities that may require referral to the

appropriate Federal or State authorities under clause 3(a)(3) of rule XI.

Office of the Historian

7. There is established an Office of the Historian of the House of Representatives. The Speaker shall appoint and set the annual rate of pay for employees of the Office of the Historian.

Office of General Counsel

8. There is established an Office of General Counsel for the purpose of providing legal assistance and representation to the House. Legal assistance and representation shall be provided without regard to political affiliation. The Office of General Counsel shall function pursuant to the direction of the Speaker, who shall consult with a Bipartisan Legal Advisory Group, which shall include the majority and minority leaderships. The Speaker shall appoint and set the annual rate of pay for employees of the Office of General Counsel.

RULE III

THE MEMBERS, DELEGATES, AND RESIDENT COMMISSIONER OF
PUERTO RICO

Voting

1. Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily

prevented, and shall vote on each question put, unless having a direct personal or pecuniary interest in the event of such question.

2. (a) A Member may not authorize any other person to cast the vote of such Member or record the presence of such Member in the House or the Committee of the Whole House on the state of the Union.

(b) No other person may cast a Member's vote or record a Member's presence in the House or the Committee of the Whole House on the state of the Union.

Delegates and the Resident Commissioner

3. (a) Each Delegate and the Resident Commissioner shall be elected to serve on standing committees in the same manner as Members and shall possess in such committees the same powers and privileges as the other members of the committee.

(b) The Delegates and the Resident Commissioner may be appointed to any select committee and to any conference committee.

RULE IV

THE HALL OF THE HOUSE

Use and admittance

1. The Hall of the House shall be used only for the legislative business of the House and for caucus and conference meetings of its Members, except when the

House agrees to take part in any ceremonies to be observed therein.

2. (a) Only the following persons shall be admitted to the Hall of the House or rooms leading thereto:

(1) Members of Congress, Members-elect, and contestants in election cases during the pendency of their cases on the floor.

(2) The Delegates and the Resident Commissioner.

(3) The President and Vice President of the United States and their private secretaries.

(4) Justices of the Supreme Court.

(5) Elected officers and minority employees nominated as elected officers of the House.

(6) The Parliamentarian.

(7) Staff of committees when business from their committee is under consideration, and staff of the respective party leaderships when so assigned with the approval of the Speaker.

(8) Not more than one person from the staff of a Member, Delegate, or Resident Commissioner when that Member, Delegate, or Resident Commissioner has an amendment under consideration (subject to clause 5).

(9) The Architect of the Capitol.

(10) The Librarian of Congress and the assistant in charge of the Law Library.

(11) The Secretary and Sergeant-at-Arms of the Senate.

(12) Heads of departments.

(13) Foreign ministers.

(14) Governors of States.

(15) Former Members, Delegates, and Resident Commissioners; former Parliamentarians of the House; and former elected officers and minority employees nominated as elected officers of the House (subject to clause 4).

(16) One attorney to accompany a Member, Delegate, or Resident Commissioner who is the respondent in an investigation undertaken by the Committee on Ethics when a recommendation of that committee is under consideration in the House.

(17) Such persons as have, by name, received the thanks of Congress.

(b) The Speaker may not entertain a unanimous consent request or a motion to suspend this clause or clauses 1, 3, 4, or 5.

3. (a) Except as provided in paragraph (b), all persons not entitled to the privilege of the floor during the session shall be excluded at all times from the Hall of the House and the cloakrooms.

(b) Until 15 minutes of the hour of the meeting of the House, persons employed in its service, accredited members of the press entitled to admission to the press

gallery, and other persons on request of a Member, Delegate, or Resident Commissioner by card or in writing, may be admitted to the Hall of the House.

4. (a) A former Member, Delegate, or Resident Commissioner; a former Parliamentarian of the House; or a former elected officer of the House or former minority employee nominated as an elected officer of the House shall not be entitled to the privilege of admission to the Hall of the House and rooms leading thereto if such individual—

(1) is a registered lobbyist or agent of a foreign principal as those terms are defined in clause 5 of rule XXV;

(2) has any direct personal or pecuniary interest in any legislative measure pending before the House or reported by a committee; or

(3) is in the employ of or represents any party or organization for the purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any legislative proposal.

(b) The Speaker may promulgate regulations to carry out this rule including regulations that exempt ceremonial or educational functions from the restrictions of this clause.

5. A person from the staff of a Member, Delegate, or Resident Commissioner may be admitted to the Hall of the House or rooms leading thereto under clause 2 only

upon prior notice to the Speaker. Such persons, and persons from the staff of committees admitted under clause 2, may not engage in efforts in the Hall of the House or rooms leading thereto to influence Members with regard to the legislation being amended. Such persons shall remain at the desk and are admitted only to advise the Member, Delegate, Resident Commissioner, or committee responsible for their admission. A person who violates this clause may be excluded during the session from the Hall of the House and rooms leading thereto by the Speaker.

Gallery

6. (a) The Speaker shall set aside a portion of the west gallery for the use of the President, the members of the Cabinet, justices of the Supreme Court, foreign ministers and suites, and the members of their respective families. The Speaker shall set aside another portion of the same gallery for the accommodation of persons to be admitted on the cards of Members, Delegates, or the Resident Commissioner.

(b) The Speaker shall set aside the southerly half of the east gallery for the use of the families of Members of Congress. The Speaker shall control one bench. On the request of a Member, Delegate, Resident Commissioner, or Senator, the Speaker shall issue a card of admission to the family of such individual, which may include their visitors. No other person shall be admitted to this section.

Prohibition on campaign contributions

7. A Member, Delegate, Resident Commissioner, officer, or employee of the House, or any other person entitled to admission to the Hall of the House or rooms leading thereto by this rule, may not knowingly distribute a political campaign contribution in the Hall of the House or rooms leading thereto.

RULE V

BROADCASTING THE HOUSE

1. The Speaker shall administer, direct, and control a system for closed-circuit viewing of floor proceedings of the House in the offices of all Members, Delegates, the Resident Commissioner, and committees and in such other places in the Capitol and the House Office Buildings as the Speaker considers appropriate. Such system may include other communications functions as the Speaker considers appropriate. Any such communications shall be subject to rules and regulations issued by the Speaker.

2. (a) The Speaker shall administer, direct, and control a system for complete and unedited audio and visual broadcasting and recording of the floor proceedings of the House. The Speaker shall provide for the distribution of such broadcasts and recordings to news media, for the storage of audio and video recordings of the proceedings,

and for the closed-captioning of the proceedings for hearing-impaired persons.

(b) All television and radio broadcasting stations, networks, services, and systems (including cable systems) that are accredited to the House Radio and Television Correspondents' Galleries, and all radio and television correspondents who are so accredited, shall be provided access to the live coverage of the House.

(c) Coverage made available under this clause, including any recording thereof—

(1) may not be used for any partisan political campaign purpose;

(2) may not be used in any commercial advertisement; and

(3) may not be broadcast with commercial sponsorship except as part of a bona fide news program or public affairs documentary program.

3. The Speaker may delegate any of the responsibilities under this rule to such legislative entity as the Speaker considers appropriate.

RULE VI

OFFICIAL REPORTERS AND NEWS MEDIA GALLERIES

Official reporters

1. Subject to the direction and control of the Speaker, the Clerk shall appoint, and may remove for cause, the

official reporters of the House, including stenographers of committees, and shall supervise the execution of their duties.

News media galleries

2. A portion of the gallery over the Speaker's chair, as may be necessary to accommodate representatives of the press wishing to report debates and proceedings, shall be set aside for their use. Reputable reporters and correspondents shall be admitted thereto under such regulations as the Speaker may prescribe from time to time. The Standing Committee of Correspondents for the Press Gallery, and the Executive Committee of Correspondents for the Periodical Press Gallery, shall supervise such galleries, including the designation of its employees, subject to the direction and control of the Speaker. The Speaker may admit to the floor, under such regulations as the Speaker may prescribe, not more than one representative of each press association.

3. A portion of the gallery as may be necessary to accommodate reporters of news to be disseminated by radio, television, and similar means of transmission, wishing to report debates and proceedings, shall be set aside for their use. Reputable reporters and correspondents shall be admitted thereto under such regulations as the Speaker may prescribe. The Executive Committee of the Radio and Television Correspondents' Galleries shall supervise such gallery, including the

designation of its employees, subject to the direction and control of the Speaker. The Speaker may admit to the floor, under such regulations as the Speaker may prescribe, not more than one representative of each media outlet.

RULE VII

RECORDS OF THE HOUSE

Archiving

1. (a) At the end of each Congress, the chair of each committee shall transfer to the Clerk any noncurrent records of such committee, including the subcommittees thereof.

(b) At the end of each Congress, each officer of the House elected under rule II shall transfer to the Clerk any noncurrent records made or acquired in the course of the duties of such officer.

2. The Clerk shall deliver the records transferred under clause 1, together with any other noncurrent records of the House, to the Archivist of the United States for preservation at the National Archives and Records Administration. Records so delivered are the permanent property of the House and remain subject to this rule and any order of the House.

Public availability

3. (a) The Clerk shall authorize the Archivist to make records delivered under clause 2 available for public use, subject to clause 4(b) and any order of the House.

(b)(1) A record shall immediately be made available if it was previously made available for public use by the House or a committee or a subcommittee.

(2) An investigative record that contains personal data relating to a specific living person (the disclosure of which would be an unwarranted invasion of personal privacy), an administrative record relating to personnel, or a record relating to a hearing that was closed under clause 2(g)(2) of rule XI shall be made available if it has been in existence for 50 years.

(3) A record for which a time, schedule, or condition for availability is specified by order of the House shall be made available in accordance with that order. Except as otherwise provided by order of the House, a record of a committee for which a time, schedule, or condition for availability is specified by order of the committee (entered during the Congress in which the record is made or acquired by the committee) shall be made available in accordance with the order of the committee.

(4) A record (other than a record referred to in subparagraph (1), (2), or (3)) shall be made available if it has been in existence for 30 years.

4. (a) A record may not be made available for public use under clause 3 if the Clerk determines that such

availability would be detrimental to the public interest or inconsistent with the rights and privileges of the House. The Clerk shall notify in writing the chair and ranking minority member of the Committee on House Administration of any such determination.

(b) A determination of the Clerk under paragraph (a) is subject to later orders of the House and, in the case of a record of a committee, later orders of the committee.

5. (a) This rule does not supersede rule VIII or clause 11 of rule X and does not authorize the public disclosure of any record if such disclosure is prohibited by law or executive order of the President.

(b) The Committee on House Administration may prescribe guidelines and regulations governing the applicability and implementation of this rule.

(c) A committee may withdraw from the National Archives and Records Administration any record of the committee delivered to the Archivist under this rule. Such a withdrawal shall be on a temporary basis and for official use of the committee.

Definition of record

6. In this rule the term “record” means any official, permanent record of the House (other than a record of an individual Member, Delegate, or Resident Commissioner), including—

(a) with respect to a committee, an official, permanent record of the committee (including any

record of a legislative, oversight, or other activity of such committee or a subcommittee thereof); and

(b) with respect to an officer of the House elected under rule II, an official, permanent record made or acquired in the course of the duties of such officer.

Withdrawal of papers

7. A memorial or other paper presented to the House may not be withdrawn from its files without its leave. If withdrawn certified copies thereof shall be left in the Office of the Clerk. When an act passes for the settlement of a claim, the Clerk may transmit to the officer charged with the settlement thereof the papers on file in the Office of the Clerk relating to such claim. The Clerk may lend temporarily to an officer or bureau of the executive departments any papers on file in the Office of the Clerk relating to any matter pending before such officer or bureau, taking proper receipt therefor.

RULE VIII

RESPONSE TO SUBPOENAS

1. When a Member, Delegate, Resident Commissioner, officer, or employee of the House is properly served with a judicial or administrative subpoena or judicial order directing appearance as a witness relating to the official functions of the House or for the production or disclosure of any document relating to the official functions of the

House, such Member, Delegate, Resident Commissioner, officer, or employee shall comply, consistently with the privileges and rights of the House, with the judicial or administrative subpoena or judicial order as hereinafter provided, unless otherwise determined under this rule.

2. Upon receipt of a properly served judicial or administrative subpoena or judicial order described in clause 1, a Member, Delegate, Resident Commissioner, officer, or employee of the House shall promptly notify the Speaker of its receipt in writing. Such notification shall promptly be laid before the House by the Speaker. During a period of recess or adjournment of longer than three days, notification to the House is not required until the reconvening of the House, when the notification shall promptly be laid before the House by the Speaker.

3. Once notification has been laid before the House, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall determine whether the issuance of the judicial or administrative subpoena or judicial order described in clause 1 is a proper exercise of jurisdiction by the court, is material and relevant, and is consistent with the privileges and rights of the House. Such Member, Delegate, Resident Commissioner, officer, or employee shall notify the Speaker before seeking judicial determination of these matters.

4. Upon determination whether a judicial or administrative subpoena or judicial order described in

clause 1 is a proper exercise of jurisdiction by the court, is material and relevant, and is consistent with the privileges and rights of the House, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall immediately notify the Speaker of the determination in writing.

5. The Speaker shall inform the House of a determination whether a judicial or administrative subpoena or judicial order described in clause 1 is a proper exercise of jurisdiction by the court, is material and relevant, and is consistent with the privileges and rights of the House. In so informing the House, the Speaker shall generally describe the records or information sought. During a period of recess or adjournment of longer than three days, such notification is not required until the reconvening of the House, when the notification shall promptly be laid before the House by the Speaker.

6. (a) Except as specified in paragraph (b) or otherwise ordered by the House, upon notification to the House that a judicial or administrative subpoena or judicial order described in clause 1 is a proper exercise of jurisdiction by the court, is material and relevant, and is consistent with the privileges and rights of the House, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall comply with the judicial or administrative subpoena or judicial order by supplying certified copies.

(b) Under no circumstances may minutes or transcripts of executive sessions, or evidence of witnesses in respect thereto, be disclosed or copied. During a period of recess or adjournment of longer than three days, the Speaker may authorize compliance or take such other action as the Speaker considers appropriate under the circumstances. Upon the reconvening of the House, all matters that transpired under this clause shall promptly be laid before the House by the Speaker.

7. A copy of this rule shall be transmitted by the Clerk to the court when a judicial or administrative subpoena or judicial order described in clause 1 is issued and served on a Member, Delegate, Resident Commissioner, officer, or employee of the House.

8. Nothing in this rule shall be construed to deprive, condition, or waive the constitutional or legal privileges or rights applicable or available at any time to a Member, Delegate, Resident Commissioner, officer, or employee of the House, or of the House itself, or the right of such Member, Delegate, Resident Commissioner, officer, or employee, or of the House itself, to assert such privileges or rights before a court in the United States.

RULE IX

QUESTIONS OF PRIVILEGE

1. Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; and second, those affecting the rights, reputation, and conduct of Members, Delegates, or the Resident Commissioner, individually, in their representative capacity only.

2. (a)(1) A resolution reported as a question of the privileges of the House, or offered from the floor by the Majority Leader or the Minority Leader as a question of the privileges of the House, or offered as privileged under clause 1, section 7, article I of the Constitution, shall have precedence of all other questions except motions to adjourn. A resolution offered from the floor by a Member, Delegate, or Resident Commissioner other than the Majority Leader or the Minority Leader as a question of the privileges of the House shall have precedence of all other questions except motions to adjourn only at a time or place, designated by the Speaker, in the legislative schedule within two legislative days after the day on which the proponent announces to the House an intention to offer the resolution and the form of the resolution. Oral announcement of the form of the resolution may be dispensed with by unanimous consent.

(2) The time allotted for debate on a resolution offered from the floor as a question of the privileges of the House shall be equally divided between (A) the proponent of the

resolution, and (B) the Majority Leader, the Minority Leader, or a designee, as determined by the Speaker.

(b) A question of personal privilege shall have precedence of all other questions except motions to adjourn.

RULE X

ORGANIZATION OF COMMITTEES

Committees and their legislative jurisdictions

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:

(a) Committee on Agriculture.

(1) Adulteration of seeds, insect pests, and protection of birds and animals in forest reserves.

(2) Agriculture generally.

(3) Agricultural and industrial chemistry.

(4) Agricultural colleges and experiment stations.

(5) Agricultural economics and research.

(6) Agricultural education extension services.

(7) Agricultural production and marketing and stabilization of prices of agricultural products, and

commodities (not including distribution outside of the United States).

- (8) Animal industry and diseases of animals.
- (9) Commodity exchanges.
- (10) Crop insurance and soil conservation.
- (11) Dairy industry.
- (12) Entomology and plant quarantine.
- (13) Extension of farm credit and farm security.
- (14) Inspection of livestock, poultry, meat products, and seafood and seafood products.
- (15) Forestry in general and forest reserves other than those created from the public domain.
- (16) Human nutrition and home economics.
- (17) Plant industry, soils, and agricultural engineering.
- (18) Rural electrification.
- (19) Rural development.
- (20) Water conservation related to activities of the Department of Agriculture.

(b) Committee on Appropriations.

- (1) Appropriation of the revenue for the support of the Government.
- (2) Rescissions of appropriations contained in appropriation Acts.
- (3) Transfers of unexpended balances.
- (4) Bills and joint resolutions reported by other committees that provide new entitlement authority as

defined in section 3(9) of the Congressional Budget Act of 1974 and referred to the committee under clause 4(a)(2).

(c) Committee on Armed Services.

(1) Ammunition depots; forts; arsenals; and Army, Navy, and Air Force reservations and establishments.

(2) Common defense generally.

(3) Conservation, development, and use of naval petroleum and oil shale reserves.

(4) The Department of Defense generally, including the Departments of the Army, Navy, and Air Force, generally.

(5) Interoceanic canals generally, including measures relating to the maintenance, operation, and administration of interoceanic canals.

(6) Merchant Marine Academy and State Maritime Academies.

(7) Military applications of nuclear energy.

(8) Tactical intelligence and intelligence-related activities of the Department of Defense.

(9) National security aspects of merchant marine, including financial assistance for the construction and operation of vessels, maintenance of the U.S. shipbuilding and ship repair industrial base, cabotage, cargo preference, and merchant marine officers and seamen as these matters relate to the national security.

(10) Pay, promotion, retirement, and other benefits and privileges of members of the armed forces.

(11) Scientific research and development in support of the armed services.

(12) Selective service.

(13) Size and composition of the Army, Navy, Marine Corps, and Air Force.

(14) Soldiers' and sailors' homes.

(15) Strategic and critical materials necessary for the common defense.

(16) Cemeteries administered by the Department of Defense.

(d) Committee on the Budget.

(1) Concurrent resolutions on the budget (as defined in section 3(4) of the Congressional Budget Act of 1974), other matters required to be referred to the committee under titles III and IV of that Act, and other measures setting forth appropriate levels of budget totals for the United States Government.

(2) Budget process generally.

(3) Establishment, extension, and enforcement of special controls over the Federal budget, including the budgetary treatment of off-budget Federal agencies and measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(e) Committee on Education and the Workforce.

- (1) Child labor.
- (2) Gallaudet University and Howard University and Hospital.
- (3) Convict labor and the entry of goods made by convicts into interstate commerce.
- (4) Food programs for children in schools.
- (5) Labor standards and statistics.
- (6) Education or labor generally.
- (7) Mediation and arbitration of labor disputes.
- (8) Regulation or prevention of importation of foreign laborers under contract.
- (9) Workers' compensation.
- (10) Vocational rehabilitation.
- (11) Wages and hours of labor.
- (12) Welfare of miners.
- (13) Work incentive programs.

(f) Committee on Energy and Commerce.

- (1) Biomedical research and development.
- (2) Consumer affairs and consumer protection.
- (3) Health and health facilities (except health care supported by payroll deductions).
- (4) Interstate energy compacts.
- (5) Interstate and foreign commerce generally.
- (6) Exploration, production, storage, supply, marketing, pricing, and regulation of energy

resources, including all fossil fuels, solar energy, and other unconventional or renewable energy resources.

(7) Conservation of energy resources.

(8) Energy information generally.

(9) The generation and marketing of power (except by federally chartered or Federal regional power marketing authorities); reliability and interstate transmission of, and ratemaking for, all power; and siting of generation facilities (except the installation of interconnections between Government waterpower projects).

(10) General management of the Department of Energy and management and all functions of the Federal Energy Regulatory Commission.

(11) National energy policy generally.

(12) Public health and quarantine.

(13) Regulation of the domestic nuclear energy industry, including regulation of research and development reactors and nuclear regulatory research.

(14) Regulation of interstate and foreign communications.

(15) Travel and tourism.

The committee shall have the same jurisdiction with respect to regulation of nuclear facilities and of use of nuclear energy as it has with respect to regulation of nonnuclear facilities and of use of nonnuclear energy.

(g) Committee on Ethics.

The Code of Official Conduct.

(h) Committee on Financial Services.

(1) Banks and banking, including deposit insurance and Federal monetary policy.

(2) Economic stabilization, defense production, renegotiation, and control of the price of commodities, rents, and services.

(3) Financial aid to commerce and industry (other than transportation).

(4) Insurance generally.

(5) International finance.

(6) International financial and monetary organizations.

(7) Money and credit, including currency and the issuance of notes and redemption thereof; gold and silver, including the coinage thereof; valuation and revaluation of the dollar.

(8) Public and private housing.

(9) Securities and exchanges.

(10) Urban development.

(i) Committee on Foreign Affairs.

(1) Relations of the United States with foreign nations generally.

(2) Acquisition of land and buildings for embassies and legations in foreign countries.

(3) Establishment of boundary lines between the United States and foreign nations.

(4) Export controls, including nonproliferation of nuclear technology and nuclear hardware.

(5) Foreign loans.

(6) International commodity agreements (other than those involving sugar), including all agreements for cooperation in the export of nuclear technology and nuclear hardware.

(7) International conferences and congresses.

(8) International education.

(9) Intervention abroad and declarations of war.

(10) Diplomatic service.

(11) Measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad.

(12) International economic policy.

(13) Neutrality.

(14) Protection of American citizens abroad and expatriation.

(15) The American National Red Cross.

(16) Trading with the enemy.

(17) United Nations organizations.

(j) Committee on Homeland Security.

(1) Overall homeland security policy.

(2) Organization, administration, and general management of the Department of Homeland

Security.

(3) Functions of the Department of Homeland Security relating to the following:

(A) Border and port security (except immigration policy and non-border enforcement).

(B) Customs (except customs revenue).

(C) Integration, analysis, and dissemination of homeland security information.

(D) Domestic preparedness for and collective response to terrorism.

(E) Research and development.

(F) Transportation security.

(k) Committee on House Administration.

(1) Appropriations from accounts for committee salaries and expenses (except for the Committee on Appropriations); House Information Resources; and allowance and expenses of Members, Delegates, the Resident Commissioner, officers, and administrative offices of the House.

(2) Auditing and settling of all accounts described in subparagraph (1).

(3) Employment of persons by the House, including staff for Members, Delegates, the Resident Commissioner, and committees; and reporters of debates, subject to rule VI.

(4) Except as provided in paragraph (r)(11), the Library of Congress, including management thereof;

the House Library; statuary and pictures; acceptance or purchase of works of art for the Capitol; the Botanic Garden; and purchase of books and manuscripts.

(5) The Smithsonian Institution and the incorporation of similar institutions (except as provided in paragraph (r)(11)).

(6) Expenditure of accounts described in subparagraph (1).

(7) Franking Commission.

(8) Printing and correction of the Congressional Record.

(9) Accounts of the House generally.

(10) Assignment of office space for Members, Delegates, the Resident Commissioner, and committees.

(11) Disposition of useless executive papers.

(12) Election of the President, Vice President, Members, Senators, Delegates, or the Resident Commissioner; corrupt practices; contested elections; credentials and qualifications; and Federal elections generally.

(13) Services to the House, including the House Restaurant, parking facilities, and administration of the House Office Buildings and of the House wing of the Capitol.

(14) Travel of Members, Delegates, and the Resident Commissioner.

(15) Raising, reporting, and use of campaign contributions for candidates for office of Representative, of Delegate, and of Resident Commissioner.

(16) Compensation, retirement, and other benefits of the Members, Delegates, the Resident Commissioner, officers, and employees of Congress.

(1) Committee on the Judiciary.

(1) The judiciary and judicial proceedings, civil and criminal.

(2) Administrative practice and procedure.

(3) Apportionment of Representatives.

(4) Bankruptcy, mutiny, espionage, and counterfeiting.

(5) Civil liberties.

(6) Constitutional amendments.

(7) Criminal law enforcement.

(8) Federal courts and judges, and local courts in the Territories and possessions.

(9) Immigration policy and non-border enforcement.

(10) Interstate compacts generally.

(11) Claims against the United States.

(12) Meetings of Congress; attendance of Members, Delegates, and the Resident

Commissioner; and their acceptance of incompatible offices.

(13) National penitentiaries.

(14) Patents, the Patent and Trademark Office, copyrights, and trademarks.

(15) Presidential succession.

(16) Protection of trade and commerce against unlawful restraints and monopolies.

(17) Revision and codification of the Statutes of the United States.

(18) State and territorial boundary lines.

(19) Subversive activities affecting the internal security of the United States.

(m) Committee on Natural Resources.

(1) Fisheries and wildlife, including research, restoration, refuges, and conservation.

(2) Forest reserves and national parks created from the public domain.

(3) Forfeiture of land grants and alien ownership, including alien ownership of mineral lands.

(4) Geological Survey.

(5) International fishing agreements.

(6) Interstate compacts relating to apportionment of waters for irrigation purposes.

(7) Irrigation and reclamation, including water supply for reclamation projects and easements of public lands for irrigation projects; and acquisition of

private lands when necessary to complete irrigation projects.

(8) Native Americans generally, including the care and allotment of Native American lands and general and special measures relating to claims that are paid out of Native American funds.

(9) Insular areas of the United States generally (except those affecting the revenue and appropriations).

(10) Military parks and battlefields, national cemeteries administered by the Secretary of the Interior, parks within the District of Columbia, and the erection of monuments to the memory of individuals.

(11) Mineral land laws and claims and entries thereunder.

(12) Mineral resources of public lands.

(13) Mining interests generally.

(14) Mining schools and experimental stations.

(15) Marine affairs, including coastal zone management (except for measures relating to oil and other pollution of navigable waters).

(16) Oceanography.

(17) Petroleum conservation on public lands and conservation of the radium supply in the United States.

(18) Preservation of prehistoric ruins and objects of interest on the public domain.

(19) Public lands generally, including entry, easements, and grazing thereon.

(20) Relations of the United States with Native Americans and Native American tribes.

(21) Trans-Alaska Oil Pipeline (except ratemaking).

(n) Committee on Oversight and Government Reform.

(1) Federal civil service, including intergovernmental personnel; and the status of officers and employees of the United States, including their compensation, classification, and retirement.

(2) Municipal affairs of the District of Columbia in general (other than appropriations).

(3) Federal paperwork reduction.

(4) Government management and accounting measures generally.

(5) Holidays and celebrations.

(6) Overall economy, efficiency, and management of government operations and activities, including Federal procurement.

(7) National archives.

(8) Population and demography generally, including the Census.

(9) Postal service generally, including transportation of the mails.

(10) Public information and records.

(11) Relationship of the Federal Government to the States and municipalities generally.

(12) Reorganizations in the executive branch of the Government.

(o) Committee on Rules.

(1) Rules and joint rules (other than those relating to the Code of Official Conduct) and the order of business of the House.

(2) Recesses and final adjournments of Congress.

(p) Committee on Science, Space, and Technology.

(1) All energy research, development, and demonstration, and projects therefor, and all federally owned or operated nonmilitary energy laboratories.

(2) Astronautical research and development, including resources, personnel, equipment, and facilities.

(3) Civil aviation research and development.

(4) Environmental research and development.

(5) Marine research.

(6) Commercial application of energy technology.

(7) National Institute of Standards and Technology, standardization of weights and measures, and the metric system.

(8) National Aeronautics and Space Administration.

(9) National Space Council.

(10) National Science Foundation.

(11) National Weather Service.

(12) Outer space, including exploration and control thereof.

(13) Science scholarships.

(14) Scientific research, development, and demonstration, and projects therefor.

(q) Committee on Small Business.

(1) Assistance to and protection of small business, including financial aid, regulatory flexibility, and paperwork reduction.

(2) Participation of small-business enterprises in Federal procurement and Government contracts.

(r) Committee on Transportation and Infrastructure.

(1) Coast Guard, including lifesaving service, lighthouses, lightships, ocean derelicts, and the Coast Guard Academy.

(2) Federal management of emergencies and natural disasters.

(3) Flood control and improvement of rivers and harbors.

(4) Inland waterways.

(5) Inspection of merchant marine vessels, lights and signals, lifesaving equipment, and fire protection on such vessels.

(6) Navigation and laws relating thereto, including pilotage.

(7) Registering and licensing of vessels and small boats.

(8) Rules and international arrangements to prevent collisions at sea.

(9) The Capitol Building and the Senate and House Office Buildings.

(10) Construction or maintenance of roads and post roads (other than appropriations therefor).

(11) Construction or reconstruction, maintenance, and care of buildings and grounds of the Botanic Garden, the Library of Congress, and the Smithsonian Institution.

(12) Merchant marine (except for national security aspects thereof).

(13) Purchase of sites and construction of post offices, customhouses, Federal courthouses, and Government buildings within the District of Columbia.

(14) Oil and other pollution of navigable waters, including inland, coastal, and ocean waters.

(15) Marine affairs, including coastal zone management, as they relate to oil and other pollution

of navigable waters.

(16) Public buildings and occupied or improved grounds of the United States generally.

(17) Public works for the benefit of navigation, including bridges and dams (other than international bridges and dams).

(18) Related transportation regulatory agencies (except the Transportation Security Administration).

(19) Roads and the safety thereof.

(20) Transportation, including civil aviation, railroads, water transportation, transportation safety (except automobile safety and transportation security functions of the Department of Homeland Security), transportation infrastructure, transportation labor, and railroad retirement and unemployment (except revenue measures related thereto).

(21) Water power.

(s) Committee on Veterans' Affairs.

(1) Veterans' measures generally.

(2) Cemeteries of the United States in which veterans of any war or conflict are or may be buried, whether in the United States or abroad (except cemeteries administered by the Secretary of the Interior).

(3) Compensation, vocational rehabilitation, and education of veterans.

(4) Life insurance issued by the Government on account of service in the Armed Forces.

(5) Pensions of all the wars of the United States, general and special.

(6) Readjustment of servicemembers to civil life.

(7) Servicemembers' civil relief.

(8) Veterans' hospitals, medical care, and treatment of veterans.

(t) Committee on Ways and Means.

(1) Customs revenue, collection districts, and ports of entry and delivery.

(2) Reciprocal trade agreements.

(3) Revenue measures generally.

(4) Revenue measures relating to insular possessions.

(5) Bonded debt of the United States, subject to the last sentence of clause 4(f).

(6) Deposit of public monies.

(7) Transportation of dutiable goods.

(8) Tax exempt foundations and charitable trusts.

(9) National social security (except health care and facilities programs that are supported from general revenues as opposed to payroll deductions and except work incentive programs).

General oversight responsibilities

2. (a) The various standing committees shall have general oversight responsibilities as provided in paragraph

(b) in order to assist the House in—

(1) its analysis, appraisal, and evaluation of—

(A) the application, administration, execution, and effectiveness of Federal laws; and

(B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and

(2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.

(b)(1) In order to determine whether laws and programs addressing subjects within the jurisdiction of a committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (other than the Committee on Appropriations) shall review and study on a continuing basis—

(A) the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;

(B) the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;

(C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its

jurisdiction (whether or not a bill or resolution has been introduced with respect thereto); and

(D) future research and forecasting on subjects within its jurisdiction.

(2) Each committee to which subparagraph (1) applies having more than 20 members shall establish an oversight subcommittee, or require its subcommittees to conduct oversight in their respective jurisdictions, to assist in carrying out its responsibilities under this clause. The establishment of an oversight subcommittee does not limit the responsibility of a subcommittee with legislative jurisdiction in carrying out its oversight responsibilities.

(c) Each standing committee shall review and study on a continuing basis the impact or probable impact of tax policies affecting subjects within its jurisdiction as described in clauses 1 and 3.

(d)(1) Not later than February 15 of the first session of a Congress, each standing committee shall, in a meeting that is open to the public and with a quorum present, adopt its oversight plan for that Congress. Such plan shall be submitted simultaneously to the Committee on Oversight and Government Reform and to the Committee on House Administration. In developing its plan each committee shall, to the maximum extent feasible—

(A) consult with other committees that have jurisdiction over the same or related laws, programs, or agencies within its jurisdiction with the objective of

ensuring maximum coordination and cooperation among committees when conducting reviews of such laws, programs, or agencies and include in its plan an explanation of steps that have been or will be taken to ensure such coordination and cooperation;

(B) review specific problems with Federal rules, regulations, statutes, and court decisions that are ambiguous, arbitrary, or nonsensical, or that impose severe financial burdens on individuals;

(C) give priority consideration to including in its plan the review of those laws, programs, or agencies operating under permanent budget authority or permanent statutory authority;

(D) have a view toward ensuring that all significant laws, programs, or agencies within its jurisdiction are subject to review every 10 years;

(E) have a view toward insuring against duplication of Federal programs; and

(F) include proposals to cut or eliminate programs, including mandatory spending programs, that are inefficient, duplicative, outdated, or more appropriately administered by State or local governments.

(2) Not later than March 31 in the first session of a Congress, after consultation with the Speaker, the Majority Leader, and the Minority Leader, the Committee on Oversight and Government Reform shall report to the House the oversight plans submitted by committees

together with any recommendations that it, or the House leadership group described above, may make to ensure the most effective coordination of oversight plans and otherwise to achieve the objectives of this clause.

(e) The Speaker, with the approval of the House, may appoint special ad hoc oversight committees for the purpose of reviewing specific matters within the jurisdiction of two or more standing committees.

Special oversight functions

3. (a) The Committee on Appropriations shall conduct such studies and examinations of the organization and operation of executive departments and other executive agencies (including an agency the majority of the stock of which is owned by the United States) as it considers necessary to assist it in the determination of matters within its jurisdiction.

(b) The Committee on Armed Services shall review and study on a continuing basis laws, programs, and Government activities relating to international arms control and disarmament and the education of military dependents in schools.

(c) The Committee on the Budget shall study on a continuing basis the effect on budget outlays of relevant existing and proposed legislation and report the results of such studies to the House on a recurring basis.

(d) The Committee on Education and the Workforce shall review, study, and coordinate on a continuing basis

laws, programs, and Government activities relating to domestic educational programs and institutions and programs of student assistance within the jurisdiction of other committees.

(e) The Committee on Energy and Commerce shall review and study on a continuing basis laws, programs, and Government activities relating to nuclear and other energy and nonmilitary nuclear energy research and development including the disposal of nuclear waste.

(f) The Committee on Foreign Affairs shall review and study on a continuing basis laws, programs, and Government activities relating to customs administration, intelligence activities relating to foreign policy, international financial and monetary organizations, and international fishing agreements.

(g)(1) The Committee on Homeland Security shall review and study on a continuing basis all Government activities relating to homeland security, including the interaction of all departments and agencies with the Department of Homeland Security.

(2) In addition, the committee shall review and study on a primary and continuing basis all Government activities, programs, and organizations related to homeland security that fall within its primary legislative jurisdiction.

(h) The Committee on Natural Resources shall review and study on a continuing basis laws, programs, and Government activities relating to Native Americans.

(i) The Committee on Oversight and Government Reform shall review and study on a continuing basis the operation of Government activities at all levels with a view to determining their economy and efficiency.

(j) The Committee on Rules shall review and study on a continuing basis the congressional budget process, and the committee shall report its findings and recommendations to the House from time to time.

(k) The Committee on Science, Space, and Technology shall review and study on a continuing basis laws, programs, and Government activities relating to nonmilitary research and development.

(l) The Committee on Small Business shall study and investigate on a continuing basis the problems of all types of small business.

(m) The Permanent Select Committee on Intelligence shall review and study on a continuing basis laws, programs, and activities of the intelligence community and shall review and study on an exclusive basis the sources and methods of entities described in clause 11(b)(1)(A).

Additional functions of committees

4. (a)(1)(A) The Committee on Appropriations shall, within 30 days after the transmittal of the Budget to Congress each year, hold hearings on the Budget as a

whole with particular reference to—

(i) the basic recommendations and budgetary policies of the President in the presentation of the Budget; and

(ii) the fiscal, financial, and economic assumptions used as bases in arriving at total estimated expenditures and receipts.

(B) In holding hearings under subdivision (A), the committee shall receive testimony from the Secretary of the Treasury, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and such other persons as the committee may desire.

(C) A hearing under subdivision (A), or any part thereof, shall be held in open session, except when the committee, in open session and with a quorum present, determines by record vote that the testimony to be taken at that hearing on that day may be related to a matter of national security. The committee may by the same procedure close one subsequent day of hearing. A transcript of all such hearings shall be printed and a copy thereof furnished to each Member, Delegate, and the Resident Commissioner.

(D) A hearing under subdivision (A), or any part thereof, may be held before a joint meeting of the committee and the Committee on Appropriations of the Senate in accordance with such procedures as the two committees jointly may determine.

(2) Pursuant to section 401(b)(2) of the Congressional Budget Act of 1974, when a committee reports a bill or joint resolution that provides new entitlement authority as defined in section 3(9) of that Act, and enactment of the bill or joint resolution, as reported, would cause a breach of the committee's pertinent allocation of new budget authority under section 302(a) of that Act, the bill or joint resolution may be referred to the Committee on Appropriations with instructions to report it with recommendations (which may include an amendment limiting the total amount of new entitlement authority provided in the bill or joint resolution). If the Committee on Appropriations fails to report a bill or joint resolution so referred within 15 calendar days (not counting any day on which the House is not in session), the committee automatically shall be discharged from consideration of the bill or joint resolution, and the bill or joint resolution shall be placed on the appropriate calendar.

(3) In addition, the Committee on Appropriations shall study on a continuing basis those provisions of law that (on the first day of the first fiscal year for which the congressional budget process is effective) provide spending authority or permanent budget authority and shall report to the House from time to time its recommendations for terminating or modifying such provisions.

(4) In the manner provided by section 302 of the Congressional Budget Act of 1974, the Committee on Appropriations (after consulting with the Committee on Appropriations of the Senate) shall subdivide any allocations made to it in the joint explanatory statement accompanying the conference report on such concurrent resolution, and promptly report the subdivisions to the House as soon as practicable after a concurrent resolution on the budget for a fiscal year is agreed to.

(b) The Committee on the Budget shall—

(1) review on a continuing basis the conduct by the Congressional Budget Office of its functions and duties;

(2) hold hearings and receive testimony from Members, Senators, Delegates, the Resident Commissioner, and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as it considers desirable in developing concurrent resolutions on the budget for each fiscal year;

(3) make all reports required of it by the Congressional Budget Act of 1974;

(4) study on a continuing basis those provisions of law that exempt Federal agencies or any of their activities or outlays from inclusion in the Budget of the United States Government, and report to the House

from time to time its recommendations for terminating or modifying such provisions;

(5) study on a continuing basis proposals designed to improve and facilitate the congressional budget process, and report to the House from time to time the results of such studies, together with its recommendations; and

(6) request and evaluate continuing studies of tax expenditures, devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and report the results of such studies to the House on a recurring basis.

(c)(1) The Committee on Oversight and Government Reform shall—

(A) receive and examine reports of the Comptroller General of the United States and submit to the House such recommendations as it considers necessary or desirable in connection with the subject matter of the reports;

(B) evaluate the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

(C) study intergovernmental relationships between the United States and the States and municipalities and between the United States and international organizations of which the United States is a member.

(2) In addition to its duties under subparagraph (1), the Committee on Oversight and Government Reform may at any time conduct investigations of any matter without regard to clause 1, 2, 3, or this clause conferring jurisdiction over the matter to another standing committee. The findings and recommendations of the committee in such an investigation shall be made available to any other standing committee having jurisdiction over the matter involved.

(3)(A) The Committee on Oversight and Government Reform may adopt a rule authorizing and regulating the taking of depositions by a member or counsel of the committee, including pursuant to subpoena under clause 2(m) of rule XI (which hereby is made applicable for such purpose).

(B) A rule adopted by the committee pursuant to this subparagraph—

(i) may provide that a deponent be directed to subscribe an oath or affirmation before a person authorized by law to administer the same;

(ii) shall ensure that the minority members and staff of the committee are accorded equitable treatment with respect to notice of and a reasonable opportunity to participate in any proceeding conducted thereunder; and

(iii) shall, unless waived by the deponent, require the attendance of a member of the committee.

(C) Information secured pursuant to the authority described in subdivision (A) shall retain the character of discovery until offered for admission in evidence before the committee, at which time any proper objection shall be timely.

(d)(1) The Committee on House Administration shall—

(A) provide policy direction for the Inspector General and oversight of the Clerk, Sergeant-at-Arms, Chief Administrative Officer, and Inspector General;

(B) oversee the management of services provided to the House by the Architect of the Capitol, except those services that lie within the jurisdiction of the Committee on Transportation and Infrastructure under clause 1(r);

(C) have the function of accepting on behalf of the House a gift, except as otherwise provided by law, if the gift does not involve a duty, burden, or condition, or is not made dependent on some future performance by the House;

(D) promulgate regulations to carry out subdivision (C); and

(E) establish and maintain standards for making documents publicly available in electronic form by the House and its committees.

(2) An employing office of the House may enter into a settlement of a complaint under the Congressional Accountability Act of 1995 that provides for the payment

of funds only after receiving the joint approval of the chair and ranking minority member of the Committee on House Administration concerning the amount of such payment.

(e)(1) Each standing committee shall, in its consideration of all public bills and public joint resolutions within its jurisdiction, ensure that appropriations for continuing programs and activities of the Federal Government and the government of the District of Columbia will be made annually to the maximum extent feasible and consistent with the nature, requirement, and objective of the programs and activities involved. In this subparagraph programs and activities of the Federal Government and the government of the District of Columbia includes programs and activities of any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or of the government of the District of Columbia.

(2) Each standing committee shall review from time to time each continuing program within its jurisdiction for which appropriations are not made annually to ascertain whether the program should be modified to provide for annual appropriations.

Budget Act responsibilities

(f)(1) Each standing committee shall submit to the Committee on the Budget not later than six weeks after

the submission of the budget by the President, or at such time as the Committee on the Budget may request—

(A) its views and estimates with respect to all matters to be set forth in the concurrent resolution on the budget for the ensuing fiscal year that are within its jurisdiction or functions; and

(B) an estimate of the total amounts of new budget authority, and budget outlays resulting therefrom, to be provided or authorized in all bills and resolutions within its jurisdiction that it intends to be effective during that fiscal year.

(2) The views and estimates submitted by the Committee on Ways and Means under subparagraph (1) shall include a specific recommendation, made after holding public hearings, as to the appropriate level of the public debt that should be set forth in the concurrent resolution on the budget.

Election and membership of standing committees

5. (a)(1) The standing committees specified in clause 1 shall be elected by the House within seven calendar days after the commencement of each Congress, from nominations submitted by the respective party caucus or conference. A resolution proposing to change the composition of a standing committee shall be privileged if offered by direction of the party caucus or conference

concerned.

(2)(A) The Committee on the Budget shall be composed of members as follows:

(i) Members, Delegates, or the Resident Commissioner who are members of other standing committees, including five from the Committee on Appropriations, five from the Committee on Ways and Means, and one from the Committee on Rules;

(ii) one Member designated by the elected leadership of the majority party; and

(iii) one Member designated by the elected leadership of the minority party.

(B) Except as permitted by subdivision (C), a member of the Committee on the Budget other than one described in subdivision (A)(ii) or (A)(iii) may not serve on the committee during more than four Congresses in a period of six successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(C) A Member, Delegate, or Resident Commissioner may exceed the limitation of subdivision (B) if elected to serve a second consecutive Congress as the chair or a second consecutive Congress as the ranking minority member.

(3)(A) The Committee on Ethics shall be composed of 10 members, five from the majority party and five from the minority party.

(B) Except as permitted by subdivision (C), a member of the Committee on Ethics may not serve on the committee during more than three Congresses in a period of five successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(C) A member of the Committee on Ethics may serve on the committee during a fourth Congress in a period of five successive Congresses only as either the chair or the ranking minority member of the committee.

(4)(A) At the beginning of a Congress, the Speaker or a designee and the Minority Leader or a designee each shall name 10 Members, Delegates, or the Resident Commissioner from the respective party of such individual who are not members of the Committee on Ethics to be available to serve on investigative subcommittees of that committee during that Congress. The lists of Members, Delegates, or the Resident Commissioner so named shall be announced to the House.

(B) Whenever the chair and the ranking minority member of the Committee on Ethics jointly determine that Members, Delegates, or the Resident Commissioner named under subdivision (A) should be assigned to serve on an investigative subcommittee of that committee, each of them shall select an equal number of such Members, Delegates, or Resident Commissioner from the respective party of such individual to serve on that subcommittee.

(b)(1) Membership on a standing committee during the course of a Congress shall be contingent on continuing membership in the party caucus or conference that nominated the Member, Delegate, or Resident Commissioner concerned for election to such committee. Should a Member, Delegate, or Resident Commissioner cease to be a member of a particular party caucus or conference, that Member, Delegate, or Resident Commissioner shall automatically cease to be a member of each standing committee to which elected on the basis of nomination by that caucus or conference. The chair of the relevant party caucus or conference shall notify the Speaker whenever a Member, Delegate, or Resident Commissioner ceases to be a member of that caucus or conference. The Speaker shall notify the chair of each affected committee that the election of such Member, Delegate, or Resident Commissioner to the committee is automatically vacated under this subparagraph.

(2)(A) Except as specified in subdivision (B), a Member, Delegate, or Resident Commissioner may not serve simultaneously as a member of more than two standing committees or more than four subcommittees of the standing committees.

(B) (i) Ex officio service by a chair or ranking minority member of a committee on each of its subcommittees under a committee rule does not count against the limitation on subcommittee service.

(ii) Service on an investigative subcommittee of the Committee on Ethics under paragraph (a)(4) does not count against the limitation on subcommittee service.

(iii) Any other exception to the limitations in subdivision (A) may be approved by the House on the recommendation of the relevant party caucus or conference.

(C) In this subparagraph the term “subcommittee” includes a panel (other than a special oversight panel of the Committee on Armed Services), task force, special subcommittee, or other subunit of a standing committee that is established for a cumulative period longer than six months in a Congress.

(c)(1) One of the members of each standing committee shall be elected by the House, on the nomination of the majority party caucus or conference, as chair thereof. In the absence of the member serving as chair, the member next in rank (and so on, as often as the case shall happen) shall act as chair. Rank shall be determined by the order members are named in resolutions electing them to the committee. In the case of a vacancy in the elected chair of a committee, the House shall elect another chair.

(2) Except in the case of the Committee on Rules, a member of a standing committee may not serve as chair of the same standing committee, or of the same subcommittee of a standing committee, during more than three consecutive Congresses (disregarding for this

purpose any service for less than a full session in a Congress).

(d)(1) Except as permitted by subparagraph (2), a committee may have not more than five subcommittees.

(2) A committee that maintains a subcommittee on oversight may have not more than six subcommittees. The Committee on Appropriations may have not more than 13 subcommittees. The Committee on Oversight and Government Reform may have not more than seven subcommittees.

(e) The House shall fill a vacancy on a standing committee by election on the nomination of the respective party caucus or conference.

Expense resolutions

6. (a) Whenever a committee, commission, or other entity (other than the Committee on Appropriations) is granted authorization for the payment of its expenses (including staff salaries) for a Congress, such authorization initially shall be procured by one primary expense resolution reported by the Committee on House Administration. A primary expense resolution may include a reserve fund for unanticipated expenses of committees. An amount from such a reserve fund may be allocated to a committee only by the approval of the Committee on House Administration. A primary expense resolution reported to the House may not be considered in the House unless a printed report thereon was available on

the previous calendar day. For the information of the House, such report shall—

(1) state the total amount of the funds to be provided to the committee, commission, or other entity under the primary expense resolution for all anticipated activities and programs of the committee, commission, or other entity; and

(2) to the extent practicable, contain such general statements regarding the estimated foreseeable expenditures for the respective anticipated activities and programs of the committee, commission, or other entity as may be appropriate to provide the House with basic estimates of the expenditures contemplated by the primary expense resolution.

(b) After the date of adoption by the House of a primary expense resolution for a committee, commission, or other entity for a Congress, authorization for the payment of additional expenses (including staff salaries) in that Congress may be procured by one or more supplemental expense resolutions reported by the Committee on House Administration, as necessary. A supplemental expense resolution reported to the House may not be considered in the House unless a printed report thereon was available on the previous calendar day. For the information of the House, such report shall—

(1) state the total amount of additional funds to be provided to the committee, commission, or other entity

under the supplemental expense resolution and the purposes for which those additional funds are available; and

(2) state the reasons for the failure to procure the additional funds for the committee, commission, or other entity by means of the primary expense resolution.

(c) The preceding provisions of this clause do not apply to—

(1) a resolution providing for the payment from committee salary and expense accounts of the House of sums necessary to pay compensation for staff services performed for, or to pay other expenses of, a committee, commission, or other entity at any time after the beginning of an odd-numbered year and before the date of adoption by the House of the primary expense resolution described in paragraph (a) for that year; or

(2) a resolution providing each of the standing committees in a Congress additional office equipment, airmail and special-delivery postage stamps, supplies, staff personnel, or any other specific item for the operation of the standing committees, and containing an authorization for the payment from committee salary and expense accounts of the House of the expenses of any of the foregoing items provided by that resolution,

subject to and until enactment of the provisions of the resolution as permanent law.

(d) From the funds made available for the appointment of committee staff by a primary or additional expense resolution, the chair of each committee shall ensure that sufficient staff is made available to each subcommittee to carry out its responsibilities under the rules of the committee and that the minority party is treated fairly in the appointment of such staff.

(e) Funds authorized for a committee under this clause and clauses 7 and 8 are for expenses incurred in the activities of the committee.

Interim funding

7. (a) For the period beginning at noon on January 3 and ending at midnight on March 31 in each odd-numbered year, such sums as may be necessary shall be paid out of the committee salary and expense accounts of the House for continuance of necessary investigations and studies by—

(1) each standing and select committee established by these rules; and

(2) except as specified in paragraph (b), each select committee established by resolution.

(b) In the case of the first session of a Congress, amounts shall be made available for a select committee established by resolution in the preceding Congress only if—

(1) a resolution proposing to reestablish such select committee is introduced in the present Congress; and

(2) the House has not adopted a resolution of the preceding Congress providing for termination of funding for investigations and studies by such select committee.

(c) Each committee described in paragraph (a) shall be entitled for each month during the period specified in paragraph (a) to 9 percent (or such lesser percentage as may be determined by the Committee on House Administration) of the total annualized amount made available under expense resolutions for such committee in the preceding session of Congress.

(d) Payments under this clause shall be made on vouchers authorized by the committee involved, signed by the chair of the committee, except as provided in paragraph (e), and approved by the Committee on House Administration.

(e) Notwithstanding any provision of law, rule of the House, or other authority, from noon on January 3 of the first session of a Congress until the election by the House of the committee concerned in that Congress, payments under this clause shall be made on vouchers signed by the ranking member of the committee as it was constituted at the expiration of the preceding Congress who is a member of the majority party in the present Congress.

(f)(1) The authority of a committee to incur expenses under this clause shall expire upon adoption by the House of a primary expense resolution for the committee.

(2) Amounts made available under this clause shall be expended in accordance with regulations prescribed by the Committee on House Administration.

(3) This clause shall be effective only insofar as it is not inconsistent with a resolution reported by the Committee on House Administration and adopted by the House after the adoption of these rules.

Travel

8. (a) Local currencies owned by the United States shall be made available to the committee and its employees engaged in carrying out their official duties outside the United States or its territories or possessions. Appropriated funds, including those authorized under this clause and clause 6, may not be expended for the purpose of defraying expenses of members of a committee or its employees in a country where local currencies are available for this purpose.

(b) The following conditions shall apply with respect to travel outside the United States or its territories or possessions:

(1) A member or employee of a committee may not receive or expend local currencies for subsistence in a country for a day at a rate in excess of the maximum per diem set forth in applicable Federal law.

(2) A member or employee shall be reimbursed for the expenses of such individual for a day at the lesser of —

(A) the per diem set forth in applicable Federal law; or

(B) the actual, unreimbursed expenses (other than for transportation) incurred during that day.

(3) Each member or employee of a committee shall make to the chair of the committee an itemized report showing the dates each country was visited, the amount of per diem furnished, the cost of transportation furnished, and funds expended for any other official purpose and shall summarize in these categories the total foreign currencies or appropriated funds expended. Each report shall be filed with the chair of the committee not later than 60 days following the completion of travel for use in complying with reporting requirements in applicable Federal law and shall be open for public inspection.

(c)(1) In carrying out the activities of a committee outside the United States in a country where local currencies are unavailable, a member or employee of a committee may not receive reimbursement for expenses (other than for transportation) in excess of the maximum per diem set forth in applicable Federal law.

(2) A member or employee shall be reimbursed for the expenses of such individual for a day, at the lesser of—

(A) the per diem set forth in applicable Federal law;
or

(B) the actual unreimbursed expenses (other than for transportation) incurred during that day.

(3) A member or employee of a committee may not receive reimbursement for the cost of any transportation in connection with travel outside the United States unless the member or employee actually paid for the transportation.

(d) The restrictions respecting travel outside the United States set forth in paragraph (c) also shall apply to travel outside the United States by a Member, Delegate, Resident Commissioner, officer, or employee of the House authorized under any standing rule.

Committee staffs

9. (a)(1) Subject to subparagraph (2) and paragraph (f), each standing committee may appoint, by majority vote, not more than 30 professional staff members to be compensated from the funds provided for the appointment of committee staff by primary and additional expense resolutions. Each professional staff member appointed under this subparagraph shall be assigned to the chair and the ranking minority member of the committee, as the committee considers advisable.

(2) Subject to paragraph (f) whenever a majority of the minority party members of a standing committee (other than the Committee on Ethics or the Permanent Select

Committee on Intelligence) so request, not more than 10 persons (or one-third of the total professional committee staff appointed under this clause, whichever is fewer) may be selected, by majority vote of the minority party members, for appointment by the committee as professional staff members under subparagraph (1). The committee shall appoint persons so selected whose character and qualifications are acceptable to a majority of the committee. If the committee determines that the character and qualifications of a person so selected are unacceptable, a majority of the minority party members may select another person for appointment by the committee to the professional staff until such appointment is made. Each professional staff member appointed under this subparagraph shall be assigned to such committee business as the minority party members of the committee consider advisable.

(b)(1) The professional staff members of each standing committee—

(A) may not engage in any work other than committee business during congressional working hours; and

(B) may not be assigned a duty other than one pertaining to committee business.

(2)(A) Subparagraph (1) does not apply to staff designated by a committee as “associate” or “shared” staff who are not paid exclusively by the committee, provided

that the chair certifies that the compensation paid by the committee for any such staff is commensurate with the work performed for the committee in accordance with clause 8 of rule XXIII.

(B) The use of any “associate” or “shared” staff by a committee other than the Committee on Appropriations shall be subject to the review of, and to any terms, conditions, or limitations established by, the Committee on House Administration in connection with the reporting of any primary or additional expense resolution.

(c) Each employee on the professional or investigative staff of a standing committee shall be entitled to pay at a single gross per annum rate, to be fixed by the chair and that does not exceed the maximum rate of pay as in effect from time to time under applicable provisions of law.

(d) Subject to appropriations hereby authorized, the Committee on Appropriations may appoint by majority vote such staff as it determines to be necessary (in addition to the clerk of the committee and assistants for the minority). The staff appointed under this paragraph, other than minority assistants, shall possess such qualifications as the committee may prescribe.

(e) A committee may not appoint to its staff an expert or other personnel detailed or assigned from a department or agency of the Government except with the written permission of the Committee on House Administration.

(f) If a request for the appointment of a minority professional staff member under paragraph (a) is made when no vacancy exists for such an appointment, the committee nevertheless may appoint under paragraph (a) a person selected by the minority and acceptable to the committee. A person so appointed shall serve as an additional member of the professional staff of the committee until such a vacancy occurs (other than a vacancy in the position of head of the professional staff, by whatever title designated), at which time that person is considered as appointed to that vacancy. Such a person shall be paid from the applicable accounts of the House described in clause 1(k)(1) of rule X. If such a vacancy occurs on the professional staff when seven or more persons have been so appointed who are eligible to fill that vacancy, a majority of the minority party members shall designate which of those persons shall fill the vacancy.

(g) Each staff member appointed pursuant to a request by minority party members under paragraph (a), and each staff member appointed to assist minority members of a committee pursuant to an expense resolution described in clause 6(a), shall be accorded equitable treatment with respect to the fixing of the rate of pay, the assignment of work facilities, and the accessibility of committee records.

(h) Paragraph (a) may not be construed to authorize the appointment of additional professional staff members of a

committee pursuant to a request under paragraph (a) by the minority party members of that committee if 10 or more professional staff members provided for in paragraph (a)(1) who are satisfactory to a majority of the minority party members are otherwise assigned to assist the minority party members.

(i) Notwithstanding paragraph (a)(2), a committee may employ nonpartisan staff, in lieu of or in addition to committee staff designated exclusively for the majority or minority party, by an affirmative vote of a majority of the members of the majority party and of a majority of the members of the minority party.

Select and joint committees

10. (a) Membership on a select or joint committee appointed by the Speaker under clause 11 of rule I during the course of a Congress shall be contingent on continuing membership in the party caucus or conference of which the Member, Delegate, or Resident Commissioner concerned was a member at the time of appointment. Should a Member, Delegate, or Resident Commissioner cease to be a member of that caucus or conference, that Member, Delegate, or Resident Commissioner shall automatically cease to be a member of any select or joint committee to which assigned. The chair of the relevant party caucus or conference shall notify the Speaker whenever a Member, Delegate, or Resident Commissioner ceases to be a member of a party caucus or conference.

The Speaker shall notify the chair of each affected select or joint committee that the appointment of such Member, Delegate, or Resident Commissioner to the select or joint committee is automatically vacated under this paragraph.

(b) Each select or joint committee, other than a conference committee, shall comply with clause 2(a) of rule XI unless specifically exempted by law.

Permanent Select Committee on Intelligence

11. (a)(1) There is established a Permanent Select Committee on Intelligence (hereafter in this clause referred to as the “select committee”). The select committee shall be composed of not more than 20 Members, Delegates, or the Resident Commissioner, of whom not more than 12 may be from the same party. The select committee shall include at least one Member, Delegate, or the Resident Commissioner from each of the following committees:

- (A) the Committee on Appropriations;
- (B) the Committee on Armed Services;
- (C) the Committee on Foreign Affairs; and
- (D) the Committee on the Judiciary.

(2) The Speaker and the Minority Leader shall be ex officio members of the select committee but shall have no vote in the select committee and may not be counted for purposes of determining a quorum thereof.

(3) The Speaker and Minority Leader each may designate a respective leadership staff member to assist in

the capacity of the Speaker or Minority Leader as ex officio member, with the same access to committee meetings, hearings, briefings, and materials as employees of the select committee and subject to the same security clearance and confidentiality requirements as employees of the select committee under this clause.

(4)(A) Except as permitted by subdivision (B), a Member, Delegate, or Resident Commissioner, other than the Speaker or the Minority Leader, may not serve as a member of the select committee during more than four Congresses in a period of six successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(B) In the case of a Member, Delegate, or Resident Commissioner appointed to serve as the chair or the ranking minority member of the select committee, tenure on the select committee shall not be limited.

(b)(1) There shall be referred to the select committee proposed legislation, messages, petitions, memorials, and other matters relating to the following:

(A) The Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(B) Intelligence and intelligence-related activities of all other departments and agencies of the Government,

including the tactical intelligence and intelligence-related activities of the Department of Defense.

(C) The organization or reorganization of a department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence or intelligence-related activities.

(D) Authorizations for appropriations, both direct and indirect, for the following:

(i) The Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(ii) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(iii) A department, agency, subdivision, or program that is a successor to an agency or program named or referred to in (i) or (ii).

(2) Proposed legislation initially reported by the select committee (other than provisions solely involving matters specified in subparagraph (1)(A) or subparagraph (1)(D) (i)) containing any matter otherwise within the jurisdiction of a standing committee shall be referred by the Speaker to that standing committee. Proposed

legislation initially reported by another committee that contains matter within the jurisdiction of the select committee shall be referred by the Speaker to the select committee if requested by the chair of the select committee.

(3) Nothing in this clause shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review an intelligence or intelligence-related activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of that committee.

(4) Nothing in this clause shall be construed as amending, limiting, or otherwise changing the authority of a standing committee to obtain full and prompt access to the product of the intelligence and intelligence-related activities of a department or agency of the Government relevant to a matter otherwise within the jurisdiction of that committee.

(c)(1) For purposes of accountability to the House, the select committee shall make regular and periodic reports to the House on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States. The select committee shall promptly call to the attention of the House, or to any other appropriate committee, a matter requiring the attention of the House or another committee. In making such report, the select committee shall proceed

in a manner consistent with paragraph (g) to protect national security.

(2) The select committee shall obtain annual reports from the Director of National Intelligence, the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence and intelligence-related activities of the agency or department concerned and the intelligence and intelligence-related activities of foreign countries directed at the United States or its interests. An unclassified version of each report may be made available to the public at the discretion of the select committee. Nothing herein shall be construed as requiring the public disclosure in such reports of the names of persons engaged in intelligence or intelligence-related activities for the United States or the divulging of intelligence methods employed or the sources of information on which the reports are based or the amount of funds authorized to be appropriated for intelligence and intelligence-related activities.

(3) Within six weeks after the President submits a budget under section 1105(a) of title 31, United States Code, or at such time as the Committee on the Budget may request, the select committee shall submit to the Committee on the Budget the views and estimates described in section 301(d) of the Congressional Budget

Act of 1974 regarding matters within the jurisdiction of the select committee.

(d)(1) Except as specified in subparagraph (2), clauses 8(a), (b), and (c) and 9(a), (b), and (c) of this rule, and clauses 1, 2, and 4 of rule XI shall apply to the select committee to the extent not inconsistent with this clause.

(2) Notwithstanding the requirements of the first sentence of clause 2(g)(2) of rule XI, in the presence of the number of members required under the rules of the select committee for the purpose of taking testimony or receiving evidence, the select committee may vote to close a hearing whenever a majority of those present determines that the testimony or evidence would endanger the national security.

(e) An employee of the select committee, or a person engaged by contract or otherwise to perform services for or at the request of the select committee, may not be given access to any classified information by the select committee unless such employee or person has—

(1) agreed in writing and under oath to be bound by the Rules of the House, including the jurisdiction of the Committee on Ethics and of the select committee concerning the security of classified information during and after the period of the employment or contractual agreement of such employee or person with the select committee; and

(2) received an appropriate security clearance, as determined by the select committee in consultation with the Director of National Intelligence, that is commensurate with the sensitivity of the classified information to which such employee or person will be given access by the select committee.

(f) The select committee shall formulate and carry out such rules and procedures as it considers necessary to prevent the disclosure, without the consent of each person concerned, of information in the possession of the select committee that unduly infringes on the privacy or that violates the constitutional rights of such person. Nothing herein shall be construed to prevent the select committee from publicly disclosing classified information in a case in which it determines that national interest in the disclosure of classified information clearly outweighs any infringement on the privacy of a person.

(g)(1) The select committee may disclose publicly any information in its possession after a determination by the select committee that the public interest would be served by such disclosure. With respect to the disclosure of information for which this paragraph requires action by the select committee—

(A) the select committee shall meet to vote on the matter within five days after a member of the select committee requests a vote; and

(B) a member of the select committee may not make such a disclosure before a vote by the select committee on the matter, or after a vote by the select committee on the matter except in accordance with this paragraph.

(2)(A) In a case in which the select committee votes to disclose publicly any information that has been classified under established security procedures, that has been submitted to it by the executive branch, and that the executive branch requests be kept secret, the select committee shall notify the President of such vote.

(B) The select committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of the vote to disclose is transmitted to the President unless, before the expiration of the five-day period, the President, personally in writing, notifies the select committee that the President objects to the disclosure of such information, provides reasons therefor, and certifies that the threat to the national interest of the United States posed by the disclosure is of such gravity that it outweighs any public interest in the disclosure.

(C) If the President, personally in writing, notifies the select committee of objections to the disclosure of information as provided in subdivision (B), the select committee may, by majority vote, refer the question of the disclosure of such information, with a recommendation thereon, to the House. The select committee may not

publicly disclose such information without leave of the House.

(D) Whenever the select committee votes to refer the question of disclosure of any information to the House under subdivision (C), the chair shall, not later than the first day on which the House is in session following the day on which the vote occurs, report the matter to the House for its consideration.

(E) If the chair of the select committee does not offer in the House a motion to consider in closed session a matter reported under subdivision (D) within four calendar days on which the House is in session after the recommendation described in subdivision (C) is reported, then such a motion shall be privileged when offered by a Member, Delegate, or Resident Commissioner. In either case such a motion shall be decided without debate or intervening motion except one that the House adjourn.

(F) Upon adoption by the House of a motion to resolve into closed session as described in subdivision (E), the Speaker may declare a recess subject to the call of the Chair. At the expiration of the recess, the pending question, in closed session, shall be, "Shall the House approve the recommendation of the select committee?".

(G) Debate on the question described in subdivision (F) shall be limited to two hours equally divided and controlled by the chair and ranking minority member of the select committee. After such debate the previous

question shall be considered as ordered on the question of approving the recommendation without intervening motion except one motion that the House adjourn. The House shall vote on the question in open session but without divulging the information with respect to which the vote is taken. If the recommendation of the select committee is not approved, then the question is considered as recommitted to the select committee for further recommendation.

(3)(A) Information in the possession of the select committee relating to the lawful intelligence or intelligence-related activities of a department or agency of the United States that has been classified under established security procedures, and that the select committee has determined should not be disclosed under subparagraph (1) or (2), may not be made available to any person by a Member, Delegate, Resident Commissioner, officer, or employee of the House except as provided in subdivision (B).

(B) The select committee shall, under such regulations as it may prescribe, make information described in subdivision (A) available to a committee or a Member, Delegate, or Resident Commissioner, and permit a Member, Delegate, or Resident Commissioner to attend a hearing of the select committee that is closed to the public. Whenever the select committee makes such information available, it shall keep a written record

showing, in the case of particular information, which committee or which Member, Delegate, or Resident Commissioner received the information. A Member, Delegate, or Resident Commissioner who, and a committee that, receives information under this subdivision may not disclose the information except in a closed session of the House.

(4) The Committee on Ethics shall investigate any unauthorized disclosure of intelligence or intelligence-related information by a Member, Delegate, Resident Commissioner, officer, or employee of the House in violation of subparagraph (3) and report to the House concerning any allegation that it finds to be substantiated.

(5) Upon the request of a person who is subject to an investigation described in subparagraph (4), the Committee on Ethics shall release to such person at the conclusion of its investigation a summary of its investigation, together with its findings. If, at the conclusion of its investigation, the Committee on Ethics determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, Delegate, Resident Commissioner, officer, or employee of the House, it shall report its findings to the House and recommend appropriate action. Recommendations may include censure, removal from committee membership, or expulsion from the House, in the case of a Member, or

removal from office or employment or punishment for contempt, in the case of an officer or employee.

(h) The select committee may permit a personal representative of the President, designated by the President to serve as a liaison to the select committee, to attend any closed meeting of the select committee.

(i) Subject to the Rules of the House, funds may not be appropriated for a fiscal year, with the exception of a bill or joint resolution continuing appropriations, or an amendment thereto, or a conference report thereon, to, or for use of, a department or agency of the United States to carry out any of the following activities, unless the funds shall previously have been authorized by a bill or joint resolution passed by the House during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Director of National Intelligence and the Office of the Director of National Intelligence.

(2) The activities of the Central Intelligence Agency.

(3) The activities of the Defense Intelligence Agency.

(4) The activities of the National Security Agency.

(5) The intelligence and intelligence-related activities of other agencies and subdivisions of the Department of Defense.

(6) The intelligence and intelligence-related activities of the Department of State.

(7) The intelligence and intelligence-related activities of the Federal Bureau of Investigation.

(8) The intelligence and intelligence-related activities of all other departments and agencies of the executive branch.

(j)(1) In this clause the term “intelligence and intelligence-related activities” includes—

(A) the collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of such information;

(B) activities taken to counter similar activities directed against the United States;

(C) covert or clandestine activities affecting the relations of the United States with a foreign government, political group, party, military force, movement, or other association;

(D) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be

considered by a department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States; and

(E) covert or clandestine activities directed against persons described in subdivision (D).

(2) In this clause the term “department or agency” includes any organization, committee, council, establishment, or office within the Federal Government.

(3) For purposes of this clause, reference to a department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that a successor engages in intelligence or intelligence-related activities now conducted by the department, agency, bureau, or subdivision referred to in this clause.

(k) Clause 12(a) of rule XXII does not apply to meetings of a conference committee respecting legislation (or any part thereof) reported by the Permanent Select Committee on Intelligence.

RULE XI

PROCEDURES OF COMMITTEES AND UNFINISHED BUSINESS

In general

1. (a)(1)(A) The Rules of the House are the rules of its committees and subcommittees so far as applicable.

(B) Each subcommittee is a part of its committee and is subject to the authority and direction of that committee and to its rules, so far as applicable.

(2)(A) In a committee or subcommittee—

(i) a motion to recess from day to day, or to recess subject to the call of the Chair (within 24 hours), shall be privileged; and

(ii) a motion to dispense with the first reading (in full) of a bill or resolution shall be privileged if printed copies are available.

(B) A motion accorded privilege under this subparagraph shall be decided without debate.

(b)(1) Each committee may conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under rule X. Subject to the adoption of expense resolutions as required by clause 6 of rule X, each committee may incur expenses, including travel expenses, in connection with such investigations and studies.

(2) A proposed investigative or oversight report shall be considered as read in committee if it has been available to the members for at least 24 hours (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day).

(3) A report of an investigation or study conducted jointly by more than one committee may be filed jointly, provided that each of the committees complies

independently with all requirements for approval and filing of the report.

(4) After an adjournment sine die of the last regular session of a Congress, an investigative or oversight report may be filed with the Clerk at any time, provided that a member who gives timely notice of intention to file supplemental, minority, or additional views shall be entitled to not less than seven calendar days in which to submit such views for inclusion in the report.

(c) Each committee may have printed and bound such testimony and other data as may be presented at hearings held by the committee or its subcommittees. All costs of stenographic services and transcripts in connection with a meeting or hearing of a committee shall be paid from the applicable accounts of the House described in clause 1(k) (1) of rule X.

(d)(1) Not later than January 2 of each year, a committee shall submit to the House a report on the activities of that committee.

(2) Such report shall include—

(A) separate sections summarizing the legislative and oversight activities of that committee under this rule and rule X during the applicable period;

(B) in the case of the first such report in each Congress, a summary of the oversight plans submitted by the committee under clause 2(d) of rule X;

(C) a summary of the actions taken and recommendations made with respect to the oversight plans specified in subdivision (B);

(D) a summary of any additional oversight activities undertaken by that committee and any recommendations made or actions taken thereon; and

(E) a delineation of any hearings held pursuant to clauses 2(n), (o), or (p) of this rule.

(3) After an adjournment sine die of a regular session of a Congress, or after December 15, whichever occurs first, the chair of a committee may file the report described in subparagraph (1) with the Clerk at any time and without approval of the committee, provided that—

(A) a copy of the report has been available to each member of the committee for at least seven calendar days; and

(B) the report includes any supplemental, minority, or additional views submitted by a member of the committee.

Adoption of written rules

2. (a)(1) Each standing committee shall adopt written rules governing its procedure. Such rules—

(A) shall be adopted in a meeting that is open to the public unless the committee, in open session and with a quorum present, determines by record vote that all or part of the meeting on that day shall be closed to the public;

(B) may not be inconsistent with the Rules of the House or with those provisions of law having the force and effect of Rules of the House; and

(C) shall in any event incorporate all of the succeeding provisions of this clause to the extent applicable.

(2) Each committee shall make its rules publicly available in electronic form and submit such rules for publication in the Congressional Record not later than 30 days after the chair of the committee is elected in each odd-numbered year.

(3) A committee may adopt a rule providing that the chair be directed to offer a motion under clause 1 of rule XXII whenever the chair considers it appropriate.

Regular meeting days

(b) Each standing committee shall establish regular meeting days for the conduct of its business, which shall be not less frequent than monthly. Each such committee shall meet for the consideration of a bill or resolution pending before the committee or the transaction of other committee business on all regular meeting days fixed by the committee if notice is given pursuant to paragraph (g) (3).

Additional and special meetings

(c)(1) The chair of each standing committee may call and convene, as the chair considers necessary, additional

and special meetings of the committee for the consideration of a bill or resolution pending before the committee or for the conduct of other committee business, subject to such rules as the committee may adopt. The committee shall meet for such purpose under that call of the chair.

(2) Three or more members of a standing committee may file in the offices of the committee a written request that the chair call a special meeting of the committee. Such request shall specify the measure or matter to be considered. Immediately upon the filing of the request, the clerk of the committee shall notify the chair of the filing of the request. If the chair does not call the requested special meeting within three calendar days after the filing of the request (to be held within seven calendar days after the filing of the request) a majority of the members of the committee may file in the offices of the committee their written notice that a special meeting of the committee will be held. The written notice shall specify the date and hour of the special meeting and the measure or matter to be considered. The committee shall meet on that date and hour. Immediately upon the filing of the notice, the clerk of the committee shall notify all members of the committee that such special meeting will be held and inform them of its date and hour and the measure or matter to be considered. Such notice shall also be made publicly available in electronic form and shall be deemed

to satisfy paragraph (g)(3)(A)(ii). Only the measure or matter specified in that notice may be considered at that special meeting.

Temporary absence of chair

(d) A member of the majority party on each standing committee or subcommittee thereof shall be designated by the chair of the full committee as the vice chair of the committee or subcommittee, as the case may be, and shall preside during the absence of the chair from any meeting. If the chair and vice chair of a committee or subcommittee are not present at any meeting of the committee or subcommittee, the ranking majority member who is present shall preside at that meeting.

Committee records

(e)(1)(A) Each committee shall keep a complete record of all committee action which shall include—

(i) in the case of a meeting or hearing transcript, a substantially verbatim account of remarks actually made during the proceedings, subject only to technical, grammatical, and typographical corrections authorized by the person making the remarks involved; and

(ii) a record of the votes on any question on which a record vote is taken.

(B) (i) Except as provided in subdivision (B)(ii) and subject to paragraph (k)(7), the result of each such record vote shall be made available by the committee for

inspection by the public at reasonable times in its offices and also made publicly available in electronic form within 48 hours of such record vote. Information so available shall include a description of the amendment, motion, order, or other proposition, the name of each member voting for and each member voting against such amendment, motion, order, or proposition, and the names of those members of the committee present but not voting.

(ii) The result of any record vote taken in executive session in the Committee on Ethics may not be made available for inspection by the public without an affirmative vote of a majority of the members of the committee.

(2)(A) Except as provided in subdivision (B), all committee records (including hearings, data, charts, and files) shall be kept separate and distinct from the congressional office records of the member serving as its chair. Such records shall be the property of the House, and each Member, Delegate, and the Resident Commissioner shall have access thereto.

(B) A Member, Delegate, or Resident Commissioner, other than members of the Committee on Ethics, may not have access to the records of that committee respecting the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House without the specific prior permission of that committee.

(3) Each committee shall include in its rules standards for availability of records of the committee delivered to the Archivist of the United States under rule VII. Such standards shall specify procedures for orders of the committee under clause 3(b)(3) and clause 4(b) of rule VII, including a requirement that nonavailability of a record for a period longer than the period otherwise applicable under that rule shall be approved by vote of the committee.

(4) Each committee shall make its publications available in electronic form to the maximum extent feasible.

(5) To the maximum extent practicable, each committee shall—

(A) provide audio and video coverage of each hearing or meeting for the transaction of business in a manner that allows the public to easily listen to and view the proceedings; and

(B) maintain the recordings of such coverage in a manner that is easily accessible to the public.

(6) Not later than 24 hours after the adoption of any amendment to a measure or matter considered by a committee, the chair of such committee shall cause the text of each such amendment to be made publicly available in electronic form.

Prohibition against proxy voting

(f) A vote by a member of a committee or subcommittee with respect to any measure or matter may not be cast by proxy.

Open meetings and hearings

(g)(1) Each meeting for the transaction of business, including the markup of legislation, by a standing committee or subcommittee thereof (other than the Committee on Ethics or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of the meeting on that day shall be in executive session because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, would tend to defame, degrade, or incriminate any person, or otherwise would violate a law or rule of the House. Persons, other than members of the committee and such noncommittee Members, Delegates, Resident Commissioner, congressional staff, or departmental representatives as the committee may authorize, may not be present at a business or markup session that is held in executive session. This subparagraph does not apply to open committee hearings, which are governed by clause 4(a)(1) of rule X or by subparagraph (2).

(2)(A) Each hearing conducted by a committee or subcommittee (other than the Committee on Ethics or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would violate a law or rule of the House.

(B) Notwithstanding the requirements of subdivision (A), in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, a majority of those present may—

(i) agree to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would endanger national security, would compromise sensitive law enforcement information, or would violate clause 2(k)(5); or

(ii) agree to close the hearing as provided in clause 2(k)(5).

(C) A Member, Delegate, or Resident Commissioner may not be excluded from non—participatory attendance at a hearing of a committee or subcommittee (other than the Committee on Ethics or its subcommittees) unless the

House by majority vote authorizes a particular committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearings to Members, Delegates, and the Resident Commissioner by the same procedures specified in this subparagraph for closing hearings to the public.

(D) The committee or subcommittee may vote by the same procedure described in this subparagraph to close one subsequent day of hearing, except that the Committee on Appropriations, the Committee on Armed Services, and the Permanent Select Committee on Intelligence, and the subcommittees thereof, may vote by the same procedure to close up to five additional, consecutive days of hearings.

(3)(A) The chair of a committee shall announce the date, place, and subject matter of—

(i) a committee hearing, which may not commence earlier than one week after such notice; or

(ii) a committee meeting, which may not commence earlier than the third day on which members have notice thereof.

(B) A hearing or meeting may begin sooner than specified in subdivision (A) in either of the following circumstances (in which case the chair shall make the announcement specified in subdivision (A) at the earliest possible time):

(i) the chair of the committee, with the concurrence of the ranking minority member, determines that there is good cause; or

(ii) the committee so determines by majority vote in the presence of the number of members required under the rules of the committee for the transaction of business.

(C) An announcement made under this subparagraph shall be published promptly in the Daily Digest and made publicly available in electronic form.

(D) This subparagraph and subparagraph (4) shall not apply to the Committee on Rules.

(4) At least 24 hours prior to the commencement of a meeting for the markup of legislation, or at the time of an announcement under subparagraph (3)(B) made within 24 hours before such meeting, the chair of the committee shall cause the text of such legislation to be made publicly available in electronic form.

(5) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof. In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or

subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redactions to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(6)(A) Except as provided in subdivision (B), a point of order does not lie with respect to a measure reported by a committee on the ground that hearings on such measure were not conducted in accordance with this clause.

(B) A point of order on the ground described in subdivision (A) may be made by a member of the committee that reported the measure if such point of order was timely made and improperly disposed of in the committee.

(7) This paragraph does not apply to hearings of the Committee on Appropriations under clause 4(a)(1) of rule X.

Quorum requirements

(h)(1) A measure or recommendation may not be reported by a committee unless a majority of the committee is actually present.

(2) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which may not be less than two.

(3) Each committee (other than the Committee on Appropriations, the Committee on the Budget, and the Committee on Ways and Means) may fix the number of its members to constitute a quorum for taking any action other than one for which the presence of a majority of the committee is otherwise required, which may not be less than one-third of the members.

(4)(A) Each committee may adopt a rule authorizing the chair of a committee or subcommittee—

(i) to postpone further proceedings when a record vote is ordered on the question of approving a measure or matter or on adopting an amendment; and

(ii) to resume proceedings on a postponed question at any time after reasonable notice.

(B) A rule adopted pursuant to this subparagraph shall provide that when proceedings resume on a postponed question, notwithstanding any intervening order for the previous question, an underlying proposition shall remain subject to further debate or amendment to the same extent as when the question was postponed.

Limitation on committee sittings

(i) A committee may not sit during a joint session of the House and Senate or during a recess when a joint meeting of the House and Senate is in progress.

Calling and questioning of witnesses

(j)(1) Whenever a hearing is conducted by a committee on a measure or matter, the minority members of the committee shall be entitled, upon request to the chair by a majority of them before the completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.

(2)(A) Subject to subdivisions (B) and (C), each committee shall apply the five-minute rule during the questioning of witnesses in a hearing until such time as each member of the committee who so desires has had an opportunity to question each witness.

(B) A committee may adopt a rule or motion permitting a specified number of its members to question a witness for longer than five minutes. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

(C) A committee may adopt a rule or motion permitting committee staff for its majority and minority party members to question a witness for equal specified periods. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

Hearing procedures

(k)(1) The chair at a hearing shall announce in an opening statement the subject of the hearing.

(2) A copy of the committee rules and of this clause shall be made available to each witness on request.

(3) Witnesses at hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(4) The chair may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

(5) Whenever it is asserted by a member of the committee that the evidence or testimony at a hearing may tend to defame, degrade, or incriminate any person, or it is asserted by a witness that the evidence or testimony that the witness would give at a hearing may tend to defame, degrade, or incriminate the witness—

(A) notwithstanding paragraph (g)(2), such testimony or evidence shall be presented in executive session if, in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, the committee determines by vote of a majority of those present that such evidence or testimony may tend to defame, degrade, or incriminate any person; and

(B) the committee shall proceed to receive such testimony in open session only if the committee, a majority being present, determines that such evidence or testimony will not tend to defame, degrade, or incriminate any person.

In either case the committee shall afford such person an opportunity voluntarily to appear as a witness, and receive and dispose of requests from such person to subpoena additional witnesses.

(6) Except as provided in subparagraph (5), the chair shall receive and the committee shall dispose of requests to subpoena additional witnesses.

(7) Evidence or testimony taken in executive session, and proceedings conducted in executive session, may be released or used in public sessions only when authorized by the committee, a majority being present.

(8) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinence of testimony and evidence adduced at its hearing.

(9) A witness may obtain a transcript copy of the testimony of such witness given at a public session or, if given at an executive session, when authorized by the committee.

Supplemental, minority, or additional views

(l) If at the time of approval of a measure or matter by a committee (other than the Committee on Rules) a member of the committee gives notice of intention to file supplemental, minority, or additional views for inclusion in the report to the House thereon, all members shall be entitled to not less than two additional calendar days after the day of such notice (excluding Saturdays, Sundays, and legal holidays except when the House is in session on such a day) to file such written and signed views with the clerk of the committee.

Power to sit and act; subpoena power

(m)(1) For the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII), a committee or subcommittee is authorized (subject to subparagraph (3)(A))—

(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings as it considers necessary; and

(B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.

(2) The chair of the committee, or a member designated by the chair, may administer oaths to witnesses.

(3)(A) (i) Except as provided in subdivision (A)(ii), a subpoena may be authorized and issued by a committee or subcommittee under subparagraph (1)(B) in the conduct of an investigation or series of investigations or activities only when authorized by the committee or subcommittee, a majority being present. The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chair of the committee under such rules and under such limitations as the committee may prescribe. Authorized subpoenas shall be signed by the chair of the committee or by a member designated by the committee.

(ii) In the case of a subcommittee of the Committee on Ethics, a subpoena may be authorized and issued only by an affirmative vote of a majority of its members.

(B) A subpoena duces tecum may specify terms of return other than at a meeting or hearing of the committee or subcommittee authorizing the subpoena.

(C) Compliance with a subpoena issued by a committee or subcommittee under subparagraph (1)(B) may be enforced only as authorized or directed by the House.

(n)(1) Each standing committee, or a subcommittee thereof, shall hold at least one hearing during each 120-day period following the establishment of the committee on the topic of waste, fraud, abuse, or mismanagement in Government programs which that committee may authorize.

(2) A hearing described in subparagraph (1) shall include a focus on the most egregious instances of waste, fraud, abuse, or mismanagement as documented by any report the committee has received from a Federal Office of the Inspector General or the Comptroller General of the United States.

(o) Each committee, or a subcommittee thereof, shall hold at least one hearing in any session in which the committee has received disclaimers of agency financial statements from auditors of any Federal agency that the committee may authorize to hear testimony on such disclaimers from representatives of any such agency.

(p) Each standing committee, or a subcommittee thereof, shall hold at least one hearing on issues raised by reports issued by the Comptroller General of the United States indicating that Federal programs or operations that the committee may authorize are at high risk for waste, fraud, and mismanagement, known as the “high-risk list” or the “high-risk series.”

Committee on Ethics

3. (a) The Committee on Ethics has the following functions:

(1) The committee may recommend to the House from time to time such administrative actions as it may consider appropriate to establish or enforce standards of official conduct for Members, Delegates, the Resident Commissioner, officers, and employees of the House. A

letter of reproof or other administrative action of the committee pursuant to an investigation under subparagraph (2) shall only be issued or implemented as a part of a report required by such subparagraph.

(2) The committee may investigate, subject to paragraph (b), an alleged violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House of the Code of Official Conduct or of a law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, Delegate, Resident Commissioner, officer, or employee in the performance of the duties or the discharge of the responsibilities of such individual. After notice and hearing (unless the right to a hearing is waived by the Member, Delegate, Resident Commissioner, officer, or employee), the committee shall report to the House its findings of fact and recommendations, if any, for the final disposition of any such investigation and such action as the committee may consider appropriate in the circumstances.

(3) The committee may report to the appropriate Federal or State authorities, either with the approval of the House or by an affirmative vote of two-thirds of the members of the committee, any substantial evidence of a violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House, of a law applicable to the performance of the duties or the

discharge of the responsibilities of such individual that may have been disclosed in a committee investigation.

(4) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, Delegate, Resident Commissioner, officer, or employee. With appropriate deletions to ensure the privacy of the person concerned, the committee may publish such opinion for the guidance of other Members, Delegates, the Resident Commissioner, officers, and employees of the House.

(5) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for a written waiver in exceptional circumstances with respect to clause 4 of rule XXIII.

(6)(A) The committee shall offer annual ethics training to each Member, Delegate, Resident Commissioner, officer, and employee of the House. Such training shall—

(i) involve the classes of employees for whom the committee determines such training to be appropriate; and

(ii) include such knowledge of the Code of Official Conduct and related House rules as may be determined appropriate by the committee.

(B) (i) A new officer or employee of the House shall receive training under this paragraph not later than 60 days after beginning service to the House.

(ii) Not later than January 31 of each year, each officer and employee of the House shall file a certification with the committee that the officer or employee attended ethics training in the last year as established by this subparagraph.

(b)(1)(A) Unless approved by an affirmative vote of a majority of its members, the Committee on Ethics may not report a resolution, report, recommendation, or advisory opinion relating to the official conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House, or, except as provided in subparagraph (2), undertake an investigation of such conduct.

(B) (i) Upon the receipt of information offered as a complaint that is in compliance with this rule and the rules of the committee, the chair and ranking minority member jointly may appoint members to serve as an investigative subcommittee.

(ii) The chair and ranking minority member of the committee jointly may gather additional information concerning alleged conduct that is the basis of a complaint or of information offered as a complaint until they have established an investigative subcommittee or either of

them has placed on the agenda of the committee the issue of whether to establish an investigative subcommittee.

(2) Except in the case of an investigation undertaken by the committee on its own initiative, the committee may undertake an investigation relating to the official conduct of an individual Member, Delegate, Resident Commissioner, officer, or employee of the House only—

(A) upon receipt of information offered as a complaint, in writing and under oath, from a Member, Delegate, or Resident Commissioner and transmitted to the committee by such Member, Delegate, or Resident Commissioner;

(B) upon receipt of information offered as a complaint, in writing and under oath, from a person not a Member, Delegate, or Resident Commissioner provided that a Member, Delegate, or Resident Commissioner certifies in writing to the committee that such Member, Delegate, or Resident Commissioner believes the information is submitted in good faith and warrants the review and consideration of the committee; or

(C) upon receipt of a report regarding a referral from the board of the Office of Congressional Ethics.

If a complaint is not disposed of within the applicable periods set forth in the rules of the Committee on Ethics, the chair and ranking minority member shall establish jointly an investigative subcommittee and forward the

complaint, or any portion thereof, to that subcommittee for its consideration. However, if at any time during those periods either the chair or ranking minority member places on the agenda the issue of whether to establish an investigative subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

(3) The committee may not undertake an investigation of an alleged violation of a law, rule, regulation, or standard of conduct that was not in effect at the time of the alleged violation. The committee may not undertake an investigation of such an alleged violation that occurred before the third previous Congress unless the committee determines that the alleged violation is directly related to an alleged violation that occurred in a more recent Congress.

(4) A member of the committee shall be ineligible to participate as a member of the committee in a committee proceeding relating to the member's official conduct. Whenever a member of the committee is ineligible to act as a member of the committee under the preceding sentence, the Speaker shall designate a Member, Delegate, or Resident Commissioner from the same political party as the ineligible member to act in any proceeding of the committee relating to that conduct.

(5) A member of the committee may seek disqualification from participating in an investigation of

the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House upon the submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks to be disqualified. If the committee approves and accepts such affidavit of disqualification, the chair shall so notify the Speaker and request the Speaker to designate a Member, Delegate, or Resident Commissioner from the same political party as the disqualifying member to act in any proceeding of the committee relating to that case.

(6) Information or testimony received, or the contents of a complaint or the fact of its filing, may not be publicly disclosed by any committee or staff member unless specifically authorized in each instance by a vote of the full committee.

(7) The committee shall have the functions designated in titles I and V of the Ethics in Government Act of 1978, in sections 7342, 7351, and 7353 of title 5, United States Code, and in clause 11(g)(4) of rule X.

(8)(A) Except as provided by subdivisions (B), (C), and (D), not later than 45 calendar days or 5 legislative days, whichever is later, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board

pursuant to a request under paragraph (r), the chair of the Committee on Ethics shall make public the written report and findings of the board unless the chair and ranking member, acting jointly, decide or the committee votes to withhold such information for not more than one additional period of the same duration, in which case the chair shall—

(i) upon the termination of such additional period, make public the written report and findings; and

(ii) upon the day of such decision or vote, make a public statement that the matter, relating to the referral made by the board of the Office of Congressional Ethics regarding the Member, officer, or employee of the House who is the subject of the applicable referral, has been extended.

At least one calendar day before the committee makes public any written report and findings of the board, the chair shall notify such board and the applicable Member, officer, or employee of that fact and transmit to such individual a copy of the statement on the committee's disposition of, and any committee report on, the matter.

(B) (i) Notwithstanding subdivision (A)(i), if the committee votes to dismiss a matter which is the subject of a referral from the board of the Office of Congressional Ethics, the committee is not required to make public the written report and findings described in such subdivision unless the committee's vote is inconsistent with the

recommendation of the board. For purposes of the previous sentence, a vote by the committee to dismiss a matter is not inconsistent with a report from the board respecting the matter as unresolved due to a tie vote.

(ii) Notwithstanding subdivision (A)(ii), if the board transmits a report respecting any matter with a recommendation to dismiss or as unresolved due to a tie vote, and the matter is extended for an additional period as provided in subdivision (A), the committee is not required to make a public statement that the matter has been extended.

(iii) Except as provided by subdivision (E), if the committee establishes an investigative subcommittee respecting any such matter, then the report and findings of the board shall not be made public until the conclusion of the investigative subcommittee process and the committee shall issue a public statement of the establishment of an investigative subcommittee, which statement shall include the name of the applicable Member, officer, or employee, and shall set forth the alleged violation. If any such investigative subcommittee does not conclude its review within one year after the board transmits a report respecting any matter, then the committee shall make public the report and upon the expiration of the Congress in which the report is made public, the committee shall make public any findings.

(C) (i) If, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the committee agrees to a request from an appropriate law enforcement or regulatory authority to defer taking action on the matter

(I) notwithstanding subdivision (A)(i), the committee is not required to make public the written report and findings described in such subdivision, except that if the recommendation of the board with respect to the report is that the matter requires further review, the committee shall make public the written report but not the findings; and

(II) before the end of the first day (excluding Saturdays, Sundays, and public holidays) after the day that the committee agrees to the request, the committee shall make a public statement that it is deferring taking action on the matter at the request of such authority.

(ii) If, upon the expiration of the one-year period that begins on the date the committee makes the public statement described in item (i)(II), the committee has not acted on the matter, the committee shall make a new public statement that it is still deferring taking action on the matter, and shall make a new statement upon the

expiration of each succeeding one-year period during which the committee has not acted on the matter.

(D) The committee may not receive any referral from the board of the Office of Congressional Ethics within 60 days before a Federal, State, or local election in which the subject of the referral is a candidate. The committee may delay any reporting requirement under this subparagraph that falls within that 60-day period until the end of such period and in that case, for purposes of subdivision (A), days within the 60-day period shall not be counted.

(E) If, at the close of any applicable period for a reporting requirement under this subparagraph with respect to a referral from the board of the Office of Congressional Ethics, the vote of the committee is a tie or the committee fails to act, the report and the findings of the board shall be made public by the committee, along with a public statement by the chair explaining the status of the matter.

(c)(1) Notwithstanding clause 2(g)(1) of rule XI, each meeting of the Committee on Ethics or a subcommittee thereof shall occur in executive session unless the committee or subcommittee, by an affirmative vote of a majority of its members, opens the meeting to the public.

(2) Notwithstanding clause 2(g)(2) of rule XI, each hearing of an adjudicatory subcommittee or sanction hearing of the Committee on Ethics shall be held in open session unless the committee or subcommittee, in open

session by an affirmative vote of a majority of its members, closes all or part of the remainder of the hearing on that day to the public.

(d) Before a member, officer, or employee of the Committee on Ethics, including members of a subcommittee of the committee selected under clause 5(a)(4) of rule X and shared staff, may have access to information that is confidential under the rules of the committee, the following oath (or affirmation) shall be executed:

“I do solemnly swear (or affirm) that I will not disclose, to any person or entity outside the Committee on Ethics, any information received in the course of my service with the committee, except as authorized by the committee or in accordance with its rules.”

Copies of the executed oath shall be retained by the Clerk as part of the records of the House. This paragraph establishes a standard of conduct within the meaning of paragraph (a)(2). Breaches of confidentiality shall be investigated by the Committee on Ethics and appropriate action shall be taken.

(e)(1) If a complaint or information offered as a complaint is deemed frivolous by an affirmative vote of a majority of the members of the Committee on Ethics, the committee may take such action as it, by an affirmative vote of a majority of its members, considers appropriate in the circumstances.

(2) Complaints filed before the One Hundred Fifth Congress may not be deemed frivolous by the Committee on Ethics.

Committee agendas

(f) The committee shall adopt rules providing that the chair shall establish the agenda for meetings of the committee, but shall not preclude the ranking minority member from placing any item on the agenda.

Committee staff

(g)(1) The committee shall adopt rules providing that—

(A) the staff be assembled and retained as a professional, nonpartisan staff;

(B) each member of the staff shall be professional and demonstrably qualified for the position for which hired;

(C) the staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner;

(D) no member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election;

(E) no member of the staff or outside counsel may accept public speaking engagements or write for publication on any subject that is in any way related to the employment or duties with the committee of such

individual without specific prior approval from the chair and ranking minority member; and

(F) no member of the staff or outside counsel may make public, unless approved by an affirmative vote of a majority of the members of the committee, any information, document, or other material that is confidential, derived from executive session, or classified and that is obtained during the course of employment with the committee.

(2) Only subdivisions (C), (E), and (F) of subparagraph (1) shall apply to shared staff.

(3)(A) All staff members shall be appointed by an affirmative vote of a majority of the members of the committee. Such vote shall occur at the first meeting of the membership of the committee during each Congress and as necessary during the Congress.

(B) Subject to the approval of the Committee on House Administration, the committee may retain counsel not employed by the House of Representatives whenever the committee determines, by an affirmative vote of a majority of the members of the committee, that the retention of outside counsel is necessary and appropriate.

(C) If the committee determines that it is necessary to retain staff members for the purpose of a particular investigation or other proceeding, then such staff shall be retained only for the duration of that particular investigation or proceeding.

(D) Outside counsel may be dismissed before the end of a contract between the committee and such counsel only by an affirmative vote of a majority of the members of the committee.

(4) In addition to any other staff provided for by law, rule, or other authority, with respect to the committee, the chair and ranking minority member each may appoint one individual as a shared staff member from the respective personal staff of the chair or ranking minority member to perform service for the committee. Such shared staff may assist the chair or ranking minority member on any subcommittee on which the chair or ranking minority member serves.

Meetings and hearings

(h) The committee shall adopt rules providing that—

(1) all meetings or hearings of the committee or any subcommittee thereof, other than any hearing held by an adjudicatory subcommittee or any sanction hearing held by the committee, shall occur in executive session unless the committee or subcommittee by an affirmative vote of a majority of its members opens the meeting or hearing to the public; and

(2) any hearing held by an adjudicatory subcommittee or any sanction hearing held by the committee shall be open to the public unless the committee or subcommittee by an affirmative vote of a

majority of its members closes the hearing to the public.

Public disclosure

(i) The committee shall adopt rules providing that, unless otherwise determined by a vote of the committee, only the chair or ranking minority member, after consultation with each other, may make public statements regarding matters before the committee or any subcommittee thereof.

Requirements to constitute a complaint

(j) The committee shall adopt rules regarding complaints to provide that whenever information offered as a complaint is submitted to the committee, the chair and ranking minority member shall have 14 calendar days or five legislative days, whichever is sooner, to determine whether the information meets the requirements of the rules of the committee for what constitutes a complaint.

Duties of chair and ranking minority member regarding properly filed complaints

(k)(1) The committee shall adopt rules providing that whenever the chair and ranking minority member jointly determine that information submitted to the committee meets the requirements of the rules of the committee for what constitutes a complaint, they shall have 45 calendar days or five legislative days, whichever is later, after that

determination (unless the committee by an affirmative vote of a majority of its members votes otherwise) to—

(A) recommend to the committee that it dispose of the complaint, or any portion thereof, in any manner that does not require action by the House, which may include dismissal of the complaint or resolution of the complaint by a letter to the Member, officer, or employee of the House against whom the complaint is made;

(B) establish an investigative subcommittee; or

(C) request that the committee extend the applicable 45-calendar day or five-legislative day period by one additional 45-calendar day period when they determine more time is necessary in order to make a recommendation under subdivision (A).

(2) The committee shall adopt rules providing that if the chair and ranking minority member jointly determine that information submitted to the committee meets the requirements of the rules of the committee for what constitutes a complaint, and the complaint is not disposed of within the applicable time periods under subparagraph (1), then they shall establish an investigative subcommittee and forward the complaint, or any portion thereof, to that subcommittee for its consideration. However, if, at any time during those periods, either the chair or ranking minority member places on the agenda the issue of whether to establish an investigative

subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

Duties of chair and ranking minority member regarding information not constituting a complaint

(l) The committee shall adopt rules providing that whenever the chair and ranking minority member jointly determine that information submitted to the committee does not meet the requirements of the rules of the committee for what constitutes a complaint, they may—

(1) return the information to the complainant with a statement that it fails to meet the requirements of the rules of the committee for what constitutes a complaint; or

(2) recommend to the committee that it authorize the establishment of an investigative subcommittee.

Investigative and adjudicatory subcommittees

(m) The committee shall adopt rules providing that—

(1)(A) an investigative subcommittee shall be composed of four Members (with equal representation from the majority and minority parties) whenever such a subcommittee is established pursuant to the rules of the committee;

(B) an adjudicatory subcommittee shall be composed of the members of the committee who did not serve on the pertinent investigative subcommittee (with equal

representation from the majority and minority parties) whenever such a subcommittee is established pursuant to the rules of the committee; and

(C) notwithstanding any other provision of this clause, the chair and ranking minority member of the committee may consult with an investigative subcommittee either on their own initiative or on the initiative of the subcommittee, shall have access to information before a subcommittee with which they so consult, and shall not thereby be precluded from serving as full, voting members of any adjudicatory subcommittee;

(2) at the time of appointment, the chair shall designate one member of a subcommittee to serve as chair and the ranking minority member shall designate one member of the subcommittee to serve as the ranking minority member; and

(3) the chair and ranking minority member of the committee may serve as members of an investigative subcommittee, but may not serve as non-voting, ex officio members.

Standard of proof for adoption of statement of alleged violation

(n) The committee shall adopt rules to provide that an investigative subcommittee may adopt a statement of alleged violation only if it determines by an affirmative vote of a majority of the members of the subcommittee

that there is substantial reason to believe that a violation of the Code of Official Conduct, or of a law, rule, regulation, or other standard of conduct applicable to the performance of official duties or the discharge of official responsibilities by a Member, officer, or employee of the House of Representatives, has occurred.

Subcommittee powers

(o)(1) The committee shall adopt rules providing that an investigative subcommittee or an adjudicatory subcommittee may authorize and issue subpoenas only when authorized by an affirmative vote of a majority of the members of the subcommittee.

(2) The committee shall adopt rules providing that an investigative subcommittee may, upon an affirmative vote of a majority of its members, expand the scope of its investigation when approved by an affirmative vote of a majority of the members of the committee.

(3) The committee shall adopt rules to provide that—

(A) an investigative subcommittee may, upon an affirmative vote of a majority of its members, amend its statement of alleged violation anytime before the statement of alleged violation is transmitted to the committee; and

(B) if an investigative subcommittee amends its statement of alleged violation, the respondent shall be notified in writing and shall have 30 calendar days from

the date of that notification to file an answer to the amended statement of alleged violation.

Due process rights of respondents

(p) The committee shall adopt rules to provide that—

(1) not less than 10 calendar days before a scheduled vote by an investigative subcommittee on a statement of alleged violation, the subcommittee shall provide the respondent with a copy of the statement of alleged violation it intends to adopt together with all evidence it intends to use to prove those charges which it intends to adopt, including documentary evidence, witness testimony, memoranda of witness interviews, and physical evidence, unless the subcommittee by an affirmative vote of a majority of its members decides to withhold certain evidence in order to protect a witness; but if such evidence is withheld, the subcommittee shall inform the respondent that evidence is being withheld and of the count to which such evidence relates;

(2) neither the respondent nor the counsel of the respondent shall, directly or indirectly, contact the subcommittee or any member thereof during the period of time set forth in paragraph (1) except for the sole purpose of settlement discussions where counsel for the respondent and the subcommittee are present;

(3) if, at any time after the issuance of a statement of alleged violation, the committee or any subcommittee thereof determines that it intends to use evidence not

provided to a respondent under paragraph (1) to prove the charges contained in the statement of alleged violation (or any amendment thereof), such evidence shall be made immediately available to the respondent, and it may be used in any further proceeding under the rules of the committee;

(4) evidence provided pursuant to paragraph (1) or (3) shall be made available to the respondent and the counsel of the respondent only after each agrees, in writing, that no document, information, or other materials obtained pursuant to that paragraph shall be made public until—

(A) such time as a statement of alleged violation is made public by the committee if the respondent has waived the adjudicatory hearing; or

(B) the commencement of an adjudicatory hearing if the respondent has not waived an adjudicatory hearing;

but the failure of respondent and the counsel of the respondent to so agree in writing, and their consequent failure to receive the evidence, shall not preclude the issuance of a statement of alleged violation at the end of the period referred to in paragraph (1);

(5) a respondent shall receive written notice whenever—

(A) the chair and ranking minority member determine that information the committee has

received constitutes a complaint;

(B) a complaint or allegation is transmitted to an investigative subcommittee;

(C) an investigative subcommittee votes to authorize its first subpoena or to take testimony under oath, whichever occurs first; or

(D) an investigative subcommittee votes to expand the scope of its investigation;

(6) whenever an investigative subcommittee adopts a statement of alleged violation and a respondent enters into an agreement with that subcommittee to settle a complaint on which that statement is based, that agreement, unless the respondent requests otherwise, shall be in writing and signed by the respondent and respondent's counsel, the chair and ranking minority member of the subcommittee, and the outside counsel, if any;

(7) statements or information derived solely from a respondent or the counsel of a respondent during any settlement discussions between the committee or a subcommittee thereof and the respondent shall not be included in any report of the subcommittee or the committee or otherwise publicly disclosed without the consent of the respondent; and

(8) whenever a motion to establish an investigative subcommittee does not prevail, the committee shall

promptly send a letter to the respondent informing the respondent of such vote.

Committee reporting requirements

(q) The committee shall adopt rules to provide that—

(1) whenever an investigative subcommittee does not adopt a statement of alleged violation and transmits a report to that effect to the committee, the committee may by an affirmative vote of a majority of its members transmit such report to the House of Representatives;

(2) whenever an investigative subcommittee adopts a statement of alleged violation, the respondent admits to the violations set forth in such statement, the respondent waives the right to an adjudicatory hearing, and the respondent's waiver is approved by the committee—

(A) the subcommittee shall prepare a report for transmittal to the committee, a final draft of which shall be provided to the respondent not less than 15 calendar days before the subcommittee votes on whether to adopt the report;

(B) the respondent may submit views in writing regarding the final draft to the subcommittee within seven calendar days of receipt of that draft;

(C) the subcommittee shall transmit a report to the committee regarding the statement of alleged violation together with any views submitted by the respondent pursuant to subdivision (B), and the

committee shall make the report together with the respondent's views available to the public before the commencement of any sanction hearing; and

(D) the committee shall by an affirmative vote of a majority of its members issue a report and transmit such report to the House of Representatives, together with the respondent's views previously submitted pursuant to subdivision (B) and any additional views respondent may submit for attachment to the final report; and

(3) members of the committee shall have not less than 72 hours to review any report transmitted to the committee by an investigative subcommittee before both the commencement of a sanction hearing and the committee vote on whether to adopt the report.

(r) Upon receipt of any written notification from the board of the Office of Congressional Ethics that the board is undertaking a review of any alleged conduct of any Member, officer, or employee of the House and if the committee is investigating such matter, the committee may at any time so notify the board and request that the board cease its review and refer the matter to the committee for its consideration. If at the end of the applicable time period (including any permissible extension) the committee has not reached a final resolution of the matter or has not referred the matter to the appropriate Federal or State authorities, the committee

shall so notify the board of the Office of Congressional Ethics in writing. The committee may not request the same matter from the board more than one time.

Audio and visual coverage of committee proceedings

4. (a) The purpose of this clause is to provide a means, in conformity with acceptable standards of dignity, propriety, and decorum, by which committee hearings or committee meetings that are open to the public may be covered by audio and visual means—

(1) for the education, enlightenment, and information of the general public, on the basis of accurate and impartial news coverage, regarding the operations, procedures, and practices of the House as a legislative and representative body, and regarding the measures, public issues, and other matters before the House and its committees, the consideration thereof, and the action taken thereon; and

(2) for the development of the perspective and understanding of the general public with respect to the role and function of the House under the Constitution as an institution of the Federal Government.

(b) In addition, it is the intent of this clause that radio and television tapes and television film of any coverage under this clause may not be used, or made available for use, as partisan political campaign material to promote or oppose the candidacy of any person for elective public office.

(c) It is, further, the intent of this clause that the general conduct of each meeting (whether of a hearing or otherwise) covered under authority of this clause by audio or visual means, and the personal behavior of the committee members and staff, other Government officials and personnel, witnesses, television, radio, and press media personnel, and the general public at the hearing or other meeting, shall be in strict conformity with and observance of the acceptable standards of dignity, propriety, courtesy, and decorum traditionally observed by the House in its operations, and may not be such as to—

(1) distort the objects and purposes of the hearing or other meeting or the activities of committee members in connection with that hearing or meeting or in connection with the general work of the committee or of the House; or

(2) cast discredit or dishonor on the House, the committee, or a Member, Delegate, or Resident Commissioner or bring the House, the committee, or a Member, Delegate, or Resident Commissioner into disrepute.

(d) The coverage of committee hearings and meetings by audio and visual means shall be permitted and conducted only in strict conformity with the purposes, provisions, and requirements of this clause.

(e) Whenever a hearing or meeting conducted by a committee or subcommittee is open to the public, those

proceedings shall be open to coverage by audio and visual means. A committee or subcommittee chair may not limit the number of television or still cameras to fewer than two representatives from each medium (except for legitimate space or safety considerations, in which case pool coverage shall be authorized).

(f) Each committee shall adopt written rules to govern its implementation of this clause. Such rules shall contain provisions to the following effect:

(1) If audio or visual coverage of the hearing or meeting is to be presented to the public as live coverage, that coverage shall be conducted and presented without commercial sponsorship.

(2) The allocation among the television media of the positions or the number of television cameras permitted by a committee or subcommittee chair in a hearing or meeting room shall be in accordance with fair and equitable procedures devised by the Executive Committee of the Radio and Television Correspondents' Galleries.

(3) Television cameras shall be placed so as not to obstruct in any way the space between a witness giving evidence or testimony and any member of the committee or the visibility of that witness and that member to each other.

(4) Television cameras shall operate from fixed positions but may not be placed in positions that

obstruct unnecessarily the coverage of the hearing or meeting by the other media.

(5) Equipment necessary for coverage by the television and radio media may not be installed in, or removed from, the hearing or meeting room while the committee is in session.

(6)(A) Except as provided in subdivision (B), floodlights, spotlights, strobelights, and flash—guns may not be used in providing any method of coverage of the hearing or meeting.

(B) The television media may install additional lighting in a hearing or meeting room, without cost to the Government, in order to raise the ambient lighting level in a hearing or meeting room to the lowest level necessary to provide adequate television coverage of a hearing or meeting at the current state of the art of television coverage.

(7) If requests are made by more of the media than will be permitted by a committee or subcommittee chair for coverage of a hearing or meeting by still photography, that coverage shall be permitted on the basis of a fair and equitable pool arrangement devised by the Standing Committee of Press Photographers.

(8) Photographers may not position themselves between the witness table and the members of the committee at any time during the course of a hearing or meeting.

(9) Photographers may not place themselves in positions that obstruct unnecessarily the coverage of the hearing by the other media.

(10) Personnel providing coverage by the television and radio media shall be currently accredited to the Radio and Television Correspondents' Galleries.

(11) Personnel providing coverage by still photography shall be currently accredited to the Press Photographers' Gallery.

(12) Personnel providing coverage by the television and radio media and by still photography shall conduct themselves and their coverage activities in an orderly and unobtrusive manner.

Pay of witnesses

5. Witnesses appearing before the House or any of its committees shall be paid the same per diem rate as established, authorized, and regulated by the Committee on House Administration for Members, Delegates, the Resident Commissioner, and employees of the House, plus actual expenses of travel to or from the place of examination. Such per diem may not be paid when a witness has been summoned at the place of examination.

Unfinished business of the session

6. All business of the House at the end of one session shall be resumed at the commencement of the next session

of the same Congress in the same manner as if no adjournment had taken place.

RULE XII

RECEIPT AND REFERRAL OF MEASURES AND MATTERS

Messages

1. Messages received from the Senate, or from the President, shall be entered on the Journal and published in the Congressional Record of the proceedings of that day.

Referral

2. (a) The Speaker shall refer each bill, resolution, or other matter that relates to a subject listed under a standing committee named in clause 1 of rule X in accordance with the provisions of this clause.

(b) The Speaker shall refer matters under paragraph (a) in such manner as to ensure to the maximum extent feasible that each committee that has jurisdiction under clause 1 of rule X over the subject matter of a provision thereof may consider such provision and report to the House thereon. Precedents, rulings, or procedures in effect before the Ninety-Fourth Congress shall be applied to referrals under this clause only to the extent that they will contribute to the achievement of the objectives of this clause.

(c) In carrying out paragraphs (a) and (b) with respect to the referral of a matter, the Speaker—

(1) shall designate a committee of primary jurisdiction (except where the Speaker determines that extraordinary circumstances justify review by more than one committee as though primary);

(2) may refer the matter to one or more additional committees for consideration in sequence, either initially or after the matter has been reported by the committee of primary jurisdiction;

(3) may refer portions of the matter reflecting different subjects and jurisdictions to one or more additional committees;

(4) may refer the matter to a special, ad hoc committee appointed by the Speaker with the approval of the House, and including members of the committees of jurisdiction, for the specific purpose of considering that matter and reporting to the House thereon;

(5) may subject a referral to appropriate time limitations; and

(6) may make such other provision as may be considered appropriate.

(d) A bill for the payment or adjudication of a private claim against the Government may not be referred to a committee other than the Committee on Foreign Affairs or the Committee on the Judiciary, except by unanimous consent.

Petitions, memorials, and private bills

3. If a Member, Delegate, or Resident Commissioner has a petition, memorial, or private bill to present, the Member, Delegate, or Resident Commissioner shall sign it, deliver it to the Clerk, and may specify the reference or disposition to be made thereof. Such petition, memorial, or private bill (except when judged by the Speaker to be obscene or insulting) shall be entered on the Journal with the name of the Member, Delegate, or Resident Commissioner presenting it and shall be printed in the Congressional Record.

4. A private bill or private resolution (including an omnibus claim or pension bill), or amendment thereto, may not be received or considered in the House if it authorizes or directs—

(a) the payment of money for property damages, for personal injuries or death for which suit may be instituted under the Tort Claims Procedure provided in title 28, United States Code, or for a pension (other than to carry out a provision of law or treaty stipulation);

(b) the construction of a bridge across a navigable stream; or

(c) the correction of a military or naval record.

Prohibition on commemorations

5. (a) A bill or resolution, or an amendment thereto, may not be introduced or considered in the House if it establishes or expresses a commemoration.

(b) In this clause the term “commemoration” means a remembrance, celebration, or recognition for any purpose through the designation of a specified period of time.

Excluded matters

6. A petition, memorial, bill, or resolution excluded under this rule shall be returned to the Member, Delegate, or Resident Commissioner from whom it was received. A petition or private bill that has been inappropriately referred may, by direction of the committee having possession of it, be properly referred in the manner originally presented. An erroneous reference of a petition or private bill under this clause does not confer jurisdiction on a committee to consider or report it.

Sponsorship

7. (a) Bills, memorials, petitions, and resolutions, endorsed with the names of Members, Delegates, or the Resident Commissioner introducing them, may be delivered to the Speaker to be referred. The titles and references of all bills, memorials, petitions, resolutions, and other documents referred under this rule shall be entered on the Journal and printed in the Congressional Record. An erroneous reference may be corrected by the House in accordance with rule X on any day immediately after the Pledge of Allegiance to the Flag by unanimous consent or motion. Such a motion shall be privileged if offered by direction of a committee to which the bill has

been erroneously referred or by direction of a committee claiming jurisdiction and shall be decided without debate.

(b)(1) The sponsor of a public bill or public resolution may name cosponsors. The name of a cosponsor added after the initial printing of a bill or resolution shall appear in the next printing of the bill or resolution on the written request of the sponsor. Such a request may be submitted to the Speaker at any time until the last committee authorized to consider and report the bill or resolution reports it to the House or is discharged from its consideration.

(2) The name of a cosponsor of a bill or resolution may be deleted by unanimous consent. The Speaker may entertain such a request only by the Member, Delegate, or Resident Commissioner whose name is to be deleted or by the sponsor of the bill or resolution, and only until the last committee authorized to consider and report the bill or resolution reports it to the House or is discharged from its consideration. The Speaker may not entertain a request to delete the name of the sponsor of a bill or resolution. A deletion shall be indicated by date in the next printing of the bill or resolution.

(3) The addition or deletion of the name of a cosponsor of a bill or resolution shall be entered on the Journal and printed in the Congressional Record of that day.

(4) A bill or resolution shall be reprinted on the written request of the sponsor. Such a request may be submitted

to the Speaker only when 20 or more cosponsors have been added since the last printing of the bill or resolution.

(5) When a bill or resolution is introduced “by request,” those words shall be entered on the Journal and printed in the Congressional Record.

(c)(1) A bill or joint resolution may not be introduced unless the sponsor submits for printing in the Congressional Record a statement citing as specifically as practicable the power or powers granted to Congress in the Constitution to enact the bill or joint resolution. The statement shall appear in a portion of the Record designated for that purpose and be made publicly available in electronic form by the Clerk.

(2) Before consideration of a Senate bill or joint resolution, the chair of a committee of jurisdiction may submit the statement required under subparagraph (1) as though the chair were the sponsor of the Senate bill or joint resolution.

Executive communications

8. Estimates of appropriations and all other communications from the executive departments intended for the consideration of any committees of the House shall be addressed to the Speaker for referral as provided in clause 2 of rule XIV.

RULE XIII

CALENDARS AND COMMITTEE REPORTS

Calendars

1. (a) All business reported by committees shall be referred to one of the following three calendars:

(1) A Calendar of the Committee of the Whole House on the state of the Union, to which shall be referred public bills and public resolutions raising revenue, involving a tax or charge on the people, directly or indirectly making appropriations of money or property or requiring such appropriations to be made, authorizing payments out of appropriations already made, releasing any liability to the United States for money or property, or referring a claim to the Court of Claims.

(2) A House Calendar, to which shall be referred all public bills and public resolutions not requiring referral to the Calendar of the Committee of the Whole House on the state of the Union.

(3) A Private Calendar as provided in clause 5 of rule XV, to which shall be referred all private bills and private resolutions.

(b) There is established a Calendar of Motions to Discharge Committees as provided in clause 2 of rule XV.

Filing and printing of reports

2. (a)(1) Except as provided in subparagraph (2), all reports of committees (other than those filed from the

floor) shall be delivered to the Clerk for printing and reference to the proper calendar under the direction of the Speaker in accordance with clause 1. The title or subject of each report shall be entered on the Journal and printed in the Congressional Record.

(2) A bill or resolution reported adversely (other than those filed as privileged) shall be laid on the table unless a committee to which the bill or resolution was referred requests at the time of the report its referral to an appropriate calendar under clause 1 or unless, within three days thereafter, a Member, Delegate, or Resident Commissioner makes such a request.

(b)(1) It shall be the duty of the chair of each committee to report or cause to be reported promptly to the House a measure or matter approved by the committee and to take or cause to be taken steps necessary to bring the measure or matter to a vote.

(2) In any event, the report of a committee on a measure that has been approved by the committee shall be filed within seven calendar days (exclusive of days on which the House is not in session) after the day on which a written request for the filing of the report, signed by a majority of the members of the committee, has been filed with the clerk of the committee. The clerk of the committee shall immediately notify the chair of the filing of such a request. This subparagraph does not apply to a report of the Committee on Rules with respect to a rule,

joint rule, or order of business of the House, or to the reporting of a resolution of inquiry addressed to the head of an executive department.

(c) All supplemental, minority, or additional views filed under clause 2(l) of rule XI by one or more members of a committee shall be included in, and shall be a part of, the report filed by the committee with respect to a measure or matter. When time guaranteed by clause 2(l) of rule XI has expired (or, if sooner, when all separate views have been received), the committee may arrange to file its report with the Clerk not later than one hour after the expiration of such time. This clause and provisions of clause 2(l) of rule XI do not preclude the immediate filing or printing of a committee report in the absence of a timely request for the opportunity to file supplemental, minority, or additional views as provided in clause 2(l) of rule XI.

Content of reports

3. (a)(1) Except as provided in subparagraph (2), the report of a committee on a measure or matter shall be printed in a single volume that—

(A) shall include all supplemental, minority, or additional views that have been submitted by the time of the filing of the report; and

(B) shall bear on its cover a recital that any such supplemental, minority, or additional views (and any

material submitted under paragraph (c)(3)) are included as part of the report.

(2) A committee may file a supplemental report for the correction of a technical error in its previous report on a measure or matter. A supplemental report only correcting errors in the depiction of record votes under paragraph (b) may be filed under this subparagraph and shall not be subject to the requirement in clause 4 or clause 6 concerning the availability of reports.

(b) With respect to each record vote on a motion to report a measure or matter of a public nature, and on any amendment offered to the measure or matter, the total number of votes cast for and against, and the names of members voting for and against, shall be included in the committee report. The preceding sentence does not apply to votes taken in executive session by the Committee on Ethics.

(c) The report of a committee on a measure that has been approved by the committee shall include, separately set out and clearly identified, the following:

(1) Oversight findings and recommendations under clause 2(b)(1) of rule X.

(2) The statement required by section 308(a) of the Congressional Budget Act of 1974, except that an estimate of new budget authority shall include, when practicable, a comparison of the total estimated funding

level for the relevant programs to the appropriate levels under current law.

(3) An estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 if timely submitted to the committee before the filing of the report.

(4) A statement of general performance goals and objectives, including outcome-related goals and objectives, for which the measure authorizes funding.

(d) Each report of a committee on a public bill or public joint resolution shall contain the following:

(1)(A) An estimate by the committee of the costs that would be incurred in carrying out the bill or joint resolution in the fiscal year in which it is reported and in each of the five fiscal years following that fiscal year (or for the authorized duration of any program authorized by the bill or joint resolution if less than five years);

(B) a comparison of the estimate of costs described in subdivision (A) made by the committee with any estimate of such costs made by a Government agency and submitted to such committee; and

(C) when practicable, a comparison of the total estimated funding level for the relevant programs with the appropriate levels under current law.

(2)(A) In subparagraph (1) the term “Government agency” includes any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or the government of the District of Columbia.

(B) Subparagraph (1) does not apply to the Committee on Appropriations, the Committee on House Administration, the Committee on Rules, or the Committee on Ethics, and does not apply when a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been included in the report under paragraph (c)(3).

(e)(1) Whenever a committee reports a bill or joint resolution proposing to repeal or amend a statute or part thereof, it shall include in its report or in an accompanying document—

(A) the text of a statute or part thereof that is proposed to be repealed; and

(B) a comparative print of any part of the bill or joint resolution proposing to amend the statute and of the statute or part thereof proposed to be amended, and adjacent provisions if useful to enable the intent and effect of the amendment to be clearly understood, showing by appropriate typographical devices the omissions and insertions proposed.

(2) If a committee reports a bill or joint resolution proposing to repeal or amend a statute or part thereof with a recommendation that the bill or joint resolution be amended, the comparative print required by subparagraph (1) shall reflect the changes in existing law proposed to be made by the bill or joint resolution as proposed to be amended.

(f)(1) A report of the Committee on Appropriations on a general appropriation bill shall include—

(A) a concise statement describing the effect of any provision of the accompanying bill that directly or indirectly changes the application of existing law; and

(B) a list of all appropriations contained in the bill for expenditures not currently authorized by law for the period concerned (excepting classified intelligence or national security programs, projects, or activities), along with a statement of the last year for which such expenditures were authorized, the level of expenditures authorized for that year, the actual level of expenditures for that year, and the level of appropriations in the bill for such expenditures.

(2) Whenever the Committee on Appropriations reports a bill or joint resolution including matter specified in clause 1(b)(2) or (3) of rule X, it shall include—

(A) in the bill or joint resolution, separate headings for “Rescissions” and “Transfers of Unexpended Balances”; and

(B) in the report of the committee, a separate section listing such rescissions and transfers.

(g) Whenever the Committee on Rules reports a resolution proposing to repeal or amend a standing rule of the House, it shall include in its report or in an accompanying document—

(1) the text of any rule or part thereof that is proposed to be repealed; and

(2) a comparative print of any part of the resolution proposing to amend the rule and of the rule or part thereof proposed to be amended, showing by appropriate typographical devices the omissions and insertions proposed.

(h)(1) It shall not be in order to consider a bill or joint resolution reported by the Committee on Ways and Means that proposes to amend the Internal Revenue Code of 1986 unless—

(A) the report includes a tax complexity analysis prepared by the Joint Committee on Internal Revenue Taxation in accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998; or

(B) the chair of the Committee on Ways and Means causes such a tax complexity analysis to be printed in the Congressional Record before consideration of the bill or joint resolution.

(2)(A) It shall not be in order to consider a bill or joint resolution reported by the Committee on Ways and Means that proposes to amend the Internal Revenue Code of 1986 unless—

(i) the report includes a macroeconomic impact analysis;

(ii) the report includes a statement from the Joint Committee on Internal Revenue Taxation explaining why a macroeconomic impact analysis is not calculable; or

(iii) the chair of the Committee on Ways and Means causes a macroeconomic impact analysis to be printed in the Congressional Record before consideration of the bill or joint resolution.

(B) In subdivision (A), the term “macroeconomic impact analysis” means—

(i) an estimate prepared by the Joint Committee on Internal Revenue Taxation of the changes in economic output, employment, capital stock, and tax revenues expected to result from enactment of the proposal; and

(ii) a statement from the Joint Committee on Internal Revenue Taxation identifying the critical assumptions and the source of data underlying that estimate.

Availability of reports

4. (a)(1) Except as specified in subparagraph (2), it shall not be in order to consider in the House a measure or matter reported by a committee until the third calendar

day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which each report of a committee on that measure or matter has been available to Members, Delegates, and the Resident Commissioner.

(2) Subparagraph (1) does not apply to—

(A) a resolution providing a rule, joint rule, or order of business reported by the Committee on Rules considered under clause 6;

(B) a resolution providing amounts from the applicable accounts described in clause 1(k)(1) of rule X reported by the Committee on House Administration considered under clause 6 of rule X;

(C) a resolution presenting a question of the privileges of the House reported by any committee;

(D) a measure for the declaration of war, or the declaration of a national emergency, by Congress; and

(E) a measure providing for the disapproval of a decision, determination, or action by a Government agency that would become, or continue to be, effective unless disapproved or otherwise invalidated by one or both Houses of Congress. In this subdivision the term “Government agency” includes any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or of the government of the District of Columbia.

(b) A committee that reports a measure or matter shall make every reasonable effort to have its hearings thereon (if any) printed and available for distribution to Members, Delegates, and the Resident Commissioner before the consideration of the measure or matter in the House.

(c) A general appropriation bill reported by the Committee on Appropriations may not be considered in the House until the third calendar day (excluding Saturdays, Sundays, and legal holidays except when the House is in session on such a day) on which printed hearings of the Committee on Appropriations thereon have been available to Members, Delegates, and the Resident Commissioner.

Privileged reports, generally

5. (a) The following committees shall have leave to report at any time on the following matters, respectively:

(1) The Committee on Appropriations, on general appropriation bills and on joint resolutions continuing appropriations for a fiscal year after September 15 in the preceding fiscal year.

(2) The Committee on the Budget, on the matters required to be reported by such committee under titles III and IV of the Congressional Budget Act of 1974.

(3) The Committee on House Administration, on enrolled bills, on contested elections, on matters referred to it concerning printing for the use of the House or the two Houses, on expenditure of the

applicable accounts of the House described in clause 1(k)(1) of rule X, and on matters relating to preservation and availability of noncurrent records of the House under rule VII.

(4) The Committee on Rules, on rules, joint rules, and the order of business.

(5) The Committee on Ethics, on resolutions recommending action by the House with respect to a Member, Delegate, Resident Commissioner, officer, or employee of the House as a result of an investigation by the committee relating to the official conduct of such Member, Delegate, Resident Commissioner, officer, or employee.

(b) A report filed from the floor as privileged under paragraph (a) may be called up as a privileged question by direction of the reporting committee, subject to any requirement concerning its availability to Members, Delegates, and the Resident Commissioner under clause 4 or concerning the timing of its consideration under clause 6.

Privileged reports by the Committee on Rules

6. (a) A report by the Committee on Rules on a rule, joint rule, or the order of business may not be called up for consideration on the same day it is presented to the House except—

(1) when so determined by a vote of two-thirds of the Members voting, a quorum being present;

(2) in the case of a resolution proposing only to waive a requirement of clause 4 or of clause 8 of rule XXII concerning the availability of reports; or

(3) during the last three days of a session of Congress.

(b) Pending the consideration of a report by the Committee on Rules on a rule, joint rule, or the order of business, the Speaker may entertain one motion that the House adjourn but may not entertain any other dilatory motion until the report shall have been disposed of.

(c) The Committee on Rules may not report a rule or order that would prevent the motion to recommit a bill or joint resolution from being made as provided in clause 2(b) of rule XIX, including a motion to recommit with instructions to report back an amendment otherwise in order, if offered by the Minority Leader or a designee, except with respect to a Senate bill or joint resolution for which the text of a House-passed measure has been substituted.

(d) The Committee on Rules shall present to the House reports concerning rules, joint rules, and the order of business, within three legislative days of the time when they are ordered. If such a report is not considered immediately, it shall be referred to the calendar. If such a report on the calendar is not called up by the member of the committee who filed the report within seven legislative days, any member of the committee may call it

up as a privileged question on the day after the calendar day on which the member announces to the House intention to do so. The Speaker shall recognize a member of the committee who rises for that purpose.

(e) An adverse report by the Committee on Rules on a resolution proposing a special order of business for the consideration of a public bill or public joint resolution may be called up as a privileged question by a Member, Delegate, or Resident Commissioner on a day when it is in order to consider a motion to discharge committees under clause 2 of rule XV.

(f) If the House has adopted a resolution making in order a motion to consider a bill or resolution, and such a motion has not been offered within seven calendar days thereafter, such a motion shall be privileged if offered by direction of all reporting committees having initial jurisdiction of the bill or resolution.

(g) Whenever the Committee on Rules reports a resolution providing for the consideration of a measure, it shall to the maximum extent possible specify in the accompanying report any waiver of a point of order against the measure or against its consideration.

Resolutions of inquiry

7. A report on a resolution of inquiry addressed to the head of an executive department may be filed from the floor as privileged. If such a resolution is not reported to the House within 14 legislative days after its introduction,

a motion to discharge a committee from its consideration shall be privileged.

RULE XIV

ORDER AND PRIORITY OF BUSINESS

1. The daily order of business (unless varied by the application of other rules and except for the disposition of matters of higher precedence) shall be as follows:

First. Prayer by the Chaplain.

Second. Reading and approval of the Journal, unless postponed under clause 8 of rule XX.

Third. The Pledge of Allegiance to the Flag.

Fourth. Correction of reference of public bills.

Fifth. Disposal of business on the Speaker's table as provided in clause 2.

Sixth. Unfinished business as provided in clause 3.

Seventh. The morning hour for the consideration of bills called up by committees as provided in clause 4.

Eighth. Motions that the House resolve into the Committee of the Whole House on the state of the Union subject to clause 5.

Ninth. Orders of the day.

2. Business on the Speaker's table shall be disposed of as follows:

(a) Messages from the President shall be referred to the appropriate committees without debate.

(b) Communications addressed to the House, including reports and communications from heads of departments and bills, resolutions, and messages from the Senate, may be referred to the appropriate committees in the same manner and with the same right of correction as public bills and public resolutions presented by Members, Delegates, or the Resident Commissioner.

(c) Motions to dispose of Senate amendments on the Speaker's table may be entertained as provided in clauses 1, 2, and 4 of rule XXII.

(d) Senate bills and resolutions substantially the same as House measures already favorably reported and not required to be considered in the Committee of the Whole House on the state of the Union may be disposed of by motion. Such a motion shall be privileged if offered by direction of all reporting committees having initial jurisdiction of the House measure.

3. Consideration of unfinished business in which the House may have been engaged at an adjournment, except business in the morning hour and proceedings postponed under clause 8 of rule XX, shall be resumed as soon as the business on the Speaker's table is finished, and at the same time each day thereafter until disposed of. The consideration of all other unfinished business shall be

resumed whenever the class of business to which it belongs shall be in order under the rules.

4. After the unfinished business has been disposed of, the Speaker shall call each standing committee in regular order and then select committees. Each committee when named may call up for consideration a bill or resolution reported by it on a previous day and on the House Calendar. If the Speaker does not complete the call of the committees before the House passes to other business, the next call shall resume at the point it left off, giving preference to the last bill or resolution under consideration. A committee that has occupied the call for two days may not call up another bill or resolution until the other committees have been called in their turn.

5. After consideration of bills or resolutions under clause 4 for one hour, it shall be in order, pending consideration thereof, to entertain a motion that the House resolve into the Committee of the Whole House on the state of the Union or, when authorized by a committee, that the House resolve into the Committee of the Whole House on the state of the Union to consider a particular bill. Such a motion shall be subject to only one amendment designating another bill. If such a motion is decided in the negative, another such motion may not be considered until the matter that was pending when such motion was offered is disposed of.

6. All questions relating to the priority of business shall be decided by a majority without debate.

RULE XV

BUSINESS IN ORDER ON SPECIAL DAYS

Suspensions

1. (a) A rule may not be suspended except by a vote of two-thirds of the Members voting, a quorum being present. The Speaker may not entertain a motion that the House suspend the rules except on Mondays, Tuesdays, and Wednesdays and during the last six days of a session of Congress.

(b) Pending a motion that the House suspend the rules, the Speaker may entertain one motion that the House adjourn but may not entertain any other motion until the vote is taken on the suspension.

(c) A motion that the House suspend the rules is debatable for 40 minutes, one-half in favor of the motion and one-half in opposition thereto.

Discharge motions, second and fourth Mondays

2. (a) Motions to discharge committees shall be in order on the second and fourth Mondays of a month.

(b)(1) A Member may present to the Clerk a motion in writing to discharge—

(A) a committee from consideration of a public bill or public resolution that has been referred to it for 30

legislative days; or

(B) the Committee on Rules from consideration of a resolution that has been referred to it for seven legislative days and that proposes a special order of business for the consideration of a public bill or public resolution that has been reported by a committee or has been referred to a committee for 30 legislative days.

(2) Only one motion may be presented for a bill or resolution. A Member may not file a motion to discharge the Committee on Rules from consideration of a resolution providing for the consideration of more than one public bill or public resolution or admitting or effecting a nongermane amendment to a public bill or public resolution.

(c) A motion presented under paragraph (b) shall be placed in the custody of the Clerk, who shall arrange a convenient place for the signatures of Members. A signature may be withdrawn by a Member in writing at any time before a motion is entered on the Journal. The Clerk shall make the signatories a matter of public record, causing the names of the Members who have signed a discharge motion during a week to be published in a portion of the Congressional Record designated for that purpose on the last legislative day of the week and making cumulative lists of such names available each day for public inspection in an appropriate office of the House. The Clerk shall devise a means for making such lists

available to offices of the House and to the public in electronic form. When a majority of the total membership of the House shall have signed the motion, it shall be entered on the Journal, published with the signatories thereto in the Record, and referred to the Calendar of Motions to Discharge Committees.

(d)(1) On the second and fourth Mondays of a month (except during the last six days of a session of Congress), immediately after the Pledge of Allegiance to the Flag, a motion to discharge that has been on the calendar for at least seven legislative days shall be privileged if called up by a Member whose signature appears thereon. When such a motion is called up, the House shall proceed to its consideration under this paragraph without intervening motion except one motion to adjourn. Privileged motions to discharge shall have precedence in the order of their entry on the Journal.

(2) When a motion to discharge is called up, the bill or resolution to which it relates shall be read by title only. The motion is debatable for 20 minutes, one-half in favor of the motion and one-half in opposition thereto.

(e)(1) If a motion prevails to discharge the Committee on Rules from consideration of a resolution, the House shall immediately consider the resolution, pending which the Speaker may entertain one motion that the House adjourn but may not entertain any other dilatory motion until the resolution has been disposed of. If the resolution

is adopted, the House shall immediately proceed to its execution.

(2) If a motion prevails to discharge a committee from consideration of a public bill or public resolution, a motion that the House proceed to the immediate consideration of such bill or resolution shall be privileged if offered by a Member whose signature appeared on the motion to discharge. The motion to proceed is not debatable. If the motion to proceed is adopted, the bill or resolution shall be considered immediately under the general rules of the House. If unfinished before adjournment of the day on which it is called up, the bill or resolution shall remain the unfinished business until it is disposed of. If the motion to proceed is rejected, the bill or resolution shall be referred to the appropriate calendar, where it shall have the same status as if the committee from which it was discharged had duly reported it to the House.

(f)(1) When a motion to discharge originated under this clause has once been acted on by the House, it shall not be in order to entertain during the same session of Congress

(A) a motion to discharge a committee from consideration of that bill or resolution or of any other bill or resolution that, by relating in substance to or dealing with the same subject matter, is substantially the same; or

(B) a motion to discharge the Committee on Rules from consideration of a resolution providing a special order of business for the consideration of that bill or resolution or of any other bill or resolution that, by relating in substance to or dealing with the same subject matter, is substantially the same.

(2) A motion to discharge on the Calendar of Motions to Discharge Committees that is rendered out of order under subparagraph (1) shall be stricken from that calendar.

Adverse report by the Committee on Rules, second and fourth Mondays

3. An adverse report by the Committee on Rules on a resolution proposing a special order of business for the consideration of a public bill or public joint resolution may be called up under clause 6(e) of rule XIII as a privileged question by a Member, Delegate, or Resident Commissioner on a day when it is in order to consider a motion to discharge committees under clause 2.

District of Columbia business, second and fourth Mondays

4. The second and fourth Mondays of a month shall be set apart for the consideration of such District of Columbia business as may be called up by the Committee on Oversight and Government Reform after the disposition of motions to discharge committees and after

the disposal of such business on the Speaker's table as requires reference only.

Private Calendar, first and third Tuesdays

5. (a) On the first Tuesday of a month, the Speaker shall direct the Clerk to call the bills and resolutions on the Private Calendar after disposal of such business on the Speaker's table as requires reference only. If two or more Members, Delegates, or the Resident Commissioner object to the consideration of a bill or resolution so called, it shall be recommitted to the committee that reported it. No other business shall be in order before completion of the call of the Private Calendar on this day unless two-thirds of the Members voting, a quorum being present, agree to a motion that the House dispense with the call.

(b)(1) On the third Tuesday of a month, after the disposal of such business on the Speaker's table as requires reference only, the Speaker may direct the Clerk to call the bills and resolutions on the Private Calendar. Preference shall be given to omnibus bills containing the texts of bills or resolutions that have previously been objected to on a call of the Private Calendar. If two or more Members, Delegates, or the Resident Commissioner object to the consideration of a bill or resolution so called (other than an omnibus bill), it shall be recommitted to the committee that reported it. Two-thirds of the Members voting, a quorum being present, may adopt a motion that the House dispense with the call on this day.

(2) Omnibus bills shall be read for amendment by paragraph. No amendment shall be in order except to strike or to reduce amounts of money or to provide limitations. An item or matter stricken from an omnibus bill may not thereafter during the same session of Congress be included in an omnibus bill. Upon passage such an omnibus bill shall be resolved into the several bills and resolutions of which it is composed. The several bills and resolutions, with any amendments adopted by the House, shall be engrossed, when necessary, and otherwise considered as passed severally by the House as distinct bills and resolutions.

(c) The Speaker may not entertain a reservation of the right to object to the consideration of a bill or resolution under this clause. A bill or resolution considered under this clause shall be considered in the House as in the Committee of the Whole. A motion to dispense with the call of the Private Calendar under this clause shall be privileged. Debate on such a motion shall be limited to five minutes in support and five minutes in opposition.

Calendar Call of Committees, Wednesdays

6. (a) On Wednesday of each week, business shall not be in order before completion of the call of those committees (except as provided by clause 4 of rule XIV) whose chair, or other member authorized by the committee, has announced to the House a request for such call on the preceding legislative day.

(b) A bill or resolution on either the House or the Union Calendar, except bills or resolutions that are privileged under the Rules of the House, may be called under this clause. A bill or resolution called up from the Union Calendar shall be considered in the Committee of the Whole House on the state of the Union without motion, subject to clause 3 of rule XVI. General debate on a measure considered under this clause shall be confined to the measure and may not exceed two hours equally divided between a proponent and an opponent.

(c) This clause does not apply during the last two weeks of a session of Congress.

(d) Precedents, rulings, or procedures in effect before the One Hundred Eleventh Congress regarding the priority of business and the availability of other business on Wednesday shall be applied only to the extent consistent with this clause.

RULE XVI

MOTIONS AND AMENDMENTS

Motions

1. Every motion entertained by the Speaker shall be reduced to writing on the demand of a Member, Delegate, or Resident Commissioner and, unless it is withdrawn the same day, shall be entered on the Journal with the name of the Member, Delegate, or Resident Commissioner

offering it. A dilatory motion may not be entertained by the Speaker.

Withdrawal

2. When a motion is entertained, the Speaker shall state it or cause it to be read aloud by the Clerk before it is debated. The motion then shall be in the possession of the House but may be withdrawn at any time before a decision or amendment thereon.

Question of consideration

3. When a motion or proposition is entertained, the question, “Will the House now consider it?” may not be put unless demanded by a Member, Delegate, or Resident Commissioner.

Precedence of motions

4. (a) When a question is under debate, only the following motions may be entertained (which shall have precedence in the following order):

- (1) To adjourn.
- (2) To lay on the table.
- (3) For the previous question.
- (4) To postpone to a day certain.
- (5) To refer.
- (6) To amend.
- (7) To postpone indefinitely.

(b) A motion to adjourn, to lay on the table, or for the previous question shall be decided without debate. A motion to postpone to a day certain, to refer, or to postpone indefinitely, being decided, may not be allowed again on the same day at the same stage of the question.

(c)(1) It shall be in order at any time for the Speaker, in the discretion of the Speaker, to entertain a motion—

(A) that the Speaker be authorized to declare a recess; or

(B) that when the House adjourns it stand adjourned to a day and time certain.

(2) Either motion shall be of equal privilege with the motion to adjourn and shall be decided without debate.

Divisibility

5. (a) Except as provided in paragraph (b), a question shall be divided on the demand of a Member, Delegate, or Resident Commissioner before the question is put if it includes propositions so distinct in substance that, one being taken away, a substantive proposition remains.

(b)(1) A motion or resolution to elect members to a standing committee of the House, or to a joint standing committee, is not divisible.

(2) A resolution or order reported by the Committee on Rules providing a special order of business is not divisible.

(c) A motion to strike and insert is not divisible, but rejection of a motion to strike does not preclude another

motion to amend.

Amendments

6. When an amendable proposition is under consideration, a motion to amend and a motion to amend that amendment shall be in order, and it also shall be in order to offer a further amendment by way of substitute for the original motion to amend, to which one amendment may be offered but which may not be voted on until the original amendment is perfected. An amendment may be withdrawn in the House at any time before a decision or amendment thereon. An amendment to the title of a bill or resolution shall not be in order until after its passage or adoption and shall be decided without debate.

Germaneness

7. No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.

Readings

8. Bills and joint resolutions are subject to readings as follows:

(a) A first reading is in full when the bill or joint resolution is first considered.

(b) A second reading occurs only when the bill or joint resolution is read for amendment in a Committee

of the Whole House on the state of the Union under clause 5 of rule XVIII.

(c) A third reading precedes passage when the Speaker states the question: “Shall the bill [or joint resolution] be engrossed [when applicable] and read a third time?” If that question is decided in the affirmative, then the bill or joint resolution shall be read the final time by title and then the question shall be put on its passage.

RULE XVII

DECORUM AND DEBATE

Decorum

1. (a) A Member, Delegate, or Resident Commissioner who desires to speak or deliver a matter to the House shall rise and respectfully address the Speaker and, on being recognized, may address the House from any place on the floor. When invited by the Chair, a Member, Delegate, or Resident Commissioner may speak from the Clerk’s desk.

(b) Remarks in debate (which may include references to the Senate or its Members) shall be confined to the question under debate, avoiding personality.

Recognition

2. When two or more Members, Delegates, or the Resident Commissioner rise at once, the Speaker shall name the Member, Delegate, or Resident Commissioner

who is first to speak. A Member, Delegate, or Resident Commissioner may not occupy more than one hour in debate on a question in the House or in the Committee of the Whole House on the state of the Union except as otherwise provided in this rule.

Managing debate

3. (a) The Member, Delegate, or Resident Commissioner who calls up a measure may open and close debate thereon. When general debate extends beyond one day, that Member, Delegate, or Resident Commissioner shall be entitled to one hour to close without regard to the time used in opening.

(b) Except as provided in paragraph (a), a Member, Delegate, or Resident Commissioner may not speak more than once to the same question without leave of the House.

(c) A manager of a measure who opposes an amendment thereto is entitled to close controlled debate thereon.

Call to order

4. (a) If a Member, Delegate, or Resident Commissioner, in speaking or otherwise, transgresses the Rules of the House, the Speaker shall, or a Member, Delegate, or Resident Commissioner may, call to order the offending Member, Delegate, or Resident Commissioner, who shall immediately sit down unless permitted on

motion of another Member, Delegate, or the Resident Commissioner to explain. If a Member, Delegate, or Resident Commissioner is called to order, the Member, Delegate, or Resident Commissioner making the call to order shall indicate the words excepted to, which shall be taken down in writing at the Clerk's desk and read aloud to the House.

(b) The Speaker shall decide the validity of a call to order. The House, if appealed to, shall decide the question without debate. If the decision is in favor of the Member, Delegate, or Resident Commissioner called to order, the Member, Delegate, or Resident Commissioner shall be at liberty to proceed, but not otherwise. If the case requires it, an offending Member, Delegate, or Resident Commissioner shall be liable to censure or such other punishment as the House may consider proper. A Member, Delegate, or Resident Commissioner may not be held to answer a call to order, and may not be subject to the censure of the House therefor, if further debate or other business has intervened.

Comportment

5. When the Speaker is putting a question or addressing the House, a Member, Delegate, or Resident Commissioner may not walk out of or across the Hall. When a Member, Delegate, or Resident Commissioner is speaking, a Member, Delegate, or Resident Commissioner may not pass between the person speaking and the Chair.

During the session of the House, a Member, Delegate, or Resident Commissioner may not wear a hat or remain by the Clerk's desk during the call of the roll or the counting of ballots. A person on the floor of the House may not smoke or use a mobile electronic device that impairs decorum. The Sergeant-at-Arms is charged with the strict enforcement of this clause.

Exhibits

6. When the use of an exhibit in debate is objected to by a Member, Delegate, or Resident Commissioner, the Chair, in the discretion of the Chair, may submit the question of its use to the House without debate.

Galleries

7. During a session of the House, it shall not be in order for a Member, Delegate, or Resident Commissioner to introduce to or to bring to the attention of the House an occupant in the galleries of the House. The Speaker may not entertain a request for the suspension of this rule by unanimous consent or otherwise.

Congressional Record

8. (a) The Congressional Record shall be a substantially verbatim account of remarks made during the proceedings of the House, subject only to technical, grammatical, and typographical corrections authorized by the Member, Delegate, or Resident Commissioner making the remarks.

(b) Unparliamentary remarks may be deleted only by permission or order of the House.

(c) This clause establishes a standard of conduct within the meaning of clause 3(a)(2) of rule XI.

Secret sessions

9. When confidential communications are received from the President, or when the Speaker or a Member, Delegate, or Resident Commissioner informs the House that such individual has communications that such individual believes ought to be kept secret for the present, the House shall be cleared of all persons except the Members, Delegates, Resident Commissioner, and officers of the House for the reading of such communications, and debates and proceedings thereon, unless otherwise ordered by the House.

RULE XVIII

THE COMMITTEE OF THE WHOLE HOUSE ON THE STATE OF THE UNION

Resolving into the Committee of the Whole

1. Whenever the House resolves into the Committee of the Whole House on the state of the Union, the Speaker shall leave the chair after appointing a Member as Chair to preside. In case of disturbance or disorderly conduct in the galleries or lobby, the Chair may cause the same to be cleared.

2. (a) Except as provided in paragraph (b) and in clause 6 of rule XV, the House resolves into the Committee of the Whole House on the state of the Union by motion. When such a motion is entertained, the Speaker shall put the question without debate: “Shall the House resolve itself into the Committee of the Whole House on the state of the Union for consideration of this matter?”, naming it.

(b) After the House has adopted a resolution reported by the Committee on Rules providing a special order of business for the consideration of a measure in the Committee of the Whole House on the state of the Union, the Speaker may at any time, when no question is pending before the House, declare the House resolved into the Committee of the Whole for the consideration of that measure without intervening motion, unless the special order of business provides otherwise.

Measures requiring initial consideration in the Committee of the Whole

3. All public bills, resolutions, or Senate amendments (as provided in clause 3 of rule XXII) involving a tax or charge on the people, raising revenue, directly or indirectly making appropriations of money or property or requiring such appropriations to be made, authorizing payments out of appropriations already made, releasing any liability to the United States for money or property, or referring a claim to the Court of Claims, shall be first considered in the Committee of the Whole House on the

state of the Union. A bill, resolution, or Senate amendment that fails to comply with this clause is subject to a point of order against its consideration.

Order of business

4. (a) Subject to subparagraph (b) business on the calendar of the Committee of the Whole House on the state of the Union may be taken up in regular order, or in such order as the Committee may determine, unless the measure to be considered was determined by the House at the time of resolving into the Committee of the Whole.

(b) Motions to resolve into the Committee of the Whole for consideration of bills and joint resolutions making general appropriations have precedence under this clause.

Reading for amendment

5. (a) Before general debate commences on a measure in the Committee of the Whole House on the state of the Union, it shall be read in full. When general debate is concluded or closed by order of the House, the measure under consideration shall be read for amendment. A Member, Delegate, or Resident Commissioner who offers an amendment shall be allowed five minutes to explain it, after which the Member, Delegate, or Resident Commissioner who shall first obtain the floor shall be allowed five minutes to speak in opposition to it. There shall be no further debate thereon, but the same privilege of debate shall be allowed in favor of and against any

amendment that may be offered to an amendment. An amendment, or an amendment to an amendment, may be withdrawn by its proponent only by the unanimous consent of the Committee of the Whole.

(b) When a Member, Delegate, or Resident Commissioner offers an amendment in the Committee of the Whole House on the state of the Union, the Clerk shall promptly transmit five copies of the amendment to the majority committee table and five copies to the minority committee table. The Clerk also shall deliver at least one copy of the amendment to the majority cloakroom and at least one copy to the minority cloakroom.

Quorum and voting

6. (a) A quorum of a Committee of the Whole House on the state of the Union is 100 Members. The first time that a Committee of the Whole finds itself without a quorum during a day, the Chair shall invoke the procedure for a quorum call set forth in clause 2 of rule XX, unless the Chair elects to invoke an alternate procedure set forth in clause 3 or clause 4(a) of rule XX. If a quorum appears, the Committee of the Whole shall continue its business. If a quorum does not appear, the Committee of the Whole shall rise, and the Chair shall report the names of absentees to the House.

(b)(1) The Chair may refuse to entertain a point of order that a quorum is not present during general debate.

(2) After a quorum has once been established on a day, the Chair may entertain a point of order that a quorum is not present only when the Committee of the Whole House on the state of the Union is operating under the five-minute rule and the Chair has put the pending proposition to a vote.

(3) Upon sustaining a point of order that a quorum is not present, the Chair may announce that, following a regular quorum call under paragraph (a), the minimum time for electronic voting on the pending question shall be not less than two minutes.

(c) When ordering a quorum call in the Committee of the Whole House on the state of the Union, the Chair may announce an intention to declare that a quorum is constituted at any time during the quorum call when the Chair determines that a quorum has appeared. If the Chair interrupts the quorum call by declaring that a quorum is constituted, proceedings under the quorum call shall be considered as vacated, and the Committee of the Whole shall continue its sitting and resume its business.

(d) A quorum is not required in the Committee of the Whole House on the state of the Union for adoption of a motion that the Committee rise.

(e) In the Committee of the Whole House on the state of the Union, the Chair shall order a recorded vote on a request supported by at least 25 Members.

(f) In the Committee of the Whole House on the state of the Union, the Chair may reduce to not less than two minutes the minimum time for electronic voting without any intervening business or debate on any or all pending amendments after a record vote has been taken on the first pending amendment.

(g) The Chair may postpone a request for a recorded vote on any amendment. The Chair may resume proceedings on a postponed request at any time. The Chair may reduce to not less than two minutes the minimum time for electronic voting—

(1) on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes; or

(2) on any postponed question taken without intervening debate or motion after the Committee of the Whole resumes its sitting if in the discretion of the Chair Members would be afforded an adequate opportunity to vote.

Dispensing with the reading of an amendment

7. It shall be in order in the Committee of the Whole House on the state of the Union to move that the Committee of the Whole dispense with the reading of an amendment that has been printed in the bill or resolution as reported by a committee, or an amendment that a Member, Delegate, or Resident Commissioner has caused

to be printed in the Congressional Record. Such a motion shall be decided without debate.

Closing debate

8. (a) Subject to paragraph (b) at any time after the Committee of the Whole House on the state of the Union has begun five-minute debate on amendments to any portion of a bill or resolution, it shall be in order to move that the Committee of the Whole close all debate on that portion of the bill or resolution or on the pending amendments only. Such a motion shall be decided without debate. The adoption of such a motion does not preclude further amendment, to be decided without debate.

(b) If the Committee of the Whole House on the state of the Union closes debate on any portion of a bill or resolution before there has been debate on an amendment that a Member, Delegate, or Resident Commissioner has caused to be printed in the Congressional Record at least one day before its consideration, the Member, Delegate, or Resident Commissioner who caused the amendment to be printed in the Record shall be allowed five minutes to explain it, after which the Member, Delegate, or Resident Commissioner who shall first obtain the floor shall be allowed five minutes to speak in opposition to it. There shall be no further debate thereon.

(c) Material submitted for printing in the Congressional Record under this clause shall indicate the full text of the proposed amendment, the name of the Member, Delegate,

or Resident Commissioner proposing it, the number of the bill or resolution to which it will be offered, and the point in the bill or resolution or amendment thereto where the amendment is intended to be offered. The amendment shall appear in a portion of the Record designated for that purpose. Amendments to a specified measure submitted for printing in that portion of the Record shall be numbered in the order printed.

Striking the enacting clause

9. A motion that the Committee of the Whole House on the state of the Union rise and report a bill or resolution to the House with the recommendation that the enacting or resolving clause be stricken shall have precedence of a motion to amend, and, if carried in the House, shall constitute a rejection of the bill or resolution. Whenever a bill or resolution is reported from the Committee of the Whole with such adverse recommendation and the recommendation is rejected by the House, the bill or resolution shall stand recommitted to the Committee of the Whole without further action by the House. Before the question of concurrence is submitted, it shall be in order to move that the House refer the bill or resolution to a committee, with or without instructions. If a bill or resolution is so referred, then when it is again reported to the House it shall be referred to the Committee of the Whole without debate.

Concurrent resolution on the budget

10. (a) At the conclusion of general debate in the Committee of the Whole House on the state of the Union on a concurrent resolution on the budget under section 305(a) of the Congressional Budget Act of 1974, the concurrent resolution shall be considered as read for amendment.

(b) It shall not be in order in the House or in the Committee of the Whole House on the state of the Union to consider an amendment to a concurrent resolution on the budget, or an amendment thereto, unless the concurrent resolution, as amended by such amendment or amendments—

(1) would be mathematically consistent except as limited by paragraph (c); and

(2) would contain all the matter set forth in paragraphs (1) through (5) of section 301(a) of the Congressional Budget Act of 1974.

(c)(1) Except as specified in subparagraph (2), it shall not be in order in the House or in the Committee of the Whole House on the state of the Union to consider an amendment to a concurrent resolution on the budget, or an amendment thereto, that proposes to change the amount of the appropriate level of the public debt set forth in the concurrent resolution, as reported.

(2) Amendments to achieve mathematical consistency under section 305(a)(5) of the Congressional Budget Act

of 1974, if offered by direction of the Committee on the Budget, may propose to adjust the amount of the appropriate level of the public debt set forth in the concurrent resolution, as reported, to reflect changes made in other figures contained in the concurrent resolution.

Applicability of Rules of the House

11. The Rules of the House are the rules of the Committee of the Whole House on the state of the Union so far as applicable.

RULE XIX

MOTIONS FOLLOWING THE AMENDMENT STAGE

Previous question

1. (a) There shall be a motion for the previous question, which, being ordered, shall have the effect of cutting off all debate and bringing the House to a direct vote on the immediate question or questions on which it has been ordered. Whenever the previous question has been ordered on an otherwise debatable question on which there has been no debate, it shall be in order to debate that question for 40 minutes, equally divided and controlled by a proponent of the question and an opponent. The previous question may be moved and ordered on a single question, on a series of questions allowable under the rules, or on an amendment or amendments, or may embrace all authorized motions or amendments and

include the bill or resolution to its passage, adoption, or rejection.

(b) Incidental questions of order arising during the pendency of a motion for the previous question shall be decided, whether on appeal or otherwise, without debate.

(c) Notwithstanding paragraph (a), when the previous question is operating to adoption or passage of a measure pursuant to a special order of business, the Chair may postpone further consideration of such measure in the House to such time as may be designated by the Speaker.

Recommit

2. (a) After the previous question has been ordered on passage or adoption of a measure, or pending a motion to that end, it shall be in order to move that the House recommit (or commit, as the case may be) the measure, with or without instructions, to a standing or select committee. For such a motion to recommit, the Speaker shall give preference in recognition to a Member, Delegate, or Resident Commissioner who is opposed to the measure.

(b)(1) Except as provided in paragraph (c), a motion that the House recommit a bill or joint resolution on which the previous question has been ordered to passage shall be debatable for 10 minutes equally divided between the proponent and an opponent.

(2) A motion to recommit a bill or joint resolution may include instructions only in the form of a direction to

report an amendment or amendments back to the House forthwith.

(c) On demand of the floor manager for the majority, it shall be in order to debate the motion for one hour equally divided and controlled by the proponent and an opponent.

Reconsideration

3. When a motion has been carried or lost, it shall be in order on the same or succeeding day for a Member on the prevailing side of the question to enter a motion for the reconsideration thereof. The entry of such a motion shall take precedence over all other questions except the consideration of a conference report or a motion to adjourn, and may not be withdrawn after such succeeding day without the consent of the House. Once entered, a motion may be called up for consideration by any Member. During the last six days of a session of Congress, such a motion shall be disposed of when entered.

4. A bill, petition, memorial, or resolution referred to a committee, or reported therefrom for printing and recommitment, may not be brought back to the House on a motion to reconsider.

RULE XX

VOTING AND QUORUM CALLS

1. (a) The House shall divide after the Speaker has put a question to a vote by voice as provided in clause 6 of rule I if the Speaker is in doubt or division is demanded. Those in favor of the question shall first rise from their seats to be counted, and then those opposed.

(b) If a Member, Delegate, or Resident Commissioner requests a recorded vote, and that request is supported by at least one-fifth of a quorum, the vote shall be taken by electronic device unless the Speaker invokes another procedure for recording votes provided in this rule. A recorded vote taken in the House under this paragraph shall be considered a vote by the yeas and nays.

(c) In case of a tie vote, a question shall be lost.

2. (a) Unless the Speaker directs otherwise, the Clerk shall conduct a record vote or quorum call by electronic device. In such a case the Clerk shall enter on the Journal and publish in the Congressional Record, in alphabetical order in each category, the names of Members recorded as voting in the affirmative, the names of Members recorded as voting in the negative, and the names of Members answering present as if they had been called in the manner provided in clause 3. Except as otherwise permitted under clause 8 or 9 of this rule or under clause 6 of rule XVIII, the minimum time for a record vote or quorum call by electronic device shall be 15 minutes.

(b) When the electronic voting system is inoperable or is not used, the Speaker or Chair may direct the Clerk to

conduct a record vote or quorum call as provided in clause 3 or 4.

3. The Speaker may direct the Clerk to conduct a record vote or quorum call by call of the roll. In such a case the Clerk shall call the names of Members, alphabetically by surname. When two or more have the same surname, the name of the State (and, if necessary to distinguish among Members from the same State, the given names of the Members) shall be added. After the roll has been called once, the Clerk shall call the names of those not recorded, alphabetically by surname. Members appearing after the second call, but before the result is announced, may vote or announce a pair.

4. (a) The Speaker may direct a record vote or quorum call to be conducted by tellers. In such a case the tellers named by the Speaker shall record the names of the Members voting on each side of the question or record their presence, as the case may be, which the Clerk shall enter on the Journal and publish in the Congressional Record. Absentees shall be noted, but the doors may not be closed except when ordered by the Speaker. The minimum time for a record vote or quorum call by tellers shall be 15 minutes.

(b) On the demand of a Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote shall be noted by the Clerk, entered on the Journal, reported to the

Speaker with the names of the Members voting, and be counted and announced in determining the presence of a quorum to do business.

5. (a) In the absence of a quorum, a majority comprising at least 15 Members, which may include the Speaker, may compel the attendance of absent Members.

(b) Subject to clause 7(b) a majority described in paragraph (a) may order the Sergeant-at-Arms to send officers appointed by the Sergeant-at-Arms to arrest those Members for whom no sufficient excuse is made and shall secure and retain their attendance. The House shall determine on what condition they shall be discharged. Unless the House otherwise directs, the Members who voluntarily appear shall be admitted immediately to the Hall of the House and shall report their names to the Clerk to be entered on the Journal as present.

(c)(1) If the House should be without a quorum due to catastrophic circumstances, then—

(A) until there appear in the House a sufficient number of Representatives to constitute a quorum among the whole number of the House, a quorum in the House shall be determined based upon the provisional number of the House; and

(B) the provisional number of the House, as of the close of the call of the House described in subparagraph (3)(C), shall be the number of Representatives responding to that call of the House.

(2) If a Representative counted in determining the provisional number of the House thereafter ceases to be a Representative, or if a Representative not counted in determining the provisional number of the House thereafter appears in the House, the provisional number of the House shall be adjusted accordingly.

(3) For the purposes of subparagraph (1), the House shall be considered to be without a quorum due to catastrophic circumstances if, after a motion under paragraph (a) has been disposed of and without intervening adjournment, each of the following occurs in the stated sequence:

(A) A call of the House (or a series of calls of the House) is closed after aggregating a period in excess of 72 hours (excluding time the House is in recess) without producing a quorum.

(B) The Speaker—

(i) with the Majority Leader and the Minority Leader (or their respective designees), receives from the Sergeant-at-Arms (or a designee) a catastrophic quorum failure report, as described in subparagraph (4);

(ii) consults with the Majority Leader and the Minority Leader (or their respective designees) on the content of that report; and

(iii) announces the content of that report to the House.

(C) A further call of the House (or a series of calls of the House) is closed after aggregating a period in excess of 24 hours (excluding time the House is in recess) without producing a quorum.

(4)(A) For purposes of subparagraph (3), a catastrophic quorum failure report is a report advising that the inability of the House to establish a quorum is attributable to catastrophic circumstances involving natural disaster, attack, contagion, or similar calamity rendering Representatives incapable of attending the proceedings of the House.

(B) Such report shall specify the following:

(i) The number of vacancies in the House and the names of former Representatives whose seats are vacant.

(ii) The names of Representatives considered incapacitated.

(iii) The names of Representatives not incapacitated but otherwise incapable of attending the proceedings of the House.

(iv) The names of Representatives unaccounted for.

(C) Such report shall be prepared on the basis of the most authoritative information available after consultation with the Attending Physician to the Congress and the Clerk (or their respective designees) and pertinent public health and law enforcement officials.

(D) Such report shall be updated every legislative day for the duration of any proceedings under or in reliance on this paragraph. The Speaker shall make such updates available to the House.

(5) An announcement by the Speaker under subparagraph (3)(B)(iii) shall not be subject to appeal.

(6) Subparagraph (1) does not apply to a proposal to create a vacancy in the representation from any State in respect of a Representative not incapacitated but otherwise incapable of attending the proceedings of the House.

(7) For purposes of this paragraph:

(A) The term “provisional number of the House” means the number of Representatives upon which a quorum will be computed in the House until Representatives sufficient in number to constitute a quorum among the whole number of the House appear in the House.

(B) The term “whole number of the House” means the number of Representatives chosen, sworn, and living whose membership in the House has not been terminated by resignation or by the action of the House.

(d) Upon the death, resignation, expulsion, disqualification, removal, or swearing of a Member, the whole number of the House shall be adjusted accordingly. The Speaker shall announce the adjustment to the House. Such an announcement shall not be subject to appeal. In

the case of a death, the Speaker may lay before the House such documentation from Federal, State, or local officials as the Speaker deems pertinent.

6. (a) When a quorum fails to vote on a question, a quorum is not present, and objection is made for that cause (unless the House shall adjourn)—

(1) there shall be a call of the House;

(2) the Sergeant-at-Arms shall proceed forthwith to bring in absent Members; and

(3) the yeas and nays on the pending question shall at the same time be considered as ordered.

(b) The Clerk shall record Members by the yeas and nays on the pending question, using such procedure as the Speaker may invoke under clause 2, 3, or 4. Each Member arrested under this clause shall be brought by the Sergeant-at-Arms before the House, whereupon the Member shall be noted as present, discharged from arrest, and given an opportunity to vote; and such vote shall be recorded. If those voting on the question and those who are present and decline to vote together make a majority of the House, the Speaker shall declare that a quorum is constituted, and the pending question shall be decided as the requisite majority of those voting shall have determined. Thereupon further proceedings under the call shall be considered as dispensed with.

(c) At any time after Members have had the requisite opportunity to respond by the yeas and nays ordered

under this clause, but before a result has been announced, a motion that the House adjourn shall be in order if seconded by a majority of those present, to be ascertained by actual count by the Speaker. If the House adjourns on such a motion, all proceedings under this clause shall be considered as vacated.

7. (a) The Speaker may not entertain a point of order that a quorum is not present unless a question has been put to a vote.

(b) Subject to paragraph (c) the Speaker may recognize a Member, Delegate, or Resident Commissioner to move a call of the House at any time. When a quorum is established pursuant to a call of the House, further proceedings under the call shall be considered as dispensed with unless the Speaker recognizes for a motion to compel attendance of Members under clause 5(b).

(c) A call of the House shall not be in order after the previous question is ordered unless the Speaker determines by actual count that a quorum is not present.

Postponement of proceedings

8. (a)(1) When a recorded vote is ordered, or the yeas and nays are ordered, or a vote is objected to under clause 6—

(A) on any of the questions specified in subparagraph (2), the Speaker may postpone further proceedings to a designated place in the legislative schedule within two additional legislative days; and

(B) on the question of agreeing to the Speaker's approval of the Journal, the Speaker may postpone further proceedings to a designated place in the legislative schedule on that legislative day.

(2) The questions described in subparagraph (1) are as follows:

(A) The question of passing a bill or joint resolution.

(B) The question of adopting a resolution or concurrent resolution.

(C) The question of agreeing to a motion to instruct managers on the part of the House (except that proceedings may not resume on such a motion under clause 7(c) of rule XXII if the managers have filed a report in the House).

(D) The question of agreeing to a conference report.

(E) The question of ordering the previous question on a question described in subdivision (A), (B), (C), or (D).

(F) The question of agreeing to a motion to suspend the rules.

(G) The question of agreeing to a motion to reconsider or the question of agreeing to a motion to lay on the table a motion to reconsider.

(H) The question of agreeing to an amendment reported from the Committee of the Whole.

(b) At the time designated by the Speaker for further proceedings on questions postponed under paragraph (a),

the Speaker shall resume proceedings on each postponed question.

(c) The Speaker may reduce to five minutes the minimum time for electronic voting on a question postponed under this clause, or on a question incidental thereto, that—

(1) follows another electronic vote without intervening business, so long as the minimum time for electronic voting on the first in any series of questions is 15 minutes; or

(2) follows a report from the Committee of the Whole without intervening debate or motion if in the discretion of the Speaker Members would be afforded an adequate opportunity to vote.

(d) If the House adjourns on a legislative day designated for further proceedings on questions postponed under this clause without disposing of such questions, then on the next legislative day the unfinished business is the disposition of such questions.

Five-minute votes

9. The Speaker may reduce to five minutes the minimum time for electronic voting—

(a) on any question arising without intervening business after an electronic vote on another question if notice of possible five-minute voting for a given series of votes was issued before the preceding electronic vote;

(b) on any question arising after a report from the Committee of the Whole without debate or intervening motion; or

(c) on the question of adoption of a motion to recommit (or ordering the previous question thereon) arising without intervening motion or debate other than debate on the motion.

Automatic yeas and nays

10. The yeas and nays shall be considered as ordered when the Speaker puts the question on passage of a bill or joint resolution, or on adoption of a conference report, making general appropriations, or increasing Federal income tax rates (within the meaning of clause 5 of rule XXI), or on final adoption of a concurrent resolution on the budget or conference report thereon.

Ballot votes

11. In a case of ballot for election, a majority of the votes shall be necessary to an election. When there is not such a majority on the first ballot, the process shall be repeated until a majority is obtained. In all balloting blanks shall be rejected, may not be counted in the enumeration of votes, and may not be reported by the tellers.

RULE XXI

RESTRICTIONS ON CERTAIN BILLS

Reservation of certain points of order

1. At the time a general appropriation bill is reported, all points of order against provisions therein shall be considered as reserved.

General appropriation bills and amendments

2. (a)(1) An appropriation may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, for an expenditure not previously authorized by law, except to continue appropriations for public works and objects that are already in progress.

(2) A reappropriation of unexpended balances of appropriations may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, except to continue appropriations for public works and objects that are already in progress. This subparagraph does not apply to transfers of unexpended balances within the department or agency for which they were originally appropriated that are reported by the Committee on Appropriations.

(b) A provision changing existing law may not be reported in a general appropriation bill, including a provision making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation, except germane provisions that retrench expenditures by the reduction of amounts of money covered by the bill (which may include those recommended to the Committee on

Appropriations by direction of a legislative committee having jurisdiction over the subject matter) and except rescissions of appropriations contained in appropriation Acts.

(c) An amendment to a general appropriation bill shall not be in order if changing existing law, including an amendment making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation. Except as provided in paragraph (d), an amendment proposing a limitation not specifically contained or authorized in existing law for the period of the limitation shall not be in order during consideration of a general appropriation bill.

(d) After a general appropriation bill has been read for amendment, a motion that the Committee of the Whole House on the state of the Union rise and report the bill to the House with such amendments as may have been adopted shall, if offered by the Majority Leader or a designee, have precedence over motions to amend the bill. If such a motion to rise and report is rejected or not offered, amendments proposing limitations not specifically contained or authorized in existing law for the period of the limitation or proposing germane amendments that retrench expenditures by reductions of amounts of money covered by the bill may be considered.

(e) A provision other than an appropriation designated an emergency under section 251(b)(2) or section 252(e) of

the Balanced Budget and Emergency Deficit Control Act, a rescission of budget authority, or a reduction in direct spending or an amount for a designated emergency may not be reported in an appropriation bill or joint resolution containing an emergency designation under section 251(b)(2) or section 252(e) of such Act and may not be in order as an amendment thereto.

(f) During the reading of an appropriation bill for amendment in the Committee of the Whole House on the state of the Union, it shall be in order to consider en bloc amendments proposing only to transfer appropriations among objects in the bill without increasing the levels of budget authority or outlays in the bill. When considered en bloc under this paragraph, such amendments may amend portions of the bill not yet read for amendment (following disposition of any points of order against such portions) and are not subject to a demand for division of the question in the House or in the Committee of the Whole.

3. It shall not be in order to consider a general appropriation bill or joint resolution, or conference report thereon, that—

(a) provides spending authority derived from receipts deposited in the Highway Trust Fund (excluding any transfers from the General Fund of the Treasury); or

(b) reduces or otherwise limits the accruing balances of the Highway Trust Fund,

for any purpose other than for those activities authorized for the highway or mass transit categories.

Appropriations on legislative bills

4. A bill or joint resolution carrying an appropriation may not be reported by a committee not having jurisdiction to report appropriations, and an amendment proposing an appropriation shall not be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A point of order against an appropriation in such a bill, joint resolution, or amendment thereto may be raised at any time during pendency of that measure for amendment.

Tax and tariff measures and amendments

5. (a)(1) A bill or joint resolution carrying a tax or tariff measure may not be reported by a committee not having jurisdiction to report tax or tariff measures, and an amendment in the House or proposed by the Senate carrying a tax or tariff measure shall not be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A point of order against a tax or tariff measure in such a bill, joint resolution, or amendment thereto may be raised at any time during pendency of that measure for amendment.

(2) For purposes of paragraph (1), a tax or tariff measure includes an amendment proposing a limitation on

funds in a general appropriation bill for the administration of a tax or tariff.

Passage of tax rate increases

(b) A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present. In this paragraph the term “Federal income tax rate increase” means any amendment to subsection (a), (b), (c), (d), or (e) of section 1, or to section 11(b) or 55(b), of the Internal Revenue Code of 1986, that imposes a new percentage as a rate of tax and thereby increases the amount of tax imposed by any such section.

Consideration of retroactive tax rate increases

(c) It shall not be in order to consider a bill, joint resolution, amendment, or conference report carrying a retroactive Federal income tax rate increase. In this paragraph—

(1) the term “Federal income tax rate increase” means any amendment to subsection (a), (b), (c), (d), or (e) of section 1, or to section 11(b) or 55(b), of the Internal Revenue Code of 1986, that imposes a new percentage as a rate of tax and thereby increases the amount of tax imposed by any such section; and

(2) a Federal income tax rate increase is retroactive if it applies to a period beginning before the enactment of the provision.

Designation of public works

6. It shall not be in order to consider a bill, joint resolution, amendment, or conference report that provides for the designation or redesignation of a public work in honor of an individual then serving as a Member, Delegate, Resident Commissioner, or Senator.

7. It shall not be in order to consider a concurrent resolution on the budget, or an amendment thereto, or a conference report thereon that contains reconciliation directives under section 310 of the Congressional Budget Act of 1974 that specify changes in law such that the reconciliation legislation reported pursuant to such directives would cause an increase in net direct spending (as such term is defined in clause 10) for the period covered by such concurrent resolution.

8. With respect to measures considered pursuant to a special order of business, points of order under title III of the Congressional Budget Act of 1974 shall operate without regard to whether the measure concerned has been reported from committee. Such points of order shall operate with respect to (as the case may be)—

(a) the form of a measure recommended by the reporting committee where the statute uses the term “as

reported” (in the case of a measure that has been so reported);

(b) the form of the measure made in order as an original bill or joint resolution for the purpose of amendment; or

(c) the form of the measure on which the previous question is ordered directly to passage.

9. (a) It shall not be in order to consider—

(1) a bill or joint resolution reported by a committee unless the report includes a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the bill or in the report (and the name of any Member, Delegate, or Resident Commissioner who submitted a request to the committee for each respective item included in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits;

(2) a bill or joint resolution not reported by a committee unless the chair of each committee of initial referral has caused a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the bill (and the name of any Member, Delegate, or Resident Commissioner who submitted a request to the committee for each respective item included in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited

tariff benefits to be printed in the Congressional Record prior to its consideration;

(3) an amendment to a bill or joint resolution to be offered at the outset of its consideration for amendment by a member of a committee of initial referral as designated in a report of the Committee on Rules to accompany a resolution prescribing a special order of business unless the proponent has caused a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the amendment (and the name of any Member, Delegate, or Resident Commissioner who submitted a request to the proponent for each respective item included in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits to be printed in the Congressional Record prior to its consideration; or

(4) a conference report to accompany a bill or joint resolution unless the joint explanatory statement prepared by the managers on the part of the House and the managers on the part of the Senate includes a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the conference report or joint statement (and the name of any Member, Delegate, Resident Commissioner, or Senator who submitted a request to the House or Senate committees of jurisdiction for each respective item included in such

list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits.

(b) It shall not be in order to consider a conference report to accompany a regular general appropriation bill unless the joint explanatory statement prepared by the managers on the part of the House and the managers on the part of the Senate includes—

(1) a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the conference report or joint statement (and the name of any Member, Delegate, Resident Commissioner, or Senator who submitted a request to the House or Senate committees of jurisdiction for each respective item included in such list) that were neither committed to the conference committee by either House nor in a report of a committee of either House on such bill or on a companion measure; or

(2) a statement that the proposition contains no such congressional earmarks, limited tax benefits, or limited tariff benefits.

(c) It shall not be in order to consider a rule or order that waives the application of paragraph (a) or (b). As disposition of a point of order under this paragraph or paragraph (b), the Chair shall put the question of consideration with respect to the rule or order or conference report, as applicable. The question of

consideration shall be debatable for 10 minutes by the Member initiating the point of order and for 10 minutes by an opponent, but shall otherwise be decided without intervening motion except one that the House adjourn.

(d) In order to be cognizable by the Chair, a point of order raised under paragraph (a) may be based only on the failure of a report, submission to the Congressional Record, or joint explanatory statement to include a list required by paragraph (a) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits.

(e) For the purpose of this clause, the term “congressional earmark” means a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

(f) For the purpose of this clause, the term “limited tax benefit” means—

(1) any revenue-losing provision that—

(A) provides a Federal tax deduction, credit, exclusion, or preference to 10 or fewer beneficiaries under the Internal Revenue Code of 1986, and

(B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; or

(2) any Federal tax provision which provides one beneficiary temporary or permanent transition relief from a change to the Internal Revenue Code of 1986.

(g) For the purpose of this clause, the term “limited tariff benefit” means a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

10. (a)(1) Except as provided in paragraphs (b) and (c), it shall not be in order to consider a bill or joint resolution, or an amendment thereto or a conference report thereon, if the provisions of such measure have the net effect of increasing mandatory spending for the period of either—

(A) the current year, the budget year, and the four fiscal years following that budget year; or

(B) the current year, the budget year, and the nine fiscal years following that budget year.

(2) For the purpose of this clause, the terms “budget year” and “current year” have the meanings specified in section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985, and the term “mandatory spending” has the meaning of “direct spending” specified

in such section 250 except that such term shall also include provisions in appropriation Acts that make outyear modifications to substantive law as described in section 3(4)(C) of the Statutory Pay-As-You-Go Act of 2010.

(b) If a bill or joint resolution, or an amendment thereto, is considered pursuant to a special order of the House directing the Clerk to add as new matter at the end of such bill or joint resolution the entire text of a separate measure or measures as passed by the House, the new matter proposed to be added shall be included in the evaluation under paragraph (a) of the bill, joint resolution, or amendment.

(c)(1) Except as provided in subparagraph (2), the evaluation under paragraph (a) shall exclude a provision expressly designated as an emergency for the Statutory Pay-As-You-Go Act of 2010, in the case of a point of order under this clause against consideration of—

(A) a bill or joint resolution;

(B) an amendment made in order as original text by a special order of business;

(C) a conference report; or

(D) an amendment between the Houses.

(2) In the case of an amendment (other than one specified in subparagraph (1)) to a bill or joint resolution, the evaluation under paragraph (a) shall give no cognizance to any designation of emergency.

11. It shall not be in order to consider a bill or joint resolution which has not been reported by a committee until the third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which such measure has been available to Members, Delegates, and the Resident Commissioner.

RULE XXII

HOUSE AND SENATE RELATIONS

Senate amendments

1. A motion to disagree to Senate amendments to a House proposition and to request or agree to a conference with the Senate, or a motion to insist on House amendments to a Senate proposition and to request or agree to a conference with the Senate, shall be privileged in the discretion of the Speaker if offered by direction of the primary committee and of all reporting committees that had initial referral of the proposition.

2. A motion to dispose of House bills with Senate amendments not requiring consideration in the Committee of the Whole House on the state of the Union shall be privileged.

3. Except as permitted by clause 1, before the stage of disagreement, a Senate amendment to a House bill or resolution shall be subject to the point of order that it must

first be considered in the Committee of the Whole House on the state of the Union if, originating in the House, it would be subject to such a point under clause 3 of rule XVIII.

4. When the stage of disagreement has been reached on a bill or resolution with House or Senate amendments, a motion to dispose of any amendment shall be privileged.

5. (a) Managers on the part of the House may not agree to a Senate amendment described in paragraph (b) unless specific authority to agree to the amendment first is given by the House by a separate vote with respect thereto. If specific authority is not granted, the Senate amendment shall be reported in disagreement by the conference committee back to the two Houses for disposition by separate motion.

(b) The managers on the part of the House may not agree to a Senate amendment described in paragraph (a) that—

(1) would violate clause 2(a)(1) or (c) of rule XXI if originating in the House; or

(2) proposes an appropriation on a bill other than a general appropriation bill.

6. A Senate amendment carrying a tax or tariff measure in violation of clause 5(a) of rule XXI may not be agreed to.

Conference reports; amendments reported in disagreement

7. (a) The presentation of a conference report shall be in order at any time except during a reading of the Journal or the conduct of a record vote, a vote by division, or a quorum call.

(b)(1) Subject to subparagraph (2) the time allotted for debate on a motion to instruct managers on the part of the House shall be equally divided between the majority and minority parties.

(2) If the proponent of a motion to instruct managers on the part of the House and the Member, Delegate, or Resident Commissioner of the other party identified under subparagraph (1) both support the motion, one-third of the time for debate thereon shall be allotted to a Member, Delegate, or Resident Commissioner who opposes the motion on demand of that Member, Delegate, or Resident Commissioner.

(c)(1) A motion to instruct managers on the part of the House, or a motion to discharge all managers on the part of the House and to appoint new conferees, shall be privileged after a conference committee has been appointed for 20 calendar days and 10 legislative days without making a report, but only on the day after the calendar day on which the Member, Delegate, or Resident Commissioner offering the motion announces to the House intention to do so and the form of the motion.

(2) The Speaker may designate a time in the legislative schedule on that legislative day for consideration of a

motion described in subparagraph (1).

(3) During the last six days of a session of Congress, a motion under subparagraph (1) shall be privileged after a conference committee has been appointed for 36 hours without making a report and the proponent meets the notice requirement in subparagraph (1).

(d) Instructions to conferees in a motion to instruct or in a motion to recommit to conference may not include argument.

(e) Each conference report to the House shall be printed as a report of the House. Each such report shall be accompanied by a joint explanatory statement prepared jointly by the managers on the part of the House and the managers on the part of the Senate. The joint explanatory statement shall be sufficiently detailed and explicit to inform the House of the effects of the report on the matters committed to conference.

8. (a)(1) Except as specified in subparagraph (2), it shall not be in order to consider a conference report until

(A) the third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which the conference report and the accompanying joint explanatory statement have been available to Members, Delegates, and the Resident Commissioner in the Congressional Record or pursuant to clause 3 of rule XXIX; and

(B) printed or electronic copies of the conference report and the accompanying joint explanatory statement have been available to Members, Delegates, and the Resident Commissioner for at least two hours.

(2) Subparagraph (1)(A) does not apply during the last six days of a session of Congress.

(b)(1) Except as specified in subparagraph (2), it shall not be in order to consider a motion to dispose of a Senate amendment reported in disagreement by a conference committee until—

(A) the third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which the report in disagreement and any accompanying statement have been available to Members, Delegates, and the Resident Commissioner in the Congressional Record; and

(B) copies of the report in disagreement and any accompanying statement, together with the text of the Senate amendment, have been available to Members, Delegates, and the Resident Commissioner for at least two hours.

(2) Subparagraph (1)(A) does not apply during the last six days of a session of Congress.

(3) During consideration of a Senate amendment reported in disagreement by a conference committee on a general appropriation bill, a motion to insist on disagreement to the Senate amendment shall be

preferential to any other motion to dispose of that amendment if the original motion offered by the floor manager proposes to change existing law and the motion to insist is offered before debate on the original motion by the chair of the committee having jurisdiction of the subject matter of the amendment or a designee. Such a preferential motion shall be separately debatable for one hour equally divided between its proponent and the proponent of the original motion. The previous question shall be considered as ordered on the preferential motion to its adoption without intervening motion.

(c) A conference report or a Senate amendment reported in disagreement by a conference committee that has been available as provided in paragraph (a) or (b) shall be considered as read when called up.

(d)(1) Subject to subparagraph (2), the time allotted for debate on a conference report or on a motion to dispose of a Senate amendment reported in disagreement by a conference committee shall be equally divided between the majority and minority parties.

(2) If the floor manager for the majority and the floor manager for the minority both support the conference report or motion, one-third of the time for debate thereon shall be allotted to a Member, Delegate, or Resident Commissioner who opposes the conference report or motion on demand of that Member, Delegate, or Resident Commissioner.

(e) Under clause 6(a)(2) of rule XIII, a resolution proposing only to waive a requirement of this clause concerning the availability of reports to Members, Delegates, and the Resident Commissioner may be considered by the House on the same day it is reported by the Committee on Rules.

9. Whenever a disagreement to an amendment has been committed to a conference committee, the managers on the part of the House may propose a substitute that is a germane modification of the matter in disagreement. The introduction of any language presenting specific additional matter not committed to the conference committee by either House does not constitute a germane modification of the matter in disagreement. Moreover, a conference report may not include matter not committed to the conference committee by either House and may not include a modification of specific matter committed to the conference committee by either or both Houses if that modification is beyond the scope of that specific matter as committed to the conference committee.

10. (a)(1) A Member, Delegate, or Resident Commissioner may raise a point of order against nongermane matter, as specified in subparagraph (2), before the commencement of debate on—

(A) a conference report;

(B) a motion that the House recede from its disagreement to a Senate amendment reported in

disagreement by a conference committee and concur therein, with or without amendment; or

(C) a motion that the House recede from its disagreement to a Senate amendment on which the stage of disagreement has been reached and concur therein, with or without amendment.

(2) A point of order against nongermane matter is one asserting that a proposition described in subparagraph (1) contains specified matter that would violate clause 7 of rule XVI if it were offered in the House as an amendment to the underlying measure in the form it was passed by the House.

(b) If a point of order under paragraph (a) is sustained, a motion that the House reject the nongermane matter identified by the point of order shall be privileged. Such a motion is debatable for 40 minutes, one-half in favor of the motion and one-half in opposition thereto.

(c) After disposition of a point of order under paragraph (a) or a motion to reject under paragraph (b), any further points of order under paragraph (a) not covered by a previous point of order, and any consequent motions to reject under paragraph (b), shall be likewise disposed of.

(d)(1) If a motion to reject under paragraph (b) is adopted, then after disposition of all points of order under paragraph (a) and any consequent motions to reject under paragraph (b), the conference report or motion, as the case may be, shall be considered as rejected and the matter

remaining in disagreement shall be disposed of under subparagraph (2) or (3), as the case may be.

(2) After the House has adopted one or more motions to reject nongermane matter contained in a conference report under the preceding provisions of this clause—

(A) if the conference report accompanied a House measure amended by the Senate, the pending question shall be whether the House shall recede and concur in the Senate amendment with an amendment consisting of so much of the conference report as was not rejected; and

(B) if the conference report accompanied a Senate measure amended by the House, the pending question shall be whether the House shall insist further on the House amendment.

(3) After the House has adopted one or more motions to reject nongermane matter contained in a motion that the House recede and concur in a Senate amendment, with or without amendment, the following motions shall be privileged and shall have precedence in the order stated:

(A) A motion that the House recede and concur in the Senate amendment with an amendment in writing then available on the floor.

(B) A motion that the House insist on its disagreement to the Senate amendment and request a further conference with the Senate.

(C) A motion that the House insist on its disagreement to the Senate amendment.

(e) If, on a division of the question on a motion described in paragraph (a)(1)(B) or (C), the House agrees to recede, then a Member, Delegate, or Resident Commissioner may raise a point of order against nongermane matter, as specified in paragraph (a)(2), before the commencement of debate on concurring in the Senate amendment, with or without amendment. A point of order under this paragraph shall be disposed of according to the preceding provisions of this clause in the same manner as a point of order under paragraph (a).

11. It shall not be in order to consider a conference report to accompany a bill or joint resolution that proposes to amend the Internal Revenue Code of 1986 unless—

(a) the joint explanatory statement of the managers includes a tax complexity analysis prepared by the Joint Committee on Internal Revenue Taxation in accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998; or

(b) the chair of the Committee on Ways and Means causes such a tax complexity analysis to be printed in the Congressional Record before consideration of the conference report.

12. (a)(1) Subject to subparagraph (2), a meeting of each conference committee shall be open to the public.

(2) In open session of the House, a motion that managers on the part of the House be permitted to close to the public a meeting or meetings of their conference committee shall be privileged, shall be decided without debate, and shall be decided by the yeas and nays.

(3) In conducting conferences with the Senate, managers on the part of the House should endeavor to ensure—

(A) that meetings for the resolution of differences between the two Houses occur only under circumstances in which every manager on the part of the House has notice of the meeting and a reasonable opportunity to attend;

(B) that all provisions on which the two Houses disagree are considered as open to discussion at any meeting of a conference committee; and

(C) that papers reflecting a conference agreement are held inviolate to change without renewal of the opportunity of all managers on the part of the House to reconsider their decisions to sign or not to sign the agreement.

(4) Managers on the part of the House shall be provided a unitary time and place with access to at least one complete copy of the final conference agreement for the purpose of recording their approval (or not) of the final conference agreement by placing their signatures (or not)

on the sheets prepared to accompany the conference report and joint explanatory statement of the managers.

(b) A point of order that a conference committee failed to comply with paragraph (a) may be raised immediately after the conference report is read or considered as read. If such a point of order is sustained, the conference report shall be considered as rejected, the House shall be considered to have insisted on its amendments or on disagreement to the Senate amendments, as the case may be, and to have requested a further conference with the Senate, and the Speaker may appoint new conferees without intervening motion.

13. It shall not be in order to consider a conference report the text of which differs in any way, other than clerical, from the text that reflects the action of the conferees on all of the differences between the two Houses, as recorded by their placement of their signatures (or not) on the sheets prepared to accompany the conference report and joint explanatory statement of the managers.

RULE XXIII

CODE OF OFFICIAL CONDUCT

There is hereby established by and for the House the following code of conduct, to be known as the “Code of Official Conduct”:

1. A Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House.

2. A Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof.

3. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress.

4. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept gifts except as provided by clause 5 of rule XXV.

5. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept an honorarium for a speech, a writing for publication, or other similar activity, except as otherwise provided under rule XXV.

6. A Member, Delegate, or Resident Commissioner—

(a) shall keep the campaign funds of such individual separate from the personal funds of such individual;

(b) may not convert campaign funds to personal use in excess of an amount representing reimbursement for

legitimate and verifiable campaign expenditures; and

(c) except as provided in clause 1(b) of rule XXIV, may not expend funds from a campaign account of such individual that are not attributable to bona fide campaign or political purposes.

7. A Member, Delegate, or Resident Commissioner shall treat as campaign contributions all proceeds from testimonial dinners or other fund-raising events.

8. (a) A Member, Delegate, Resident Commissioner, or officer of the House may not retain an employee who does not perform duties for the offices of the employing authority commensurate with the compensation such employee receives.

(b) In the case of a committee employee who works under the direct supervision of a member of the committee other than a chair, the chair may require that such member affirm in writing that the employee has complied with clause 8(a) (subject to clause 9 of rule X) as evidence of compliance by the chair with this clause and with clause 9 of rule X.

(c)(1) Except as specified in subparagraph (2)—

(A) a Member, Delegate, or Resident Commissioner may not retain the relative of such individual in a paid position; and

(B) an employee of the House may not accept compensation for work for a committee on which the relative of such employee serves as a member.

(2) Subparagraph (1) shall not apply in the case of a relative whose pertinent employment predates the One Hundred Thirteenth Congress.

(3) As used in this paragraph, the term “relative” means an individual who is related to the Member, Delegate, or Resident Commissioner as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandson, or granddaughter.

9. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not discharge and may not refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the race, color, religion, sex (including marital or parental status), disability, age, or national origin of such individual, but may take into consideration the domicile or political affiliation of such individual.

10. A Member, Delegate, or Resident Commissioner who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years’ imprisonment may be imposed should refrain from participation in the business of each committee of which such individual is a member, and a Member should

refrain from voting on any question at a meeting of the House or of the Committee of the Whole House on the state of the Union, unless or until judicial or executive proceedings result in reinstatement of the presumption of the innocence of such Member or until the Member is reelected to the House after the date of such conviction.

11. A Member, Delegate, or Resident Commissioner may not authorize or otherwise allow an individual, group, or organization not under the direction and control of the House to use the words “Congress of the United States,” “House of Representatives,” or “Official Business,” or any combination of words thereof, on any letterhead or envelope.

12. (a) Except as provided in paragraph (b), an employee of the House who is required to file a report under rule XXVI may not participate personally and substantially as an employee of the House in a contact with an agency of the executive or judicial branches of Government with respect to nonlegislative matters affecting any nongovernmental person in which the employee has a significant financial interest.

(b) Paragraph (a) does not apply if an employee first advises the employing authority of such employee of a significant financial interest described in paragraph (a) and obtains from such employing authority a written waiver stating that the participation of the employee in the activity described in paragraph (a) is necessary. A copy of

each such waiver shall be filed with the Committee on Ethics.

13. Before a Member, Delegate, Resident Commissioner, officer, or employee of the House may have access to classified information, the following oath (or affirmation) shall be executed:

“I do solemnly swear (or affirm) that I will not disclose any classified information received in the course of my service with the House of Representatives, except as authorized by the House of Representatives or in accordance with its Rules.”

Copies of the executed oath (or affirmation) shall be retained as part of the records of the House, in the case of a Member, Delegate, or the Resident Commissioner, by the Clerk, and in the case of an officer or employee of the House, by the Sergeant-at-Arms. The Clerk shall make the signatories a matter of public record, causing the names of each Member, Delegate, or Resident Commissioner who has signed the oath during a week (if any) to be published in a portion of the Congressional Record designated for that purpose on the last legislative day of the week and making cumulative lists of such names available each day for public inspection in an appropriate office of the House.

14. A Member, Delegate, or Resident Commissioner may not, with the intent to influence on the basis of

partisan political affiliation an employment decision or employment practice of any private entity—

(a) take or withhold, or offer or threaten to take or withhold, an official act; or

(b) influence, or offer or threaten to influence, the official act of another.

15. (a) Except as provided in paragraphs (b) and (c), a Member, Delegate, or Resident Commissioner may not use personal funds, official funds, or campaign funds for a flight on an aircraft.

(b) Paragraph (a) does not apply if—

(1) the aircraft is operated by an air carrier or commercial operator certificated by the Federal Aviation Administration and the flight is required to be conducted under air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority and the flight is required to be conducted under air carrier safety rules;

(2) the aircraft is owned or leased by a Member, Delegate, Resident Commissioner or a family member of a Member, Delegate, or Resident Commissioner (including an aircraft owned by an entity that is not a public corporation in which the Member, Delegate, Resident Commissioner or a family member of a Member, Delegate, or Resident Commissioner has an ownership interest, provided that such Member,

Delegate, or Resident Commissioner does not use the aircraft any more than the Member, Delegate, Resident Commissioner, or family member's proportionate share of ownership allows);

(3) the flight consists of the personal use of an aircraft by a Member, Delegate, or the Resident Commissioner that is supplied by—

(A) an individual on the basis of personal friendship; or

(B) another Member, Delegate, or the Resident Commissioner;

(4) the aircraft is operated by an entity of the Federal government or an entity of the government of any State; or

(5) the owner or operator of the aircraft is paid a pro rata share of the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size as determined by dividing such cost by the number of Members, Delegates, or the Resident Commissioner, officers, or employees of Congress on the flight.

(c) An advance written request for a waiver of the restriction in paragraph (a) may be granted jointly by the chair and ranking minority member of the Committee on Ethics, subject to such conditions as they may prescribe.

(d) In this clause—

(1) the term “campaign funds” includes funds of any political committee under the Federal Election Campaign Act of 1971, without regard to whether the committee is an authorized committee of the Member, Delegate, or Resident Commissioner involved under such Act;

(2) the term “family member” means an individual who is related to the Member, Delegate, or Resident Commissioner, as father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law; and

(3) the term “on the basis of personal friendship” has the same meaning as in clause 5 of rule XXV and shall be determined as under clause 5(a)(3)(D)(ii) of rule XXV.

16. A Member, Delegate, or Resident Commissioner may not condition the inclusion of language to provide funding for a congressional earmark, a limited tax benefit, or a limited tariff benefit in any bill or joint resolution (or an accompanying report) or in any conference report on a bill or joint resolution (including an accompanying joint explanatory statement of managers) on any vote cast by another Member, Delegate, or Resident Commissioner. For purposes of this clause and clause 17, the terms “congressional earmark,” “limited tax benefit,” and “limited tariff benefit” shall have the meanings given them in clause 9 of rule XXI.

17. (a) A Member, Delegate, or Resident Commissioner who requests a congressional earmark, a limited tax benefit, or a limited tariff benefit in any bill or joint resolution (or an accompanying report) or in any conference report on a bill or joint resolution (or an accompanying joint statement of managers) shall provide a written statement to the chair and ranking minority member of the committee of jurisdiction, including—

(1) the name of the Member, Delegate, or Resident Commissioner;

(2) in the case of a congressional earmark, the name and address of the intended recipient or, if there is no specifically intended recipient, the intended location of the activity;

(3) in the case of a limited tax or tariff benefit, identification of the individual or entities reasonably anticipated to benefit, to the extent known to the Member, Delegate, or Resident Commissioner;

(4) the purpose of such congressional earmark or limited tax or tariff benefit; and

(5) a certification that the Member, Delegate, or Resident Commissioner or spouse has no financial interest in such congressional earmark or limited tax or tariff benefit.

(b) Each committee shall maintain the information transmitted under paragraph (a), and the written disclosures for any congressional earmarks, limited tax

benefits, or limited tariff benefits included in any measure reported by the committee or conference report filed by the chair of the committee or any subcommittee thereof shall be open for public inspection.

18. (a) In this Code of Official Conduct, the term “officer or employee of the House” means an individual whose compensation is disbursed by the Chief Administrative Officer.

(b) An individual whose services are compensated by the House pursuant to a consultant contract shall be considered an employee of the House for purposes of clauses 1, 2, 3, 4, 8, 9, and 13 of this rule. An individual whose services are compensated by the House pursuant to a consultant contract may not lobby the contracting committee or the members or staff of the contracting committee on any matter. Such an individual may lobby other Members, Delegates, or the Resident Commissioner or staff of the House on matters outside the jurisdiction of the contracting committee. In the case of such an individual who is a member or employee of a firm, partnership, or other business organization, the other members and employees of the firm, partnership, or other business organization shall be subject to the same restrictions on lobbying that apply to the individual under this paragraph.

RULE XXIV

LIMITATIONS ON USE OF OFFICIAL FUNDS

Limitations on use of official and unofficial accounts

1. (a) Except as provided in paragraph (b), a Member, Delegate, or Resident Commissioner may not maintain, or have maintained for the use of such individual, an unofficial office account. Funds may not be paid into an unofficial office account.

(b)(1) Except as provided in subparagraph (2), a Member, Delegate, or Resident Commissioner may defray official expenses with funds of the principal campaign committee of such individual under the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.).

(2) The funds specified in subparagraph (1) may not be used to defray official expenses for mail or other communications, compensation for services, office space, office furniture, office equipment, or any associated information technology services (excluding handheld communications devices).

2. Notwithstanding any other provision of this rule, if an amount from the Official Expenses Allowance of a Member, Delegate, or Resident Commissioner is paid into the House Recording Studio revolving fund for telecommunications satellite services, the Member, Delegate, or Resident Commissioner may accept reimbursement from nonpolitical entities in that amount for transmission to the Chief Administrative Officer for credit to the Official Expenses Allowance.

3. In this rule the term “unofficial office account” means an account or repository in which funds are received for the purpose of defraying otherwise unreimbursed expenses allowable under section 162(a) of the Internal Revenue Code of 1986 as ordinary and necessary in the operation of a congressional office, and includes a newsletter fund referred to in section 527(g) of the Internal Revenue Code of 1986.

Limitations on use of the frank

4. A Member, Delegate, or Resident Commissioner shall mail franked mail under section 3210(d) of title 39, United States Code at the most economical rate of postage practicable.

5. Before making a mass mailing, a Member, Delegate, or Resident Commissioner shall submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether the proposed mailing is in compliance with applicable provisions of law, rule, or regulation.

6. A mass mailing that is otherwise frankable by a Member, Delegate, or Resident Commissioner under the provisions of section 3210(e) of title 39, United States Code, is not frankable unless the cost of preparing and printing it is defrayed exclusively from funds made available in an appropriation Act.

7. A Member, Delegate, or Resident Commissioner may not send a mass mailing outside the congressional district from which elected.

8. In the case of a Member, Delegate, or Resident Commissioner, a mass mailing is not frankable under section 3210 of title 39, United States Code, when it is postmarked less than 90 days before the date of a primary or general election (whether regular, special, or runoff) in which such individual is a candidate for public office. If the mail matter is of a type that is not customarily postmarked, the date on which it would have been postmarked, if it were of a type customarily postmarked, applies.

9. In this rule the term “mass mailing” means, with respect to a session of Congress, a mailing of newsletters or other pieces of mail with substantially identical content (whether such pieces of mail are deposited singly or in bulk, or at the same time or different times), totaling more than 500 pieces of mail in that session, except that such term does not include a mailing—

(a) of matter in direct response to a communication from a person to whom the matter is mailed;

(b) from a Member, Delegate, or Resident Commissioner to other Members, Delegates, the Resident Commissioner, or Senators, or to Federal, State, or local government officials; or

(c) of a news release to the communications media.

Prohibition on use of funds by Members not elected to succeeding Congress

10. Funds from the applicable accounts described in clause 1(k)(1) of rule X, including funds from committee expense resolutions, and funds in any local currencies owned by the United States may not be made available for travel by a Member, Delegate, Resident Commissioner, or Senator after the date of a general election in which such individual was not elected to the succeeding Congress or, in the case of a Member, Delegate, or Resident Commissioner who is not a candidate in a general election, after the earlier of the date of such general election or the adjournment sine die of the last regular session of the Congress.

RULE XXV

LIMITATIONS ON OUTSIDE EARNED INCOME AND ACCEPTANCE OF GIFTS

Outside earned income; honoraria

1. (a) Except as provided by paragraph (b), a Member, Delegate, Resident Commissioner, officer, or employee of the House may not—

(1) have outside earned income attributable to a calendar year that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year; or

(2) receive any honorarium, except that an officer or employee of the House who is paid at a rate less than 120 percent of the minimum rate of basic pay for GS–15 of the General Schedule may receive an honorarium unless the subject matter is directly related to the official duties of the individual, the payment is made because of the status of the individual with the House, or the person offering the honorarium has interests that may be substantially affected by the performance or nonperformance of the official duties of the individual.

(b) In the case of an individual who becomes a Member, Delegate, Resident Commissioner, officer, or employee of the House, such individual may not have outside earned income attributable to the portion of a calendar year that occurs after such individual becomes a Member, Delegate, Resident Commissioner, officer, or employee that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year multiplied by a fraction, the numerator of which is the number of days the individual is a Member, Delegate, Resident Commissioner, officer, or employee during that calendar year and the denominator of which is 365.

(c) A payment in lieu of an honorarium that is made to a charitable organization on behalf of a Member, Delegate, Resident Commissioner, officer, or employee of the

House may not be received by that Member, Delegate, Resident Commissioner, officer, or employee. Such a payment may not exceed \$2,000 or be made to a charitable organization from which the Member, Delegate, Resident Commissioner, officer, or employee or a parent, sibling, spouse, child, or dependent relative of the Member, Delegate, Resident Commissioner, officer, or employee, derives a financial benefit.

2. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not—

(a) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity that provides professional services involving a fiduciary relationship except for the practice of medicine;

(b) permit the name of such individual to be used by such a firm, partnership, association, corporation, or other entity;

(c) receive compensation for practicing a profession that involves a fiduciary relationship except for the practice of medicine;

(d) serve for compensation as an officer or member of the board of an association, corporation, or other entity; or

(e) receive compensation for teaching, without the prior notification and approval of the Committee on Ethics.

Copyright royalties

3. (a) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive an advance payment on copyright royalties. This paragraph does not prohibit a literary agent, researcher, or other individual (other than an individual employed by the House or a relative of a Member, Delegate, Resident Commissioner, officer, or employee) working on behalf of a Member, Delegate, Resident Commissioner, officer, or employee with respect to a publication from receiving an advance payment of a copyright royalty directly from a publisher and solely for the benefit of that literary agent, researcher, or other individual.

(b) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive copyright royalties under a contract entered into on or after January 1, 1996, unless that contract is first approved by the Committee on Ethics as complying with the requirement of clause 4(d)(1)(E) (that royalties are received from an established publisher under usual and customary contractual terms).

Definitions

4. (a)(1) In this rule, except as provided in subparagraph (2), the term “officer or employee of the House” means an individual (other than a Member, Delegate, or Resident Commissioner) whose pay is disbursed by the Chief Administrative Officer, who is paid

at a rate equal to or greater than 120 percent of the minimum rate of basic pay for GS–15 of the General Schedule, and who is so employed for more than 90 days in a calendar year.

(2)(A) When used with respect to an honorarium, the term “officer or employee of the House” means an individual (other than a Member, Delegate, or Resident Commissioner) whose salary is disbursed by the Chief Administrative Officer.

(B) When used in clause 5 of this rule, the terms “officer” and “employee” have the same meanings as in rule XXIII.

(b) In this rule the term “honorarium” means a payment of money or a thing of value for an appearance, speech, or article (including a series of appearances, speeches, or articles) by a Member, Delegate, Resident Commissioner, officer, or employee of the House, excluding any actual and necessary travel expenses incurred by that Member, Delegate, Resident Commissioner, officer, or employee (and one relative) to the extent that such expenses are paid or reimbursed by any other person. The amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not so paid or reimbursed.

(c) In this rule the term “travel expenses” means, with respect to a Member, Delegate, Resident Commissioner, officer, or employee of the House, or a relative of such

Member, Delegate, Resident Commissioner, officer, or employee, the cost of transportation, and the cost of lodging and meals while away from the residence or principal place of employment of such individual.

(d)(1) In this rule the term “outside earned income” means, with respect to a Member, Delegate, Resident Commissioner, officer, or employee of the House, wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually rendered, but does not include—

(A) the salary of a Member, Delegate, Resident Commissioner, officer, or employee;

(B) any compensation derived by a Member, Delegate, Resident Commissioner, officer, or employee of the House for personal services actually rendered before the adoption of this rule or before such individual became a Member, Delegate, Resident Commissioner, officer, or employee;

(C) any amount paid by, or on behalf of, a Member, Delegate, Resident Commissioner, officer, or employee of the House to a tax-qualified pension, profit-sharing, or stock bonus plan and received by such individual from such a plan;

(D) in the case of a Member, Delegate, Resident Commissioner, officer, or employee of the House engaged in a trade or business in which such individual or the family of such individual holds a controlling

interest and in which both personal services and capital are income-producing factors, any amount received by the Member, Delegate, Resident Commissioner, officer, or employee, so long as the personal services actually rendered by such individual in the trade or business do not generate a significant amount of income; or

(E) copyright royalties received from established publishers under usual and customary contractual terms; and

(2) outside earned income shall be determined without regard to community property law.

(e) In this rule the term “charitable organization” means an organization described in section 170(c) of the Internal Revenue Code of 1986.

Gifts

5. (a)(1)(A) (i) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift except as provided in this clause.

(ii) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift from a registered lobbyist or agent of a foreign principal or from a private entity that retains or employs registered lobbyists or agents of a foreign principal except as provided in subparagraph (3) of this paragraph.

(B) (i) A Member, Delegate, Resident Commissioner, officer, or employee of the House may accept a gift (other

than cash or cash equivalent) not prohibited by subdivision (A)(ii) that the Member, Delegate, Resident Commissioner, officer, or employee reasonably and in good faith believes to have a value of less than \$50 and a cumulative value from one source during a calendar year of less than \$100. A gift having a value of less than \$10 does not count toward the \$100 annual limit. The value of perishable food sent to an office shall be allocated among the individual recipients and not to the Member, Delegate, or Resident Commissioner. Formal recordkeeping is not required by this subdivision, but a Member, Delegate, Resident Commissioner, officer, or employee of the House shall make a good faith effort to comply with this subdivision.

(ii) A gift of a ticket to a sporting or entertainment event shall be valued at the face value of the ticket or, in the case of a ticket without a face value, at the highest cost of a ticket with a face value for the event. The price printed on a ticket to an event shall be deemed its face value only if it also is the price at which the issuer offers that ticket for sale to the public.

(2)(A) In this clause the term “gift” means a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by

purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(B) (i) A gift to a family member of a Member, Delegate, Resident Commissioner, officer, or employee of the House, or a gift to any other individual based on that individual's relationship with the Member, Delegate, Resident Commissioner, officer, or employee, shall be considered a gift to the Member, Delegate, Resident Commissioner, officer, or employee if it is given with the knowledge and acquiescence of the Member, Delegate, Resident Commissioner, officer, or employee and the Member, Delegate, Resident Commissioner, officer, or employee has reason to believe the gift was given because of the official position of such individual.

(ii) If food or refreshment is provided at the same time and place to both a Member, Delegate, Resident Commissioner, officer, or employee of the House and the spouse or dependent thereof, only the food or refreshment provided to the Member, Delegate, Resident Commissioner, officer, or employee shall be treated as a gift for purposes of this clause.

(3) The restrictions in subparagraph (1) do not apply to the following:

(A) Anything for which the Member, Delegate, Resident Commissioner, officer, or employee of the House pays the market value, or does not use and promptly returns to the donor.

(B) A contribution, as defined in section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) that is lawfully made under that Act, a lawful contribution for election to a State or local government office, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

(C) A gift from a relative as described in section 109(16) of title I of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(16)).

(D) (i) Anything provided by an individual on the basis of a personal friendship unless the Member, Delegate, Resident Commissioner, officer, or employee of the House has reason to believe that, under the circumstances, the gift was provided because of the official position of such individual and not because of the personal friendship.

(ii) In determining whether a gift is provided on the basis of personal friendship, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall consider the circumstances under which the gift was offered, such as:

(I) The history of the relationship of such individual with the individual giving the gift, including any previous exchange of gifts between them.

(II) Whether to the actual knowledge of such individual the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift.

(III) Whether to the actual knowledge of such individual the individual who gave the gift also gave the same or similar gifts to other Members, Delegates, the Resident Commissioners, officers, or employees of the House.

(E) Except as provided in paragraph (e)(3), a contribution or other payment to a legal expense fund established for the benefit of a Member, Delegate, Resident Commissioner, officer, or employee of the House that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Ethics.

(F) A gift from another Member, Delegate, Resident Commissioner, officer, or employee of the House or Senate.

(G) Food, refreshments, lodging, transportation, and other benefits—

(i) resulting from the outside business or employment activities of the Member, Delegate, Resident Commissioner, officer, or employee of the House (or other outside activities that are not connected to the duties of such individual as an officeholder), or of the spouse of such individual, if

such benefits have not been offered or enhanced because of the official position of such individual and are customarily provided to others in similar circumstances;

(ii) customarily provided by a prospective employer in connection with bona fide employment discussions; or

(iii) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fundraising or campaign event sponsored by such organization.

(H) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

(I) Informational materials that are sent to the office of the Member, Delegate, Resident Commissioner, officer, or employee of the House in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.

(J) Awards or prizes that are given to competitors in contests or events open to the public, including random drawings.

(K) Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, nonmonetary awards presented in recognition of public service (and associated food, refreshments, and

entertainment provided in the presentation of such degrees and awards).

(L) Training (including food and refreshments furnished to all attendees as an integral part of the training) if such training is in the interest of the House.

(M) Bequests, inheritances, and other transfers at death.

(N) An item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute.

(O) Anything that is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

(P) A gift of personal hospitality (as defined in section 109(14) of the Ethics in Government Act) of an individual other than a registered lobbyist or agent of a foreign principal.

(Q) Free attendance at an event permitted under subparagraph (4).

(R) Opportunities and benefits that are—

(i) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration;

(ii) offered to members of a group or class in which membership is unrelated to congressional employment;

(iii) offered to members of an organization, such as an employees' association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;

(iv) offered to a group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

(v) in the form of loans from banks and other financial institutions on terms generally available to the public; or

(vi) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

(S) A plaque, trophy, or other item that is substantially commemorative in nature and that is intended for presentation.

(T) Anything for which, in an unusual case, a waiver is granted by the Committee on Ethics.

(U) Food or refreshments of a nominal value offered other than as a part of a meal.

(V) Donations of products from the district or State that the Member, Delegate, or Resident Commissioner represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any single recipient.

(W) An item of nominal value such as a greeting card, baseball cap, or a T-shirt.

(4)(A) A Member, Delegate, Resident Commissioner, officer, or employee of the House may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if—

(i) the Member, Delegate, Resident Commissioner, officer, or employee of the House participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the official position of such individual; or

(ii) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, Delegate, Resident Commissioner, officer, or employee of the House.

(B) A Member, Delegate, Resident Commissioner, officer, or employee of the House who attends an event described in subdivision (A) may accept a sponsor's

unsolicited offer of free attendance at the event for an accompanying individual.

(C) A Member, Delegate, Resident Commissioner, officer, or employee of the House, or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging may not be accepted in connection with the event unless—

(i) all of the net proceeds of the event are for the benefit of an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;

(ii) reimbursement for the transportation and lodging in connection with the event is paid by such organization; and

(iii) the offer of free attendance at the event is made by such organization.

(D) In this paragraph the term “free attendance” may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. The term does not include entertainment collateral to the event, nor does it include food or refreshments taken other than in a group setting with all or substantially all other attendees.

(5) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept a gift the value of which exceeds \$250 on the basis of the personal friendship exception in subparagraph (3)(D) unless the Committee on Ethics issues a written determination that such exception applies. A determination under this subparagraph is not required for gifts given on the basis of the family relationship exception in subparagraph (3)(C).

(6) When it is not practicable to return a tangible item because it is perishable, the item may, at the discretion of the recipient, be given to an appropriate charity or destroyed.

(b)(1)(A) A reimbursement (including payment in kind) to a Member, Delegate, Resident Commissioner, officer, or employee of the House for necessary transportation, lodging, and related expenses for travel to a meeting, speaking engagement, factfinding trip, or similar event in connection with the duties of such individual as an officeholder shall be considered as a reimbursement to the House and not a gift prohibited by this clause when it is from a private source other than a registered lobbyist or agent of a foreign principal or a private entity that retains or employs registered lobbyists or agents of a foreign principal (except as provided in subdivision (C)), if the Member, Delegate, Resident Commissioner, officer, or

employee—

(i) in the case of an employee, receives advance authorization, from the Member, Delegate, Resident Commissioner, or officer under whose direct supervision the employee works, to accept reimbursement; and

(ii) discloses the expenses reimbursed or to be reimbursed and the authorization to the Clerk within 15 days after the travel is completed.

(B) For purposes of subdivision (A), events, the activities of which are substantially recreational in nature, are not considered to be in connection with the duties of a Member, Delegate, Resident Commissioner, officer, or employee of the House as an officeholder.

(C) A reimbursement (including payment in kind) to a Member, Delegate, Resident Commissioner, officer, or employee of the House for any purpose described in subdivision (A) also shall be considered as a reimbursement to the House and not a gift prohibited by this clause (without regard to whether the source retains or employs registered lobbyists or agents of a foreign principal) if it is, under regulations prescribed by the Committee on Ethics to implement this provision—

(i) directly from an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965; or

(ii) provided only for attendance at or participation in a one-day event (exclusive of travel time and an overnight stay).

Regulations prescribed to implement this provision may permit a two-night stay when determined by the committee on a case-by-case basis to be practically required to participate in the one-day event.

(2) Each advance authorization to accept reimbursement shall be signed by the Member, Delegate, Resident Commissioner, or officer of the House under whose direct supervision the employee works and shall include—

(A) the name of the employee;

(B) the name of the person who will make the reimbursement;

(C) the time, place, and purpose of the travel; and

(D) a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.

(3) Each disclosure made under subparagraph (1)(A) shall be signed by the Member, Delegate, Resident Commissioner, or officer (in the case of travel by that Member, Delegate, Resident Commissioner, or officer) or by the Member, Delegate, Resident Commissioner, or officer under whose direct supervision the employee

works (in the case of travel by an employee) and shall include—

(A) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;

(B) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;

(C) a good faith estimate of total meal expenses reimbursed or to be reimbursed;

(D) a good faith estimate of the total of other expenses reimbursed or to be reimbursed;

(E) a determination that all such expenses are necessary transportation, lodging, and related expenses as defined in subparagraph (4);

(F) a description of meetings and events attended; and

(G) in the case of a reimbursement to a Member, Delegate, Resident Commissioner, or officer, a determination that the travel was in connection with the duties of such individual as an officeholder and would not create the appearance that the Member, Delegate, Resident Commissioner, or officer is using public office for private gain.

(4) In this paragraph the term “necessary transportation, lodging, and related expenses”—

(A) includes reasonable expenses that are necessary for travel for a period not exceeding four days within the United States or seven days exclusive of travel time

outside of the United States unless approved in advance by the Committee on Ethics;

(B) is limited to reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments, including reimbursement for necessary transportation, whether or not such transportation occurs within the periods described in subdivision (A);

(C) does not include expenditures for recreational activities, nor does it include entertainment other than that provided to all attendees as an integral part of the event, except for activities or entertainment otherwise permissible under this clause; and

(D) may include travel expenses incurred on behalf of a relative of the Member, Delegate, Resident Commissioner, officer, or employee.

(5) The Clerk of the House shall make all advance authorizations, certifications, and disclosures filed pursuant to this paragraph available for public inspection as soon as possible after they are received.

(c)(1)(A) Except as provided in subdivision (B), a Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept a reimbursement (including payment in kind) for transportation, lodging, or related expenses for a trip on which the traveler is accompanied on any segment by a registered lobbyist or

agent of a foreign principal.

(B) Subdivision (A) does not apply to a trip for which the source of reimbursement is an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965.

(2) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept a reimbursement (including payment in kind) for transportation, lodging, or related expenses under the exception in paragraph (b)(1)(C)(ii) of this clause for a trip that is financed in whole or in part by a private entity that retains or employs registered lobbyists or agents of a foreign principal unless any involvement of a registered lobbyist or agent of a foreign principal in the planning, organization, request, or arrangement of the trip is de minimis under rules prescribed by the Committee on Ethics to implement paragraph (b)(1)(C) of this clause.

(3) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept a reimbursement (including payment in kind) for transportation, lodging, or related expenses for a trip (other than a trip permitted under paragraph (b)(1)(C) of this clause) if such trip is in any part planned, organized, requested, or arranged by a registered lobbyist or agent of a foreign principal.

(d) A Member, Delegate, Resident Commissioner, officer, or employee of the House shall, before accepting

travel otherwise permissible under paragraph (b)(1) of this clause from any private source—

(1) provide to the Committee on Ethics before such trip a written certification signed by the source or (in the case of a corporate person) by an officer of the source—

(A) that the trip will not be financed in any part by a registered lobbyist or agent of a foreign principal;

(B) that the source either—

(i) does not retain or employ registered lobbyists or agents of a foreign principal; or

(ii) is an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965; or

(iii) certifies that the trip meets the requirements specified in rules prescribed by the Committee on Ethics to implement paragraph (b)(1)(C)(ii) of this clause and specifically details the extent of any involvement of a registered lobbyist or agent of a foreign principal in the planning, organization, request, or arrangement of the trip considered to qualify as de minimis under such rules;

(C) that the source will not accept from another source any funds earmarked directly or indirectly for the purpose of financing any aspect of the trip;

(D) that the traveler will not be accompanied on any segment of the trip by a registered lobbyist or

agent of a foreign principal (except in the case of a trip for which the source of reimbursement is an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965); and

(E) that (except as permitted in paragraph (b)(1)(C) of this clause) the trip will not in any part be planned, organized, requested, or arranged by a registered lobbyist or agent of a foreign principal; and

(2) after the Committee on Ethics has promulgated the regulations mandated in paragraph (i)(1)(B) of this clause, obtain the prior approval of the committee for such trip.

(e) A gift prohibited by paragraph (a)(1) includes the following:

(1) Anything provided by a registered lobbyist or an agent of a foreign principal to an entity that is maintained or controlled by a Member, Delegate, Resident Commissioner, officer, or employee of the House.

(2) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal on the basis of a designation, recommendation, or other specification of a Member, Delegate, Resident Commissioner, officer, or employee of the House (not

including a mass mailing or other solicitation directed to a broad category of persons or entities), other than a charitable contribution permitted by paragraph (f).

(3) A contribution or other payment by a registered lobbyist or an agent of a foreign principal to a legal expense fund established for the benefit of a Member, Delegate, Resident Commissioner, officer, or employee of the House.

(4) A financial contribution or expenditure made by a registered lobbyist or an agent of a foreign principal relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of Members, Delegates, the Resident Commissioner, officers, or employees of the House.

(f)(1) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal in lieu of an honorarium to a Member, Delegate, Resident Commissioner, officer, or employee of the House is not considered a gift under this clause if it is reported as provided in subparagraph (2).

(2) A Member, Delegate, Resident Commissioner, officer, or employee who designates or recommends a contribution to a charitable organization in lieu of an honorarium described in subparagraph (1) shall report

within 30 days after such designation or recommendation to the Clerk—

(A) the name and address of the registered lobbyist who is making the contribution in lieu of an honorarium;

(B) the date and amount of the contribution; and

(C) the name and address of the charitable organization designated or recommended by the Member, Delegate, or Resident Commissioner.

The Clerk shall make public information received under this subparagraph as soon as possible after it is received.

(g) In this clause—

(1) the term “registered lobbyist” means a lobbyist registered under the Federal Regulation of Lobbying Act or any successor statute;

(2) the term “agent of a foreign principal” means an agent of a foreign principal registered under the Foreign Agents Registration Act; and

(3) the terms “officer” and “employee” have the same meanings as in rule XXIII.

(h) All the provisions of this clause shall be interpreted and enforced solely by the Committee on Ethics. The Committee on Ethics is authorized to issue guidance on any matter contained in this clause.

(i)(1) Not later than 45 days after the date of adoption of this paragraph and at annual intervals thereafter, the Committee on Ethics shall develop and revise, as

necessary—

(A) guidelines on judging the reasonableness of an expense or expenditure for purposes of this clause, including the factors that tend to establish—

- (i) a connection between a trip and official duties;
- (ii) the reasonableness of an amount spent by a sponsor;
- (iii) a relationship between an event and an officially connected purpose; and
- (iv) a direct and immediate relationship between a source of funding and an event; and

(B) regulations describing the information it will require individuals subject to this clause to submit to the committee in order to obtain the prior approval of the committee for any travel covered by this clause, including any required certifications.

(2) In developing and revising guidelines under subparagraph (1)(A), the committee shall take into account the maximum per diem rates for official Government travel published annually by the General Services Administration, the Department of State, and the Department of Defense.

Claims against the Government

6. A person may not be an officer or employee of the House, or continue in its employment, if acting as an agent for the prosecution of a claim against the Government or if interested in such claim, except as an

original claimant or in the proper discharge of official duties.

7. A Member, Delegate, or Resident Commissioner shall prohibit all staff employed by that Member, Delegate, or Resident Commissioner (including staff in personal, committee, and leadership offices) from making any lobbying contact (as defined in section 3 of the Lobbying Disclosure Act of 1995) with that individual's spouse if that spouse is a lobbyist under the Lobbying Disclosure Act of 1995 or is employed or retained by such a lobbyist for the purpose of influencing legislation.

8. During the dates on which the national political party to which a Member (including a Delegate or Resident Commissioner) belongs holds its convention to nominate a candidate for the office of President or Vice President, the Member may not participate in an event honoring that Member, other than in the capacity as a candidate for such office, if such event is directly paid for by a registered lobbyist under the Lobbying Disclosure Act of 1995 or a private entity that retains or employs such a registered lobbyist.

RULE XXVI

FINANCIAL DISCLOSURE

1. The Clerk shall send a copy of each report filed with the Clerk under title I of the Ethics in Government Act of

1978 within the seven-day period beginning on the date on which the report is filed to the Committee on Ethics.

2. For the purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be considered Rules of the House as they pertain to Members, Delegates, the Resident Commissioner, officers, and employees of the House.

3. Members of the board of the Office of Congressional Ethics shall file annual financial disclosure reports with the Clerk of the House on or before May 15 of each calendar year after any year in which they perform the duties of that position. Such reports shall be on a form prepared by the Clerk that is substantially similar to form 450 of the Office of Government Ethics. The Clerk shall send a copy of each such report filed with the Clerk within the seven-day period beginning on the date on which the report is filed to the Committee on Ethics and shall have them printed as a House document and made available to the public pursuant to clause 1.

RULE XXVII

DISCLOSURE BY MEMBERS AND STAFF OF EMPLOYMENT NEGOTIATIONS

1. A Member, Delegate, or Resident Commissioner shall not directly negotiate or have any agreement of future employment or compensation, unless such Member, Delegate, or Resident Commissioner, within 3

business days after the commencement of such negotiation or agreement of future employment or compensation, files with the Committee on Ethics a statement, which must be signed by the Member, Delegate, or Resident Commissioner, regarding such negotiations or agreement, including the name of the private entity or entities involved in such negotiations or agreement, and the date such negotiations or agreement commenced.

2. An officer or an employee of the House earning in excess of 75 percent of the salary paid to a Member shall notify the Committee on Ethics that such individual is negotiating or has any agreement of future employment or compensation.

3. The disclosure and notification under this rule shall be made within 3 business days after the commencement of such negotiation or agreement of future employment or compensation.

4. A Member, Delegate, or Resident Commissioner, and an officer or employee to whom this rule applies, shall recuse himself or herself from any matter in which there is a conflict of interest or an appearance of a conflict for that Member, Delegate, Resident Commissioner, officer, or employee under this rule and shall notify the Committee on Ethics of such recusal. A Member, Delegate, or Resident Commissioner making such recusal shall, upon such recusal, submit to the Clerk for public disclosure the

statement of disclosure under clause 1 with respect to which the recusal was made.

RULE XXVIII

(RESERVED.)

RULE XXIX

GENERAL PROVISIONS

1. The provisions of law that constituted the Rules of the House at the end of the previous Congress shall govern the House in all cases to which they are applicable, and the rules of parliamentary practice comprised by Jefferson's Manual shall govern the House in all cases to which they are applicable and in which they are not inconsistent with the Rules and orders of the House.

2. In these rules words importing one gender include the other as well.

3. If a measure or matter is publicly available in electronic form at a location designated by the Committee on House Administration, it shall be considered as having been available to Members, Delegates, and the Resident Commissioner for purposes of these rules.

4. Authoritative guidance from the Committee on the Budget concerning the impact of a legislative proposition on the levels of new budget authority, outlays, direct

spending, new entitlement authority and revenues may be provided by the chair of the committee.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit XX

RULES OF THE HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

RULE I

THE SPEAKER

Approval of the Journal

1. The Speaker shall take the Chair on every legislative day precisely at the hour to which the House last adjourned and immediately call the House to order. Having examined and approved the Journal of the last day's proceedings, the Speaker shall announce to the House approval thereof. The Speaker's approval of the Journal shall be deemed agreed to unless a Member, Delegate, or Resident Commissioner demands a vote thereon. If such a vote is decided in the affirmative, it shall not be subject to a motion to reconsider. If such a vote is decided in the negative, then one motion that the Journal be read shall be privileged, shall be decided without debate, and shall not be subject to a motion to reconsider.

Preservation of order

2. The Speaker shall preserve order and decorum and, in case of disturbance or disorderly conduct in the

galleries or in the lobby, may cause the same to be cleared.

Control of Capitol facilities

3. Except as otherwise provided by rule or law, the Speaker shall have general control of the Hall of the House, the corridors and passages in the part of the Capitol assigned to the use of the House, and the disposal of unappropriated rooms in that part of the Capitol.

Signature of documents

4. The Speaker shall sign all acts and joint resolutions passed by the two Houses and all writs, warrants, and subpoenas of, or issued by order of, the House. The Speaker may sign enrolled bills and joint resolutions whether or not the House is in session.

Questions of order

5. The Speaker shall decide all questions of order, subject to appeal by a Member, Delegate, or Resident Commissioner. On such an appeal a Member, Delegate, or Resident Commissioner may not speak more than once without permission of the House.

Form of a question

6. The Speaker shall put a question in this form: “Those in favor (of the question), say ‘Aye.’”; and after the affirmative voice is expressed, “Those opposed, say

‘No.’”. After a vote by voice under this clause, the Speaker may use such voting procedures as may be invoked under rule XX.

Discretion to vote

7. The Speaker is not required to vote in ordinary legislative proceedings, except when such vote would be decisive or when the House is engaged in voting by ballot.

Speaker pro tempore

8. (a) The Speaker may appoint a Member to perform the duties of the Chair. Except as specified in paragraph (b), such an appointment may not extend beyond three legislative days.

(b)(1) In the case of illness, the Speaker may appoint a Member to perform the duties of the Chair for a period not exceeding 10 days, subject to the approval of the House. If the Speaker is absent and has omitted to make such an appointment, then the House shall elect a Speaker pro tempore to act during the absence of the Speaker.

(2) With the approval of the House, the Speaker may appoint a Member to act as Speaker pro tempore only to sign enrolled bills and joint resolutions for a specified period of time.

(3)(A) In the case of a vacancy in the Office of Speaker, the next Member on the list described in subdivision (B) shall act as Speaker pro tempore until the election of a Speaker or a Speaker pro tempore. Pending such election

the Member acting as Speaker pro tempore may exercise such authorities of the Office of Speaker as may be necessary and appropriate to that end.

(B) As soon as practicable after the election of the Speaker and whenever appropriate thereafter, the Speaker shall deliver to the Clerk a list of Members in the order in which each shall act as Speaker pro tempore under subdivision (A).

(C) For purposes of subdivision (A), a vacancy in the Office of Speaker may exist by reason of the physical inability of the Speaker to discharge the duties of the office.

Other responsibilities

9. The Speaker, in consultation with the Minority Leader, shall develop through an appropriate entity of the House a system for drug testing in the House. The system may provide for the testing of a Member, Delegate, Resident Commissioner, officer, or employee of the House, and otherwise shall be comparable in scope to the system for drug testing in the executive branch pursuant to Executive Order 12564 (Sept. 15, 1986). The expenses of the system may be paid from applicable accounts of the House for official expenses.

Designation of travel

10. The Speaker may designate a Member, Delegate, Resident Commissioner, officer, or employee of the

House to travel on the business of the House within or without the United States, whether the House is meeting, has recessed, or has adjourned. Expenses for such travel may be paid from applicable accounts of the House described in clause 1(k)(1) of rule X on vouchers approved and signed solely by the Speaker.

Committee appointment

11. The Speaker shall appoint all select, joint, and conference committees ordered by the House. At any time after an original appointment, the Speaker may remove Members, Delegates, or the Resident Commissioner from, or appoint additional Members, Delegates, or the Resident Commissioner to, a select or conference committee. In appointing Members, Delegates, or the Resident Commissioner to conference committees, the Speaker shall appoint no less than a majority who generally supported the House position as determined by the Speaker, shall name those who are primarily responsible for the legislation, and shall, to the fullest extent feasible, include the principal proponents of the major provisions of the bill or resolution passed or adopted by the House.

Recess and Convening Authorities

12. (a) To suspend the business of the House for a short time when no question is pending before the House, the Speaker may declare a recess subject to the call of the Chair.

(b)(1) To suspend the business of the House when notified of an imminent threat to its safety, the Speaker may declare an emergency recess subject to the call of the Chair.

(2) To suspend the business of the Committee of the Whole House on the state of the Union when notified of an imminent threat to its safety, the chair of the Committee of the Whole may declare an emergency recess subject to the call of the Chair.

(c) During any recess or adjournment of not more than three days, if the Speaker is notified by the Sergeant-at-Arms of an imminent impairment of the place of reconvening at the time previously appointed, then the Speaker may, in consultation with the Minority Leader—

(1) postpone the time for reconvening within the limits of clause 4, section 5, article I of the Constitution and notify Members accordingly; or

(2) reconvene the House before the time previously appointed solely to declare the House in recess within the limits of clause 4, section 5, article I of the Constitution and notify Members accordingly.

(d) The Speaker may convene the House in a place at the seat of government other than the Hall of the House if, in the opinion of the Speaker, the public interest shall warrant it.

(e) During any recess or adjournment of not more than three days, if in the opinion of the Speaker the public

interest so warrants, then the Speaker, after consultation with the Minority Leader, may reconvene the House at a time other than that previously appointed, within the limits of clause 4, section 5, article I of the Constitution, and notify Members accordingly.

(f) The Speaker may name a designee for purposes of paragraphs (c), (d), and (e).

RULE II

OTHER OFFICERS AND OFFICIALS

Elections

1. There shall be elected at the commencement of each Congress, to continue in office until their successors are chosen and qualified, a Clerk, a Sergeant-at-Arms, a Chief Administrative Officer, and a Chaplain. Each of these officers shall take an oath to support the Constitution of the United States, and for the true and faithful exercise of the duties of the office to the best of the knowledge and ability of the officer, and to keep the secrets of the House. Each of these officers shall appoint all of the employees of the department concerned provided for by law. The Clerk, Sergeant-at-Arms, and Chief Administrative Officer may be removed by the House or by the Speaker.

Clerk

2. (a) At the commencement of the first session of each Congress, the Clerk shall call the Members, Delegates, and Resident Commissioner to order and proceed to record their presence by States in alphabetical order, either by call of the roll or by use of the electronic voting system. Pending the election of a Speaker or Speaker pro tempore, and in the absence of a Member acting as Speaker pro tempore pursuant to clause 8(b)(3)(A) of rule I, the Clerk shall preserve order and decorum and decide all questions of order, subject to appeal by a Member, Delegate, or Resident Commissioner.

(b) At the commencement of every regular session of Congress, the Clerk shall make and cause to be delivered to each Member, Delegate, and the Resident Commissioner a list of the reports that any officer or Department is required to make to Congress, citing the law or resolution in which the requirement may be contained and placing under the name of each officer the list of reports required to be made by such officer.

(c) The Clerk shall—

(1) note all questions of order, with the decisions thereon, the record of which shall be appended to the Journal of each session;

(2) enter on the Journal the hour at which the House adjourns;

(3) complete the distribution of the Journal to Members, Delegates, and the Resident Commissioner,

together with an accurate and complete index, as soon as possible after the close of a session; and

(4) send a copy of the Journal to the executive of and to each branch of the legislature of every State as may be requested by such State officials.

(d)(1) The Clerk shall attest and affix the seal of the House to all writs, warrants, and subpoenas issued by order of the House and certify the passage of all bills and joint resolutions.

(2) The Clerk shall examine all bills, amendments, and joint resolutions after passage by the House and, in cooperation with the Senate, examine all bills and joint resolutions that have passed both Houses to see that they are correctly enrolled and forthwith present those bills and joint resolutions that originated in the House to the President in person after their signature by the Speaker and the President of the Senate, and report to the House the fact and date of their presentment.

(e) The Clerk shall cause the calendars of the House to be distributed each legislative day.

(f) The Clerk shall—

(1) retain in the library at the Office of the Clerk for the use of the Members, Delegates, Resident Commissioner, and officers of the House, and not to be withdrawn therefrom, two copies of all the books and printed documents deposited there; and

(2) deliver to any Member, Delegate, or the Resident Commissioner an extra copy of each document requested by that Member, Delegate, or Resident Commissioner that has been printed by order of either House of Congress in any Congress in which the Member, Delegate, or Resident Commissioner served.

(g) The Clerk shall provide for the temporary absence or disability of the Clerk by designating an official in the Office of the Clerk to sign all papers that may require the official signature of the Clerk and to perform all other official acts that the Clerk may be required to perform under the rules and practices of the House, except such official acts as are provided for by statute. Official acts performed by the designated official shall be under the name of the Clerk. The designation shall be in writing and shall be laid before the House and entered on the Journal.

(h) The Clerk may receive messages from the President and from the Senate at any time when the House is in recess or adjournment.

(i)(1) The Clerk shall supervise the staff and manage the office of a Member, Delegate, or Resident Commissioner who has died, resigned, or been expelled until a successor is elected. The Clerk shall perform similar duties in the event that a vacancy is declared by the House in any congressional district because of the incapacity of the person representing such district or other reason. When acting as a supervisory authority over such

staff, the Clerk shall have authority to terminate employees and, with the approval of the Committee on House Administration, may appoint such staff as is required to operate the office until a successor is elected.

(2) For 60 days following the death of a former Speaker, the Clerk shall maintain on the House payroll, and shall supervise in the same manner, staff appointed under House Resolution 1238, Ninety-first Congress (as enacted into permanent law by chapter VIII of the Supplemental Appropriations Act, 1971) (2 U.S.C. 5128).

(j) In addition to any other reports required by the Speaker or the Committee on House Administration, the Clerk shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or on December 31 on the financial and operational status of each function under the jurisdiction of the Clerk. Each report shall include financial statements and a description or explanation of current operations, the implementation of new policies and procedures, and future plans for each function.

(k) The Clerk shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

Sergeant-at-Arms

3. (a) The Sergeant-at-Arms shall attend the House during its sittings and maintain order under the direction

of the Speaker or other presiding officer. The Sergeant-at-Arms shall execute the commands of the House, and all processes issued by authority thereof, directed to the Sergeant-at-Arms by the Speaker.

(b) The symbol of the Office of the Sergeant-at-Arms shall be the mace, which shall be borne by the Sergeant-at-Arms while enforcing order on the floor.

(c) The Sergeant-at-Arms shall enforce strictly the rules relating to the privileges of the Hall of the House and be responsible to the House for the official conduct of employees of the Office of the Sergeant-at-Arms.

(d) The Sergeant-at-Arms may not allow a person to enter the room over the Hall of the House during its sittings and, from 15 minutes before the hour of the meeting of the House each day until 10 minutes after adjournment, shall see that the floor is cleared of all persons except those privileged to remain.

(e) In addition to any other reports required by the Speaker or the Committee on House Administration, the Sergeant-at-Arms shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or on December 31 on the financial and operational status of each function under the jurisdiction of the Sergeant-at-Arms. Each report shall include financial statements and a description or explanation of current operations, the

implementation of new policies and procedures, and future plans for each function.

(f) The Sergeant-at-Arms shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

(g)(1) The Sergeant-at-Arms is authorized and directed to impose a fine against a Member, Delegate, or the Resident Commissioner for the use of an electronic device for still photography or for audio or visual recording or broadcasting in contravention of clause 5 of rule XVII and any applicable Speaker's announced policy on electronic devices.

(2) A fine imposed pursuant to this paragraph shall be \$500 for a first offense and \$2,500 for any subsequent offense.

(3)(A) The Sergeant-at-Arms shall promptly notify the Member, Delegate, or the Resident Commissioner, the Speaker, the Chief Administrative Officer, and the Committee on Ethics of any such fine.

(B) Such Member, Delegate, or Resident Commissioner may appeal the fine in writing to the Committee on Ethics not later than 30 calendar days or five legislative days, whichever is later, after notification pursuant to subdivision (A).

(C) Upon receipt of an appeal pursuant to subdivision (B), the Committee on Ethics shall have 30 calendar days

or five legislative days, whichever is later, to either dismiss the fine or allow it to proceed. Upon a determination regarding the appeal or if no appeal has been filed at the expiration of the period specified in subdivision (B), the chair of the Committee on Ethics shall promptly notify the Member, Delegate, or the Resident Commissioner, the Speaker and the Chief Administrative Officer. The Speaker shall promptly lay such notification before the House.

(4) The Sergeant-at-Arms and the Committee on Ethics are authorized to establish policies and procedures for the implementation of this paragraph.

Chief Administrative Officer

4. (a) The Chief Administrative Officer shall have operational and financial responsibility for functions as assigned by the Committee on House Administration and shall be subject to the policy direction and oversight of the Committee on House Administration.

(b) In addition to any other reports required by the Committee on House Administration, the Chief Administrative Officer shall report to the Committee on House Administration not later than 45 days following the close of each semiannual period ending on June 30 or December 31 on the financial and operational status of each function under the jurisdiction of the Chief Administrative Officer. Each report shall include financial statements and a description or explanation of current

operations, the implementation of new policies and procedures, and future plans for each function.

(c) The Chief Administrative Officer shall fully cooperate with the appropriate offices and persons in the performance of reviews and audits of financial records and administrative operations.

(d)(1) Upon notification from the chair of the Committee on Ethics pursuant to clause 3(g)(3)(C), the Chief Administrative Officer shall deduct the amount of any fine levied under clause 3(g) from the net salary otherwise due the Member, Delegate, or the Resident Commissioner.

(2) The Chief Administrative Officer is authorized to establish policies and procedures for such salary deductions.

Chaplain

5. The Chaplain shall offer a prayer at the commencement of each day's sitting of the House.

Office of Inspector General

6. (a) There is established an Office of Inspector General.

(b) The Inspector General shall be appointed for a Congress by the Speaker, the Majority Leader, and the Minority Leader, acting jointly.

(c) Subject to the policy direction and oversight of the Committee on House Administration, the Inspector

General shall only—

(1) provide audit, investigative, and advisory services to the House and joint entities in a manner consistent with government-wide standards;

(2) inform the officers or other officials who are the subject of an audit of the results of that audit and suggesting appropriate curative actions;

(3) simultaneously notify the Speaker, the Majority Leader, the Minority Leader, and the chair and ranking minority member of the Committee on House Administration in the case of any financial irregularity discovered in the course of carrying out responsibilities under this clause;

(4) simultaneously submit to the Speaker, the Majority Leader, the Minority Leader, and the chair and ranking minority member of the Committee on Appropriations and the Committee on House Administration a report of each audit conducted under this clause; and

(5) report to the Committee on Ethics information involving possible violations by a Member, Delegate, Resident Commissioner, officer, or employee of the House of any rule of the House or of any law applicable to the performance of official duties or the discharge of official responsibilities that may require referral to the appropriate Federal or State authorities under clause 3(a)(3) of rule XI.

Office of the Historian

7. There is established an Office of the Historian of the House of Representatives. The Speaker shall appoint and set the annual rate of pay for employees of the Office of the Historian.

Office of General Counsel

8. (a) There is established an Office of General Counsel for the purpose of providing legal assistance and representation to the House. Legal assistance and representation shall be provided without regard to political affiliation. The Speaker shall appoint and set the annual rate of pay for employees of the Office of General Counsel. The Office of General Counsel shall function pursuant to the direction of the Speaker, who shall consult with the Bipartisan Legal Advisory Group.

(b) There is established a Bipartisan Legal Advisory Group composed of the Speaker and the majority and minority leaderships. Unless otherwise provided by the House, the Bipartisan Legal Advisory Group speaks for, and articulates the institutional position of, the House in all litigation matters.

(c) The House, the Speaker, a committee or the chair of a committee authorized during a prior Congress to act in a litigation matter is authorized to act as the successor in interest to the House, the Speaker, such committee or the chair of such committee of a prior Congress, respectively, with respect to such litigation matter, and to take such

steps as may be appropriate to ensure continuation of such litigation matter.

RULE III

THE MEMBERS, DELEGATES, AND RESIDENT COMMISSIONER OF PUERTO RICO

Voting

1. Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented, and shall vote on each question put, unless having a direct personal or pecuniary interest in the event of such question.

2. (a) A Member may not authorize any other person to cast the vote of such Member or record the presence of such Member in the House or the Committee of the Whole House on the state of the Union.

(b) No other person may cast a Member's vote or record a Member's presence in the House or the Committee of the Whole House on the state of the Union.

Delegates and the Resident Commissioner

3. (a) Each Delegate and the Resident Commissioner shall be elected to serve on standing committees in the same manner as Members and shall possess in such committees the same powers and privileges as the other members of the committee.

(b) The Delegates and the Resident Commissioner may be appointed to any select committee and to any conference committee.

RULE IV

THE HALL OF THE HOUSE

Use and admittance

1. The Hall of the House shall be used only for the legislative business of the House and for caucus and conference meetings of its Members, except when the House agrees to take part in any ceremonies to be observed therein.

2. (a) Only the following persons shall be admitted to the Hall of the House or rooms leading thereto:

(1) Members of Congress, Members-elect, and contestants in election cases during the pendency of their cases on the floor.

(2) The Delegates and the Resident Commissioner.

(3) The President and Vice President of the United States and their private secretaries.

(4) Justices of the Supreme Court.

(5) Elected officers and minority employees nominated as elected officers of the House.

(6) The Parliamentarian.

(7) Staff of committees when business from their committee is under consideration, and staff of the

respective party leaderships when so assigned with the approval of the Speaker.

(8) Not more than one person from the staff of a Member, Delegate, or Resident Commissioner when that Member, Delegate, or Resident Commissioner has an amendment under consideration (subject to clause 5).

(9) The Architect of the Capitol.

(10) The Librarian of Congress and the assistant in charge of the Law Library.

(11) The Secretary and Sergeant-at-Arms of the Senate.

(12) Heads of departments.

(13) Foreign ministers.

(14) Governors of States.

(15) Former Members, Delegates, and Resident Commissioners; former Parliamentarians of the House; and former elected officers and minority employees nominated as elected officers of the House (subject to clause 4).

(16) One attorney to accompany a Member, Delegate, or Resident Commissioner who is the respondent in an investigation undertaken by the Committee on Ethics when a recommendation of that committee is under consideration in the House.

(17) Such persons as have, by name, received the thanks of Congress.

(b) The Speaker may not entertain a unanimous consent request or a motion to suspend this clause or clauses 1, 3, 4, or 5.

3. (a) Except as provided in paragraph (b), all persons not entitled to the privilege of the floor during the session shall be excluded at all times from the Hall of the House and the cloakrooms.

(b) Until 15 minutes of the hour of the meeting of the House, persons employed in its service, accredited members of the press entitled to admission to the press gallery, and other persons on request of a Member, Delegate, or Resident Commissioner by card or in writing, may be admitted to the Hall of the House.

4. (a) A former Member, Delegate, or Resident Commissioner; a former Parliamentarian of the House; or a former elected officer of the House or former minority employee nominated as an elected officer of the House shall not be entitled to the privilege of admission to the Hall of the House and rooms leading thereto if such individual—

(1) is a registered lobbyist or agent of a foreign principal as those terms are defined in clause 5 of rule XXV;

(2) has any direct personal or pecuniary interest in any legislative measure pending before the House or reported by a committee; or

(3) is in the employ of or represents any party or organization for the purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any legislative proposal.

(b) The Speaker may promulgate regulations to carry out this rule including regulations that exempt ceremonial or educational functions from the restrictions of this clause.

5. A person from the staff of a Member, Delegate, or Resident Commissioner may be admitted to the Hall of the House or rooms leading thereto under clause 2 only upon prior notice to the Speaker. Such persons, and persons from the staff of committees admitted under clause 2, may not engage in efforts in the Hall of the House or rooms leading thereto to influence Members with regard to the legislation being amended. Such persons are admitted only to advise the Member, Delegate, Resident Commissioner, or committee responsible for their admission. A person who violates this clause may be excluded during the session from the Hall of the House and rooms leading thereto by the Speaker.

Gallery

6. (a) The Speaker shall set aside a portion of the west gallery for the use of the President, the members of the Cabinet, justices of the Supreme Court, foreign ministers and suites, and the members of their respective families. The Speaker shall set aside another portion of the same

gallery for the accommodation of persons to be admitted on the cards of Members, Delegates, or the Resident Commissioner.

(b) The Speaker shall set aside the southerly half of the east gallery for the use of the families of Members of Congress. The Speaker shall control one bench. On the request of a Member, Delegate, Resident Commissioner, or Senator, the Speaker shall issue a card of admission to the family of such individual, which may include their visitors. No other person shall be admitted to this section.

Prohibition on campaign contributions

7. A Member, Delegate, Resident Commissioner, officer, or employee of the House, or any other person entitled to admission to the Hall of the House or rooms leading thereto by this rule, may not knowingly distribute a political campaign contribution in the Hall of the House or rooms leading thereto.

RULE V

BROADCASTING THE HOUSE

1. The Speaker shall administer, direct, and control a system for closed-circuit viewing of floor proceedings of the House in the offices of all Members, Delegates, the Resident Commissioner, and committees and in such other places in the Capitol and the House Office Buildings

as the Speaker considers appropriate. Such system may include other communications functions as the Speaker considers appropriate. Any such communications shall be subject to rules and regulations issued by the Speaker.

2. (a) The Speaker shall administer, direct, and control a system for complete and unedited audio and visual broadcasting and recording of the floor proceedings of the House. The Speaker shall provide for the distribution of such broadcasts and recordings to news media, for the storage of audio and video recordings of the proceedings, and for the closed-captioning of the proceedings for hearing-impaired persons.

(b) All television and radio broadcasting stations, networks, services, and systems (including cable systems) that are accredited to the House Radio and Television Correspondents' Galleries, and all radio and television correspondents who are so accredited, shall be provided access to the live coverage of the House.

(c) Coverage made available under this clause, including any recording thereof—

(1) may not be used for any partisan political campaign purpose;

(2) may not be used in any commercial advertisement; and

(3) may not be broadcast with commercial sponsorship except as part of a bona fide news program or public affairs documentary program.

3. The Speaker may delegate any of the responsibilities under this rule to such legislative entity as the Speaker considers appropriate.

RULE VI

OFFICIAL REPORTERS AND NEWS MEDIA GALLERIES

Official reporters

1. Subject to the direction and control of the Speaker, the Clerk shall appoint, and may remove for cause, the official reporters of the House, including stenographers of committees, and shall supervise the execution of their duties.

News media galleries

2. A portion of the gallery over the Speaker's chair, as may be necessary to accommodate representatives of the press wishing to report debates and proceedings, shall be set aside for their use. Reputable reporters and correspondents shall be admitted thereto under such regulations as the Speaker may prescribe from time to time. The Standing Committee of Correspondents for the Press Gallery, and the Executive Committee of Correspondents for the Periodical Press Gallery, shall supervise such galleries, including the designation of its employees, subject to the direction and control of the Speaker. The Speaker may admit to the floor, under such

regulations as the Speaker may prescribe, not more than one representative of each press association.

3. A portion of the gallery as may be necessary to accommodate reporters of news to be disseminated by radio, television, and similar means of transmission, wishing to report debates and proceedings, shall be set aside for their use. Reputable reporters and correspondents shall be admitted thereto under such regulations as the Speaker may prescribe. The Executive Committee of the Radio and Television Correspondents' Galleries shall supervise such gallery, including the designation of its employees, subject to the direction and control of the Speaker. The Speaker may admit to the floor, under such regulations as the Speaker may prescribe, not more than one representative of each media outlet.

RULE VII

RECORDS OF THE HOUSE

Archiving

1. (a) At the end of each Congress, the chair of each committee shall transfer to the Clerk any noncurrent records of such committee, including the subcommittees thereof.

(b) At the end of each Congress, each officer of the House elected under rule II shall transfer to the Clerk any

noncurrent records made or acquired in the course of the duties of such officer.

2. The Clerk shall deliver the records transferred under clause 1, together with any other noncurrent records of the House, to the Archivist of the United States for preservation at the National Archives and Records Administration. Records so delivered are the permanent property of the House and remain subject to this rule and any order of the House.

Public availability

3. (a) The Clerk shall authorize the Archivist to make records delivered under clause 2 available for public use, subject to clause 4(b) and any order of the House.

(b)(1) A record shall immediately be made available if it was previously made available for public use by the House or a committee or a subcommittee.

(2) An investigative record that contains personal data relating to a specific living person (the disclosure of which would be an unwarranted invasion of personal privacy), an administrative record relating to personnel, or a record relating to a hearing that was closed under clause 2(g)(2) of rule XI shall be made available if it has been in existence for 50 years.

(3) A record for which a time, schedule, or condition for availability is specified by order of the House shall be made available in accordance with that order. Except as otherwise provided by order of the House, a record of a

committee for which a time, schedule, or condition for availability is specified by order of the committee (entered during the Congress in which the record is made or acquired by the committee) shall be made available in accordance with the order of the committee.

(4) A record (other than a record referred to in subparagraph (1), (2), or (3)) shall be made available if it has been in existence for 30 years.

4. (a) A record may not be made available for public use under clause 3 if the Clerk determines that such availability would be detrimental to the public interest or inconsistent with the rights and privileges of the House. The Clerk shall notify in writing the chair and ranking minority member of the Committee on House Administration of any such determination.

(b) A determination of the Clerk under paragraph (a) is subject to later orders of the House and, in the case of a record of a committee, later orders of the committee.

5. (a) This rule does not supersede rule VIII or clause 11 of rule X and does not authorize the public disclosure of any record if such disclosure is prohibited by law or executive order of the President.

(b) The Committee on House Administration may prescribe guidelines and regulations governing the applicability and implementation of this rule.

(c) A committee may withdraw from the National Archives and Records Administration any record of the

committee delivered to the Archivist under this rule. Such a withdrawal shall be on a temporary basis and for official use of the committee.

Definition of record

6. (a) In this rule the term “record” means any official, permanent record of the House (other than a record of an individual Member, Delegate, or Resident Commissioner as described in paragraph (b)), including—

(1) with respect to a committee, an official, permanent record of the committee (including any record of a legislative, oversight, or other activity of such committee or a subcommittee thereof); and

(2) with respect to an officer of the House elected under rule II, an official, permanent record made or acquired in the course of the duties of such officer.

(b) Records created, generated, or received by the congressional office of a Member, Delegate, or the Resident Commissioner in the performance of official duties are exclusively the personal property of the individual Member, Delegate, or the Resident Commissioner and such Member, Delegate, or Resident Commissioner has control over such records.

Withdrawal of papers

7. A memorial or other paper presented to the House may not be withdrawn from its files without its leave. If withdrawn certified copies thereof shall be left in the

Office of the Clerk. When an act passes for the settlement of a claim, the Clerk may transmit to the officer charged with the settlement thereof the papers on file in the Office of the Clerk relating to such claim. The Clerk may lend temporarily to an officer or bureau of the executive departments any papers on file in the Office of the Clerk relating to any matter pending before such officer or bureau, taking proper receipt therefor.

RULE VIII

RESPONSE TO SUBPOENAS

1. (a) When a Member, Delegate, Resident Commissioner, officer, or employee of the House is properly served with a judicial subpoena or order, such Member, Delegate, Resident Commissioner, officer, or employee shall comply, consistently with the privileges and rights of the House, with the judicial subpoena or order as hereinafter provided, unless otherwise determined under this rule.

(b) For purposes of this rule, “judicial subpoena or order” means a judicial subpoena or judicial order directing appearance as a witness relating to the official functions of the House or for the production or disclosure of any document relating to the official functions of the House.

2. (a) Upon receipt of a properly served judicial subpoena or order, a Member, Delegate, Resident Commissioner, officer, or employee of the House shall promptly notify the Speaker in writing of its receipt together with either:

(1) a determination as to whether the issuance of the judicial subpoena or order is a proper exercise of jurisdiction by the court and is consistent with the privileges and rights of the House; or

(2) a statement that such Member, Delegate, Resident Commissioner, officer, or employee of the House intends to make a determination with respect to the matters described in subparagraph (1).

(b) The notification required by paragraph (a) shall promptly be laid before the House by the Speaker.

3. (a) Except as specified in paragraph (b) or otherwise ordered by the House, upon notification to the House that a judicial subpoena or order is a proper exercise of jurisdiction by the court and is consistent with the privileges and rights of the House, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall comply with the judicial subpoena or order by supplying copies.

(b) Under no circumstances may minutes or transcripts of executive sessions, or evidence of witnesses in respect thereto, be disclosed or copied. During a period of recess or adjournment of longer than three days, the Speaker

may authorize compliance or take such other action as the Speaker considers appropriate under the circumstances. Upon the reconvening of the House, all matters that transpired under this clause shall promptly be laid before the House by the Speaker.

4. Nothing in this rule shall be construed to deprive, condition, or waive the constitutional or legal privileges or rights applicable or available at any time to a Member, Delegate, Resident Commissioner, officer, or employee of the House, or of the House itself, or the right of such Member, Delegate, Resident Commissioner, officer, or employee, or of the House itself, to assert such privileges or rights before a court in the United States.

RULE IX

QUESTIONS OF PRIVILEGE

1. Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; and second, those affecting the rights, reputation, and conduct of Members, Delegates, or the Resident Commissioner, individually, in their representative capacity only.

2. (a)(1) A resolution reported as a question of the privileges of the House, or offered from the floor by the Majority Leader or the Minority Leader as a question of the privileges of the House, or offered as privileged under

clause 1, section 7, article I of the Constitution, shall have precedence of all other questions except motions to adjourn. A resolution offered from the floor by a Member, Delegate, or Resident Commissioner other than the Majority Leader or the Minority Leader as a question of the privileges of the House shall have precedence of all other questions except motions to adjourn only at a time or place, designated by the Speaker, in the legislative schedule within two legislative days after the day on which the proponent announces to the House an intention to offer the resolution and the form of the resolution. Oral announcement of the form of the resolution may be dispensed with by unanimous consent.

(2) The time allotted for debate on a resolution offered from the floor as a question of the privileges of the House shall be equally divided between (A) the proponent of the resolution, and (B) the Majority Leader, the Minority Leader, or a designee, as determined by the Speaker.

(b) A question of personal privilege shall have precedence of all other questions except motions to adjourn.

RULE X

ORGANIZATION OF COMMITTEES

Committees and their legislative jurisdictions

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:

(a) Committee on Agriculture.

(1) Adulteration of seeds, insect pests, and protection of birds and animals in forest reserves.

(2) Agriculture generally.

(3) Agricultural and industrial chemistry.

(4) Agricultural colleges and experiment stations.

(5) Agricultural economics and research.

(6) Agricultural education extension services.

(7) Agricultural production and marketing and stabilization of prices of agricultural products, and commodities (not including distribution outside of the United States).

(8) Animal industry and diseases of animals.

(9) Commodity exchanges.

(10) Crop insurance and soil conservation.

(11) Dairy industry.

(12) Entomology and plant quarantine.

(13) Extension of farm credit and farm security.

(14) Inspection of livestock, poultry, meat products, and seafood and seafood products.

(15) Forestry in general and forest reserves other than those created from the public domain.

(16) Human nutrition and home economics.

(17) Plant industry, soils, and agricultural engineering.

(18) Rural electrification.

(19) Rural development.

(20) Water conservation related to activities of the Department of Agriculture.

(b) Committee on Appropriations.

(1) Appropriation of the revenue for the support of the Government.

(2) Rescissions of appropriations contained in appropriation Acts.

(3) Transfers of unexpended balances.

(4) Bills and joint resolutions reported by other committees that provide new entitlement authority as defined in section 3(9) of the Congressional Budget Act of 1974 and referred to the committee under clause 4(a)(2).

(5) Bills and joint resolutions that provide new budget authority, limitation on the use of funds, or other authority relating to new direct loan obligations and new loan guarantee commitments referencing section 504(b) of the Congressional Budget Act of 1974.

(c) Committee on Armed Services.

(1) Ammunition depots; forts; arsenals; and Army, Navy, and Air Force reservations and establishments.

(2) Common defense generally.

(3) Conservation, development, and use of naval petroleum and oil shale reserves.

(4) The Department of Defense generally, including the Departments of the Army, Navy, and Air Force, generally.

(5) Interoceanic canals generally, including measures relating to the maintenance, operation, and administration of interoceanic canals.

(6) Merchant Marine Academy and State Maritime Academies.

(7) Military applications of nuclear energy.

(8) Tactical intelligence and intelligence-related activities of the Department of Defense.

(9) National security aspects of merchant marine, including financial assistance for the construction and operation of vessels, maintenance of the U.S. shipbuilding and ship repair industrial base, cabotage, cargo preference, and merchant marine officers and seamen as these matters relate to the national security.

(10) Pay, promotion, retirement, and other benefits and privileges of members of the armed forces.

(11) Scientific research and development in support of the armed services.

(12) Selective service.

(13) Size and composition of the Army, Navy, Marine Corps, and Air Force.

(14) Soldiers' and sailors' homes.

(15) Strategic and critical materials necessary for the common defense.

(16) Cemeteries administered by the Department of Defense.

(d) Committee on the Budget.

(1) Concurrent resolutions on the budget (as defined in section 3(4) of the Congressional Budget Act of 1974), other matters required to be referred to the committee under titles III and IV of that Act, and other measures setting forth appropriate levels of budget totals for the United States Government.

(2) Budget process generally.

(3) Establishment, extension, and enforcement of special controls over the Federal budget, including the budgetary treatment of off-budget Federal agencies and measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(e) Committee on Education and the Workforce.

(1) Child labor.

(2) Gallaudet University and Howard University and Hospital.

(3) Convict labor and the entry of goods made by convicts into interstate commerce.

(4) Food programs for children in schools.

(5) Labor standards and statistics.

(6) Education or labor generally.

(7) Mediation and arbitration of labor disputes.

(8) Regulation or prevention of importation of foreign laborers under contract.

(9) Workers' compensation.

(10) Vocational rehabilitation.

(11) Wages and hours of labor.

(12) Welfare of miners.

(13) Work incentive programs.

(f) Committee on Energy and Commerce.

(1) Biomedical research and development.

(2) Consumer affairs and consumer protection.

(3) Health and health facilities (except health care supported by payroll deductions).

(4) Interstate energy compacts.

(5) Interstate and foreign commerce generally.

(6) Exploration, production, storage, supply, marketing, pricing, and regulation of energy resources, including all fossil fuels, solar energy, and other unconventional or renewable energy resources.

(7) Conservation of energy resources.

(8) Energy information generally.

(9) The generation and marketing of power (except by federally chartered or Federal regional power marketing authorities); reliability and interstate transmission of, and ratemaking for, all power; and siting of generation facilities (except the installation of interconnections between Government waterpower projects).

(10) General management of the Department of Energy and management and all functions of the Federal Energy Regulatory Commission.

(11) National energy policy generally.

(12) Public health and quarantine.

(13) Regulation of the domestic nuclear energy industry, including regulation of research and development reactors and nuclear regulatory research.

(14) Regulation of interstate and foreign communications.

(15) Travel and tourism.

The committee shall have the same jurisdiction with respect to regulation of nuclear facilities and of use of nuclear energy as it has with respect to regulation of nonnuclear facilities and of use of nonnuclear energy.

(g) Committee on Ethics.

The Code of Official Conduct.

(h) Committee on Financial Services.

(1) Banks and banking, including deposit insurance and Federal monetary policy.

(2) Economic stabilization, defense production, renegotiation, and control of the price of commodities, rents, and services.

(3) Financial aid to commerce and industry (other than transportation).

(4) Insurance generally.

(5) International finance.

(6) International financial and monetary organizations.

(7) Money and credit, including currency and the issuance of notes and redemption thereof; gold and silver, including the coinage thereof; valuation and revaluation of the dollar.

(8) Public and private housing.

(9) Securities and exchanges.

(10) Urban development.

(i) Committee on Foreign Affairs.

(1) Relations of the United States with foreign nations generally.

(2) Acquisition of land and buildings for embassies and legations in foreign countries.

(3) Establishment of boundary lines between the United States and foreign nations.

(4) Export controls, including nonproliferation of nuclear technology and nuclear hardware.

(5) Foreign loans.

(6) International commodity agreements (other than those involving sugar), including all agreements for cooperation in the export of nuclear technology and nuclear hardware.

(7) International conferences and congresses.

(8) International education.

(9) Intervention abroad and declarations of war.

(10) Diplomatic service.

(11) Measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad.

(12) International economic policy.

(13) Neutrality.

(14) Protection of American citizens abroad and expatriation.

(15) The American National Red Cross.

(16) Trading with the enemy.

(17) United Nations organizations.

(j) Committee on Homeland Security.

(1) Overall homeland security policy.

(2) Organization, administration, and general management of the Department of Homeland Security.

(3) Functions of the Department of Homeland Security relating to the following:

(A) Border and port security (except immigration policy and non-border enforcement).

(B) Customs (except customs revenue).

(C) Integration, analysis, and dissemination of homeland security information.

(D) Domestic preparedness for and collective response to terrorism.

(E) Research and development.

(F) Transportation security.

(k) Committee on House Administration.

(1) Appropriations from accounts for committee salaries and expenses (except for the Committee on Appropriations); House Information Resources; and allowance and expenses of Members, Delegates, the Resident Commissioner, officers, and administrative offices of the House.

(2) Auditing and settling of all accounts described in subparagraph (1).

(3) Employment of persons by the House, including staff for Members, Delegates, the Resident Commissioner, and committees; and reporters of debates, subject to rule VI.

(4) Except as provided in paragraph (r)(11), the Library of Congress, including management thereof; the House Library; statuary and pictures; acceptance or purchase of works of art for the Capitol; the

Botanic Garden; and purchase of books and manuscripts.

(5) The Smithsonian Institution and the incorporation of similar institutions (except as provided in paragraph (r)(11)).

(6) Expenditure of accounts described in subparagraph (1).

(7) Franking Commission.

(8) Printing and correction of the Congressional Record.

(9) Accounts of the House generally.

(10) Assignment of office space for Members, Delegates, the Resident Commissioner, and committees.

(11) Disposition of useless executive papers.

(12) Election of the President, Vice President, Members, Senators, Delegates, or the Resident Commissioner; corrupt practices; contested elections; credentials and qualifications; and Federal elections generally.

(13) Services to the House, including the House Restaurant, parking facilities, and administration of the House Office Buildings and of the House wing of the Capitol.

(14) Travel of Members, Delegates, and the Resident Commissioner.

(15) Raising, reporting, and use of campaign contributions for candidates for office of Representative, of Delegate, and of Resident Commissioner.

(16) Compensation, retirement, and other benefits of the Members, Delegates, the Resident Commissioner, officers, and employees of Congress.

(1) Committee on the Judiciary.

(1) The judiciary and judicial proceedings, civil and criminal.

(2) Administrative practice and procedure.

(3) Apportionment of Representatives.

(4) Bankruptcy, mutiny, espionage, and counterfeiting.

(5) Civil liberties.

(6) Constitutional amendments.

(7) Criminal law enforcement and criminalization.

(8) Federal courts and judges, and local courts in the Territories and possessions.

(9) Immigration policy and non-border enforcement.

(10) Interstate compacts generally.

(11) Claims against the United States.

(12) Meetings of Congress; attendance of Members, Delegates, and the Resident Commissioner; and their acceptance of incompatible offices.

(13) National penitentiaries.

(14) Patents, the Patent and Trademark Office, copyrights, and trademarks.

(15) Presidential succession.

(16) Protection of trade and commerce against unlawful restraints and monopolies.

(17) Revision and codification of the Statutes of the United States.

(18) State and territorial boundary lines.

(19) Subversive activities affecting the internal security of the United States.

(m) Committee on Natural Resources.

(1) Fisheries and wildlife, including research, restoration, refuges, and conservation.

(2) Forest reserves and national parks created from the public domain.

(3) Forfeiture of land grants and alien ownership, including alien ownership of mineral lands.

(4) Geological Survey.

(5) International fishing agreements.

(6) Interstate compacts relating to apportionment of waters for irrigation purposes.

(7) Irrigation and reclamation, including water supply for reclamation projects and easements of public lands for irrigation projects; and acquisition of private lands when necessary to complete irrigation projects.

(8) Native Americans generally, including the care and allotment of Native American lands and general and special measures relating to claims that are paid out of Native American funds.

(9) Insular areas of the United States generally (except those affecting the revenue and appropriations).

(10) Military parks and battlefields, national cemeteries administered by the Secretary of the Interior, parks within the District of Columbia, and the erection of monuments to the memory of individuals.

(11) Mineral land laws and claims and entries thereunder.

(12) Mineral resources of public lands.

(13) Mining interests generally.

(14) Mining schools and experimental stations.

(15) Marine affairs, including coastal zone management (except for measures relating to oil and other pollution of navigable waters).

(16) Oceanography.

(17) Petroleum conservation on public lands and conservation of the radium supply in the United States.

(18) Preservation of prehistoric ruins and objects of interest on the public domain.

(19) Public lands generally, including entry, easements, and grazing thereon.

(20) Relations of the United States with Native Americans and Native American tribes.

(21) Trans-Alaska Oil Pipeline (except ratemaking).

(n) Committee on Oversight and Government Reform.

(1) Federal civil service, including intergovernmental personnel; and the status of officers and employees of the United States, including their compensation, classification, and retirement.

(2) Municipal affairs of the District of Columbia in general (other than appropriations).

(3) Federal paperwork reduction.

(4) Government management and accounting measures generally.

(5) Holidays and celebrations.

(6) Overall economy, efficiency, and management of government operations and activities, including Federal procurement.

(7) National archives.

(8) Population and demography generally, including the Census.

(9) Postal service generally, including transportation of the mails.

(10) Public information and records.

(11) Relationship of the Federal Government to the States and municipalities generally.

(12) Reorganizations in the executive branch of the Government.

(o) Committee on Rules.

(1) Rules and joint rules (other than those relating to the Code of Official Conduct) and the order of business of the House.

(2) Recesses and final adjournments of Congress.

(p) Committee on Science, Space, and Technology.

(1) All energy research, development, and demonstration, and projects therefor, and all federally owned or operated nonmilitary energy laboratories.

(2) Astronautical research and development, including resources, personnel, equipment, and facilities.

(3) Civil aviation research and development.

(4) Environmental research and development.

(5) Marine research.

(6) Commercial application of energy technology.

(7) National Institute of Standards and Technology, standardization of weights and measures, and the metric system.

(8) National Aeronautics and Space Administration.

(9) National Space Council.

(10) National Science Foundation.

(11) National Weather Service.

(12) Outer space, including exploration and control thereof.

(13) Science scholarships.

(14) Scientific research, development, and demonstration, and projects therefor.

(q) Committee on Small Business.

(1) Assistance to and protection of small business, including financial aid, regulatory flexibility, and paperwork reduction.

(2) Participation of small-business enterprises in Federal procurement and Government contracts.

(r) Committee on Transportation and Infrastructure.

(1) Coast Guard, including lifesaving service, lighthouses, lightships, ocean derelicts, and the Coast Guard Academy.

(2) Federal management of emergencies and natural disasters.

(3) Flood control and improvement of rivers and harbors.

(4) Inland waterways.

(5) Inspection of merchant marine vessels, lights and signals, lifesaving equipment, and fire protection on such vessels.

(6) Navigation and laws relating thereto, including pilotage.

(7) Registering and licensing of vessels and small boats.

(8) Rules and international arrangements to prevent collisions at sea.

(9) The Capitol Building and the Senate and House Office Buildings.

(10) Construction or maintenance of roads and post roads (other than appropriations therefor).

(11) Construction or reconstruction, maintenance, and care of buildings and grounds of the Botanic Garden, the Library of Congress, and the Smithsonian Institution.

(12) Merchant marine (except for national security aspects thereof).

(13) Purchase of sites and construction of post offices, customhouses, Federal courthouses, and Government buildings within the District of Columbia.

(14) Oil and other pollution of navigable waters, including inland, coastal, and ocean waters.

(15) Marine affairs, including coastal zone management, as they relate to oil and other pollution of navigable waters.

(16) Public buildings and occupied or improved grounds of the United States generally.

(17) Public works for the benefit of navigation, including bridges and dams (other than international bridges and dams).

(18) Related transportation regulatory agencies (except the Transportation Security Administration).

(19) Roads and the safety thereof.

(20) Transportation, including civil aviation, railroads, water transportation, transportation safety (except automobile safety and transportation security functions of the Department of Homeland Security), transportation infrastructure, transportation labor, and railroad retirement and unemployment (except revenue measures related thereto).

(21) Water power.

(s) Committee on Veterans' Affairs.

(1) Veterans' measures generally.

(2) Cemeteries of the United States in which veterans of any war or conflict are or may be buried, whether in the United States or abroad (except cemeteries administered by the Secretary of the Interior).

(3) Compensation, vocational rehabilitation, and education of veterans.

(4) Life insurance issued by the Government on account of service in the Armed Forces.

(5) Pensions of all the wars of the United States, general and special.

- (6) Readjustment of servicemembers to civil life.
- (7) Servicemembers' civil relief.
- (8) Veterans' hospitals, medical care, and treatment of veterans.

(t) Committee on Ways and Means.

- (1) Customs revenue, collection districts, and ports of entry and delivery.
- (2) Reciprocal trade agreements.
- (3) Revenue measures generally.
- (4) Revenue measures relating to insular possessions.
- (5) Bonded debt of the United States, subject to the last sentence of clause 4(f).
- (6) Deposit of public monies.
- (7) Transportation of dutiable goods.
- (8) Tax exempt foundations and charitable trusts.
- (9) National social security (except health care and facilities programs that are supported from general revenues as opposed to payroll deductions and except work incentive programs).

General oversight responsibilities

- 2. (a) The various standing committees shall have general oversight responsibilities as provided in paragraph (b) in order to assist the House in—
 - (1) its analysis, appraisal, and evaluation of—
 - (A) the application, administration, execution, and effectiveness of Federal laws; and

(B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and

(2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.

(b)(1) In order to determine whether laws and programs addressing subjects within the jurisdiction of a committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (other than the Committee on Appropriations) shall review and study on a continuing basis—

(A) the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;

(B) the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;

(C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto); and

(D) future research and forecasting on subjects within its jurisdiction.

(2) Each committee to which subparagraph (1) applies having more than 20 members shall establish an oversight subcommittee, or require its subcommittees to conduct oversight in their respective jurisdictions, to assist in carrying out its responsibilities under this clause. The establishment of an oversight subcommittee does not limit the responsibility of a subcommittee with legislative jurisdiction in carrying out its oversight responsibilities.

(c) Each standing committee shall review and study on a continuing basis the impact or probable impact of tax policies affecting subjects within its jurisdiction as described in clauses 1 and 3.

(d)(1) Not later than February 15 of the first session of a Congress, each standing committee (other than the Committee on Appropriations, the Committee on Ethics, and the Committee on Rules) shall, in a meeting that is open to the public, adopt its authorization and oversight plan for that Congress. Such plan shall be submitted simultaneously to the Committee on Oversight and Government Reform, the Committee on House Administration, and the Committee on Appropriations.

(2) Each such plan shall include, with respect to programs and agencies within the committee's jurisdiction, and to the maximum extent practicable—

(A) a list of such programs or agencies with lapsed authorizations that received funding in the prior fiscal year or, in the case of a program or agency with a

permanent authorization, which has not been subject to a comprehensive review by the committee in the prior three Congresses;

(B) a description of each such program or agency to be authorized in the current Congress;

(C) a description of each such program or agency to be authorized in the next Congress, if applicable;

(D) a description of any oversight to support the authorization of each such program or agency in the current Congress; and

(E) recommendations for changes to existing law for moving such programs or agencies from mandatory funding to discretionary appropriations, where appropriate.

(3) Each such plan may include, with respect to the programs and agencies within the committee's jurisdiction

(A) recommendations for the consolidation or termination of such programs or agencies that are duplicative, unnecessary, or inconsistent with the appropriate roles and responsibilities of the Federal Government;

(B) recommendations for changes to existing law related to Federal rules, regulations, statutes, and court decisions affecting such programs and agencies that are inconsistent with the authorities of the Congress under Article I of the Constitution; and

(C) a description of such other oversight activities as the committee may consider necessary.

(4) In the development of such plan, the chair of each committee shall coordinate with other committees of jurisdiction to ensure that programs and agencies are subject to routine, comprehensive authorization efforts.

(5) Not later than March 31 in the first session of a Congress, after consultation with the Speaker, the Majority Leader, and the Minority Leader, the Committee on Oversight and Government Reform shall report to the House the authorization and oversight plans submitted by committees together with any recommendations that it, or the House leadership group described above, may make to ensure the most effective coordination of authorization and oversight plans and otherwise to achieve the objectives of this clause.

(e) The Speaker, with the approval of the House, may appoint special ad hoc oversight committees for the purpose of reviewing specific matters within the jurisdiction of two or more standing committees.

Special oversight functions

3. (a) The Committee on Appropriations shall conduct such studies and examinations of the organization and operation of executive departments and other executive agencies (including an agency the majority of the stock of which is owned by the United States) as it considers

necessary to assist it in the determination of matters within its jurisdiction.

(b) The Committee on Armed Services shall review and study on a continuing basis laws, programs, and Government activities relating to international arms control and disarmament and the education of military dependents in schools.

(c) The Committee on the Budget shall study on a continuing basis the effect on budget outlays of relevant existing and proposed legislation and report the results of such studies to the House on a recurring basis.

(d) The Committee on Education and the Workforce shall review, study, and coordinate on a continuing basis laws, programs, and Government activities relating to domestic educational programs and institutions and programs of student assistance within the jurisdiction of other committees.

(e) The Committee on Energy and Commerce shall review and study on a continuing basis laws, programs, and Government activities relating to nuclear and other energy and nonmilitary nuclear energy research and development including the disposal of nuclear waste.

(f) The Committee on Foreign Affairs shall review and study on a continuing basis laws, programs, and Government activities relating to customs administration, intelligence activities relating to foreign policy,

international financial and monetary organizations, and international fishing agreements.

(g)(1) The Committee on Homeland Security shall review and study on a continuing basis all Government activities relating to homeland security, including the interaction of all departments and agencies with the Department of Homeland Security.

(2) In addition, the committee shall review and study on a primary and continuing basis all Government activities, programs and organizations related to homeland security that fall within its primary legislative jurisdiction.

(h) The Committee on Natural Resources shall review and study on a continuing basis laws, programs, and Government activities relating to Native Americans.

(i) The Committee on Oversight and Government Reform shall review and study on a continuing basis the operation of Government activities at all levels with a view to determining their economy and efficiency.

(j) The Committee on Rules shall review and study on a continuing basis the congressional budget process, and the committee shall report its findings and recommendations to the House from time to time.

(k) The Committee on Science, Space, and Technology shall review and study on a continuing basis laws, programs, and Government activities relating to nonmilitary research and development.

(l) The Committee on Small Business shall study and investigate on a continuing basis the problems of all types of small business.

(m) The Permanent Select Committee on Intelligence shall review and study on a continuing basis laws, programs, and activities of the intelligence community and shall review and study on an exclusive basis the sources and methods of entities described in clause 11(b)(1)(A).

Additional functions of committees

4. (a)(1)(A) The Committee on Appropriations shall, within 30 days after the transmittal of the Budget to Congress each year, hold hearings on the Budget as a whole with particular reference to—

(i) the basic recommendations and budgetary policies of the President in the presentation of the Budget; and

(ii) the fiscal, financial, and economic assumptions used as bases in arriving at total estimated expenditures and receipts.

(B) In holding hearings under subdivision (A), the committee shall receive testimony from the Secretary of the Treasury, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and such other persons as the committee may desire.

(C) A hearing under subdivision (A), or any part thereof, shall be held in open session, except when the

committee, in open session and with a quorum present, determines by record vote that the testimony to be taken at that hearing on that day may be related to a matter of national security. The committee may by the same procedure close one subsequent day of hearing. A transcript of all such hearings shall be printed and a copy thereof furnished to each Member, Delegate, and the Resident Commissioner.

(D) A hearing under subdivision (A), or any part thereof, may be held before a joint meeting of the committee and the Committee on Appropriations of the Senate in accordance with such procedures as the two committees jointly may determine.

(2) Pursuant to section 401(b)(2) of the Congressional Budget Act of 1974, when a committee reports a bill or joint resolution that provides new entitlement authority as defined in section 3(9) of that Act, and enactment of the bill or joint resolution, as reported, would cause a breach of the committee's pertinent allocation of new budget authority under section 302(a) of that Act, the bill or joint resolution may be referred to the Committee on Appropriations with instructions to report it with recommendations (which may include an amendment limiting the total amount of new entitlement authority provided in the bill or joint resolution). If the Committee on Appropriations fails to report a bill or joint resolution so referred within 15 calendar days (not counting any day

on which the House is not in session), the committee automatically shall be discharged from consideration of the bill or joint resolution, and the bill or joint resolution shall be placed on the appropriate calendar.

(3) In addition, the Committee on Appropriations shall study on a continuing basis those provisions of law that (on the first day of the first fiscal year for which the congressional budget process is effective) provide spending authority or permanent budget authority and shall report to the House from time to time its recommendations for terminating or modifying such provisions.

(4) In the manner provided by section 302 of the Congressional Budget Act of 1974, the Committee on Appropriations (after consulting with the Committee on Appropriations of the Senate) shall subdivide any allocations made to it in the joint explanatory statement accompanying the conference report on such concurrent resolution, and promptly report the subdivisions to the House as soon as practicable after a concurrent resolution on the budget for a fiscal year is agreed to.

(b) The Committee on the Budget shall—

(1) review on a continuing basis the conduct by the Congressional Budget Office of its functions and duties;

(2) hold hearings and receive testimony from Members, Senators, Delegates, the Resident

Commissioner, and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as it considers desirable in developing concurrent resolutions on the budget for each fiscal year;

(3) make all reports required of it by the Congressional Budget Act of 1974;

(4) study on a continuing basis those provisions of law that exempt Federal agencies or any of their activities or outlays from inclusion in the Budget of the United States Government, and report to the House from time to time its recommendations for terminating or modifying such provisions;

(5) study on a continuing basis proposals designed to improve and facilitate the congressional budget process, and report to the House from time to time the results of such studies, together with its recommendations; and

(6) request and evaluate continuing studies of tax expenditures, devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and report the results of such studies to the House on a recurring basis.

(c)(1) The Committee on Oversight and Government Reform shall—

(A) receive and examine reports of the Comptroller General of the United States and submit to the House

such recommendations as it considers necessary or desirable in connection with the subject matter of the reports;

(B) evaluate the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

(C) study intergovernmental relationships between the United States and the States and municipalities and between the United States and international organizations of which the United States is a member.

(2) In addition to its duties under subparagraph (1), the Committee on Oversight and Government Reform may at any time conduct investigations of any matter without regard to clause 1, 2, 3, or this clause conferring jurisdiction over the matter to another standing committee. The findings and recommendations of the committee in such an investigation shall be made available to any other standing committee having jurisdiction over the matter involved.

(3)(A) The Committee on Oversight and Government Reform may adopt a rule authorizing and regulating the taking of depositions by a member or counsel of the committee, including pursuant to subpoena under clause 2(m) of rule XI (which hereby is made applicable for such purpose).

(B) A rule adopted by the committee pursuant to this subparagraph—

(i) may provide that a deponent be directed to subscribe an oath or affirmation before a person authorized by law to administer the same;

(ii) shall ensure that the minority members and staff of the committee are accorded equitable treatment with respect to notice of and a reasonable opportunity to participate in any proceeding conducted thereunder; and

(iii) shall, unless waived by the deponent, require the attendance of a member of the committee.

(C) Information secured pursuant to the authority described in subdivision (A) shall retain the character of discovery until offered for admission in evidence before the committee, at which time any proper objection shall be timely.

(d)(1) The Committee on House Administration shall—

(A) provide policy direction for the Chief Administrative Officer and the Inspector General and oversight of the Clerk, Sergeant-at-Arms, Chief Administrative Officer, and Inspector General;

(B) oversee the management of services provided to the House by the Architect of the Capitol, except those services that lie within the jurisdiction of the Committee on Transportation and Infrastructure under clause 1(r);

(C) have the function of accepting on behalf of the House a gift, except as otherwise provided by law, if

the gift does not involve a duty, burden, or condition, or is not made dependent on some future performance by the House;

(D) promulgate regulations to carry out subdivision (C); and

(E) establish and maintain standards for making documents publicly available in electronic form by the House and its committees.

(2) An employing office of the House may enter into a settlement of a complaint under the Congressional Accountability Act of 1995 that provides for the payment of funds only after receiving the joint approval of the chair and ranking minority member of the Committee on House Administration concerning the amount of such payment.

(e)(1) Each standing committee shall, in its consideration of all public bills and public joint resolutions within its jurisdiction, ensure that appropriations for continuing programs and activities of the Federal Government and the government of the District of Columbia will be made annually to the maximum extent feasible and consistent with the nature, requirement, and objective of the programs and activities involved. In this subparagraph programs and activities of the Federal Government and the government of the District of Columbia includes programs and activities of any department, agency, establishment, wholly owned

Government corporation, or instrumentality of the Federal Government or of the government of the District of Columbia.

(2) Each standing committee shall review from time to time each continuing program within its jurisdiction for which appropriations are not made annually to ascertain whether the program should be modified to provide for annual appropriations.

Budget Act responsibilities

(f)(1) Each standing committee shall submit to the Committee on the Budget not later than six weeks after the submission of the budget by the President, or at such time as the Committee on the Budget may request—

(A) its views and estimates with respect to all matters to be set forth in the concurrent resolution on the budget for the ensuing fiscal year that are within its jurisdiction or functions; and

(B) an estimate of the total amounts of new budget authority, and budget outlays resulting therefrom, to be provided or authorized in all bills and resolutions within its jurisdiction that it intends to be effective during that fiscal year.

(2) The views and estimates submitted by the Committee on Ways and Means under subparagraph (1) shall include a specific recommendation, made after holding public hearings, as to the appropriate level of the

public debt that should be set forth in the concurrent resolution on the budget.

Election and membership of standing committees

5. (a)(1) The standing committees specified in clause 1 shall be elected by the House within seven calendar days after the commencement of each Congress, from nominations submitted by the respective party caucus or conference. A resolution proposing to change the composition of a standing committee shall be privileged if offered by direction of the party caucus or conference concerned.

(2)(A) The Committee on the Budget shall be composed of members as follows:

(i) Members, Delegates, or the Resident Commissioner who are members of other standing committees, including five from the Committee on Appropriations, five from the Committee on Ways and Means, and one from the Committee on Rules;

(ii) one Member designated by the elected leadership of the majority party; and

(iii) one Member designated by the elected leadership of the minority party.

(B) Except as permitted by subdivision (C), a member of the Committee on the Budget other than one described in subdivision (A)(ii) or (A)(iii) may not serve on the committee during more than four Congresses in a period of six successive Congresses (disregarding for this

purpose any service for less than a full session in a Congress).

(C) A Member, Delegate, or Resident Commissioner may exceed the limitation of subdivision (B) if elected to serve a second consecutive Congress as the chair or a second consecutive Congress as the ranking minority member.

(3)(A) The Committee on Ethics shall be composed of 10 members, five from the majority party and five from the minority party.

(B) Except as permitted by subdivision (C), a member of the Committee on Ethics may not serve on the committee during more than three Congresses in a period of five successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(C) A member of the Committee on Ethics may serve on the committee during a fourth Congress in a period of five successive Congresses only as either the chair or the ranking minority member of the committee.

(4)(A) At the beginning of a Congress, the Speaker or a designee and the Minority Leader or a designee each shall name 10 Members, Delegates, or the Resident Commissioner from the respective party of such individual who are not members of the Committee on Ethics to be available to serve on investigative subcommittees of that committee during that Congress.

The lists of Members, Delegates, or the Resident Commissioner so named shall be announced to the House.

(B) Whenever the chair and the ranking minority member of the Committee on Ethics jointly determine that Members, Delegates, or the Resident Commissioner named under subdivision (A) should be assigned to serve on an investigative subcommittee of that committee, each of them shall select an equal number of such Members, Delegates, or Resident Commissioner from the respective party of such individual to serve on that subcommittee.

(b)(1) Membership on a standing committee during the course of a Congress shall be contingent on continuing membership in the party caucus or conference that nominated the Member, Delegate, or Resident Commissioner concerned for election to such committee. Should a Member, Delegate, or Resident Commissioner cease to be a member of a particular party caucus or conference, that Member, Delegate, or Resident Commissioner shall automatically cease to be a member of each standing committee to which elected on the basis of nomination by that caucus or conference. The chair of the relevant party caucus or conference shall notify the Speaker whenever a Member, Delegate, or Resident Commissioner ceases to be a member of that caucus or conference. The Speaker shall notify the chair of each affected committee that the election of such Member,

Delegate, or Resident Commissioner to the committee is automatically vacated under this subparagraph.

(2)(A) Except as specified in subdivision (B), a Member, Delegate, or Resident Commissioner may not serve simultaneously as a member of more than two standing committees or more than four subcommittees of the standing committees.

(B)(i) Ex officio service by a chair or ranking minority member of a committee on each of its subcommittees under a committee rule does not count against the limitation on subcommittee service.

(ii) Service on an investigative subcommittee of the Committee on Ethics under paragraph (a)(4) does not count against the limitation on subcommittee service.

(iii) Any other exception to the limitations in subdivision (A) may be approved by the House on the recommendation of the relevant party caucus or conference.

(C) In this subparagraph the term “subcommittee” includes a panel (other than a special oversight panel of the Committee on Armed Services), task force, special subcommittee, or other subunit of a standing committee that is established for a cumulative period longer than six months in a Congress.

(c)(1) One of the members of each standing committee shall be elected by the House, on the nomination of the majority party caucus or conference, as chair thereof. In

the absence of the member serving as chair, the member next in rank (and so on, as often as the case shall happen) shall act as chair. Rank shall be determined by the order members are named in resolutions electing them to the committee. In the case of a vacancy in the elected chair of a committee, the House shall elect another chair.

(2) Except in the case of the Committee on Rules, a member of a standing committee may not serve as chair of the same standing committee, or of the same subcommittee of a standing committee, during more than three consecutive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(d)(1) Except as permitted by subparagraph (2), a committee may have not more than five subcommittees.

(2)(A) A committee that maintains a subcommittee on oversight may have not more than six subcommittees.

(B) The Committee on Appropriations may have not more than 13 subcommittees.

(C) The Committee on Armed Services may have not more than seven subcommittees.

(D) The Committee on Foreign Affairs may have not more than seven subcommittees.

(E) The Committee on Oversight and Government Reform may have not more than seven subcommittees.

(F) The Committee on Transportation and Infrastructure may have not more than six subcommittees.

(e) The House shall fill a vacancy on a standing committee by election on the nomination of the respective party caucus or conference.

Expense resolutions

6. (a) Whenever a committee, commission, or other entity (other than the Committee on Appropriations) is granted authorization for the payment of its expenses (including staff salaries) for a Congress, such authorization initially shall be procured by one primary expense resolution reported by the Committee on House Administration. A primary expense resolution may include a reserve fund for unanticipated expenses of committees. An amount from such a reserve fund may be allocated to a committee only by the approval of the Committee on House Administration. A primary expense resolution reported to the House may not be considered in the House unless a printed report thereon was available on the previous calendar day. For the information of the House, such report shall—

(1) state the total amount of the funds to be provided to the committee, commission, or other entity under the primary expense resolution for all anticipated activities and programs of the committee, commission, or other entity; and

(2) to the extent practicable, contain such general statements regarding the estimated foreseeable expenditures for the respective anticipated activities

and programs of the committee, commission, or other entity as may be appropriate to provide the House with basic estimates of the expenditures contemplated by the primary expense resolution.

(b) After the date of adoption by the House of a primary expense resolution for a committee, commission, or other entity for a Congress, authorization for the payment of additional expenses (including staff salaries) in that Congress may be procured by one or more supplemental expense resolutions reported by the Committee on House Administration, as necessary. A supplemental expense resolution reported to the House may not be considered in the House unless a printed report thereon was available on the previous calendar day. For the information of the House, such report shall—

(1) state the total amount of additional funds to be provided to the committee, commission, or other entity under the supplemental expense resolution and the purposes for which those additional funds are available; and

(2) state the reasons for the failure to procure the additional funds for the committee, commission, or other entity by means of the primary expense resolution.

(c) The preceding provisions of this clause do not apply to—

(1) a resolution providing for the payment from committee salary and expense accounts of the House of sums necessary to pay compensation for staff services performed for, or to pay other expenses of, a committee, commission, or other entity at any time after the beginning of an odd-numbered year and before the date of adoption by the House of the primary expense resolution described in paragraph (a) for that year; or

(2) a resolution providing each of the standing committees in a Congress additional office equipment, airmail and special-delivery postage stamps, supplies, staff personnel, or any other specific item for the operation of the standing committees, and containing an authorization for the payment from committee salary and expense accounts of the House of the expenses of any of the foregoing items provided by that resolution, subject to and until enactment of the provisions of the resolution as permanent law.

(d) From the funds made available for the appointment of committee staff by a primary or additional expense resolution, the chair of each committee shall ensure that sufficient staff is made available to each subcommittee to carry out its responsibilities under the rules of the committee and that the minority party is treated fairly in the appointment of such staff.

(e) Funds authorized for a committee under this clause and clauses 7 and 8 are for expenses incurred in the activities of the committee.

Interim funding

7. (a) For the period beginning at noon on January 3 and ending at midnight on March 31 in each odd-numbered year, such sums as may be necessary shall be paid out of the committee salary and expense accounts of the House for continuance of necessary investigations and studies by—

(1) each standing and select committee established by these rules; and

(2) except as specified in paragraph (b), each select committee established by resolution.

(b) In the case of the first session of a Congress, amounts shall be made available for a select committee established by resolution in the preceding Congress only if—

(1) a resolution proposing to reestablish such select committee is introduced in the present Congress; and

(2) the House has not adopted a resolution of the preceding Congress providing for termination of funding for investigations and studies by such select committee.

(c) Each committee described in paragraph (a) shall be entitled for each month during the period specified in paragraph (a) to 9 percent (or such lesser percentage as

may be determined by the Committee on House Administration) of the total annualized amount made available under expense resolutions for such committee in the preceding session of Congress.

(d) Payments under this clause shall be made on vouchers authorized by the committee involved, signed by the chair of the committee, except as provided in paragraph (e), and approved by the Committee on House Administration.

(e) Notwithstanding any provision of law, rule of the House, or other authority, from noon on January 3 of the first session of a Congress until the election by the House of the committee concerned in that Congress, payments under this clause shall be made on vouchers signed by the ranking member of the committee as it was constituted at the expiration of the preceding Congress who is a member of the majority party in the present Congress.

(f)(1) The authority of a committee to incur expenses under this clause shall expire upon adoption by the House of a primary expense resolution for the committee.

(2) Amounts made available under this clause shall be expended in accordance with regulations prescribed by the Committee on House Administration.

(3) This clause shall be effective only insofar as it is not inconsistent with a resolution reported by the Committee on House Administration and adopted by the House after the adoption of these rules.

Travel

8. (a) Local currencies owned by the United States shall be made available to the committee and its employees engaged in carrying out their official duties outside the United States or its territories or possessions. Appropriated funds, including those authorized under this clause and clause 6, may not be expended for the purpose of defraying expenses of members of a committee or its employees in a country where local currencies are available for this purpose.

(b) The following conditions shall apply with respect to travel outside the United States or its territories or possessions:

(1) A member or employee of a committee may not receive or expend local currencies for subsistence in a country for a day at a rate in excess of the maximum per diem set forth in applicable Federal law.

(2) A member or employee shall be reimbursed for the expenses of such individual for a day at the lesser of

—
(A) the per diem set forth in applicable Federal law; or

(B) the actual, unreimbursed expenses (other than for transportation) incurred during that day.

(3) Each member or employee of a committee shall make to the chair of the committee an itemized report showing the dates each country was visited, the amount

of per diem furnished, the cost of transportation furnished, and funds expended for any other official purpose and shall summarize in these categories the total foreign currencies or appropriated funds expended. Each report shall be filed with the chair of the committee not later than 60 days following the completion of travel for use in complying with reporting requirements in applicable Federal law and shall be open for public inspection.

(c)(1) In carrying out the activities of a committee outside the United States in a country where local currencies are unavailable, a member or employee of a committee may not receive reimbursement for expenses (other than for transportation) in excess of the maximum per diem set forth in applicable Federal law.

(2) A member or employee shall be reimbursed for the expenses of such individual for a day, at the lesser of—

(A) the per diem set forth in applicable Federal law;
or

(B) the actual unreimbursed expenses (other than for transportation) incurred during that day.

(3) A member or employee of a committee may not receive reimbursement for the cost of any transportation in connection with travel outside the United States unless the member or employee actually paid for the transportation.

(d) The restrictions respecting travel outside the United States set forth in paragraph (c) also shall apply to travel outside the United States by a Member, Delegate, Resident Commissioner, officer, or employee of the House authorized under any standing rule.

Committee staffs

9. (a)(1) Subject to subparagraph (2) and paragraph (f), each standing committee may appoint, by majority vote, not more than 30 professional staff members to be compensated from the funds provided for the appointment of committee staff by primary and additional expense resolutions. Each professional staff member appointed under this subparagraph shall be assigned to the chair and the ranking minority member of the committee, as the committee considers advisable.

(2) Subject to paragraph (f) whenever a majority of the minority party members of a standing committee (other than the Committee on Ethics or the Permanent Select Committee on Intelligence) so request, not more than 10 persons (or one-third of the total professional committee staff appointed under this clause, whichever is fewer) may be selected, by majority vote of the minority party members, for appointment by the committee as professional staff members under subparagraph (1). The committee shall appoint persons so selected whose character and qualifications are acceptable to a majority of the committee. If the committee determines that the

character and qualifications of a person so selected are unacceptable, a majority of the minority party members may select another person for appointment by the committee to the professional staff until such appointment is made. Each professional staff member appointed under this subparagraph shall be assigned to such committee business as the minority party members of the committee consider advisable.

(b)(1) The professional staff members of each standing committee—

(A) may not engage in any work other than committee business during congressional working hours; and

(B) may not be assigned a duty other than one pertaining to committee business.

(2)(A) Subparagraph (1) does not apply to staff designated by a committee as “associate” or “shared” staff who are not paid exclusively by the committee, provided that the chair certifies that the compensation paid by the committee for any such staff is commensurate with the work performed for the committee in accordance with clause 8 of rule XXIII.

(B) The use of any “associate” or “shared” staff by a committee other than the Committee on Appropriations shall be subject to the review of, and to any terms, conditions, or limitations established by, the Committee

on House Administration in connection with the reporting of any primary or additional expense resolution.

(c) Each employee on the professional or investigative staff of a standing committee shall be entitled to pay at a single gross per annum rate, to be fixed by the chair and that does not exceed the maximum rate of pay as in effect from time to time under applicable provisions of law.

(d) Subject to appropriations hereby authorized, the Committee on Appropriations may appoint by majority vote such staff as it determines to be necessary (in addition to the clerk of the committee and assistants for the minority). The staff appointed under this paragraph, other than minority assistants, shall possess such qualifications as the committee may prescribe.

(e) A committee may not appoint to its staff an expert or other personnel detailed or assigned from a department or agency of the Government except with the written permission of the Committee on House Administration.

(f) If a request for the appointment of a minority professional staff member under paragraph (a) is made when no vacancy exists for such an appointment, the committee nevertheless may appoint under paragraph (a) a person selected by the minority and acceptable to the committee. A person so appointed shall serve as an additional member of the professional staff of the committee until such a vacancy occurs (other than a vacancy in the position of head of the professional staff,

by whatever title designated), at which time that person is considered as appointed to that vacancy. Such a person shall be paid from the applicable accounts of the House described in clause 1(k)(1) of rule X. If such a vacancy occurs on the professional staff when seven or more persons have been so appointed who are eligible to fill that vacancy, a majority of the minority party members shall designate which of those persons shall fill the vacancy.

(g) Each staff member appointed pursuant to a request by minority party members under paragraph (a), and each staff member appointed to assist minority members of a committee pursuant to an expense resolution described in clause 6(a), shall be accorded equitable treatment with respect to the fixing of the rate of pay, the assignment of work facilities, and the accessibility of committee records.

(h) Paragraph (a) may not be construed to authorize the appointment of additional professional staff members of a committee pursuant to a request under paragraph (a) by the minority party members of that committee if 10 or more professional staff members provided for in paragraph (a)(1) who are satisfactory to a majority of the minority party members are otherwise assigned to assist the minority party members.

(i) Notwithstanding paragraph (a)(2), a committee may employ nonpartisan staff, in lieu of or in addition to committee staff designated exclusively for the majority or

minority party, by an affirmative vote of a majority of the members of the majority party and of a majority of the members of the minority party.

Select and joint committees

10. (a) Membership on a select or joint committee appointed by the Speaker under clause 11 of rule I during the course of a Congress shall be contingent on continuing membership in the party caucus or conference of which the Member, Delegate, or Resident Commissioner concerned was a member at the time of appointment. Should a Member, Delegate, or Resident Commissioner cease to be a member of that caucus or conference, that Member, Delegate, or Resident Commissioner shall automatically cease to be a member of any select or joint committee to which assigned. The chair of the relevant party caucus or conference shall notify the Speaker whenever a Member, Delegate, or Resident Commissioner ceases to be a member of a party caucus or conference. The Speaker shall notify the chair of each affected select or joint committee that the appointment of such Member, Delegate, or Resident Commissioner to the select or joint committee is automatically vacated under this paragraph.

(b) Each select or joint committee, other than a conference committee, shall comply with clause 2(a) of rule XI unless specifically exempted by law.

Permanent Select Committee on Intelligence

11. (a)(1) There is established a Permanent Select Committee on Intelligence (hereafter in this clause referred to as the “select committee”). The select committee shall be composed of not more than 22 Members, Delegates, or the Resident Commissioner, of whom not more than 13 may be from the same party. The select committee shall include at least one Member, Delegate, or the Resident Commissioner from each of the following committees:

- (A) the Committee on Appropriations;
- (B) the Committee on Armed Services;
- (C) the Committee on Foreign Affairs; and
- (D) the Committee on the Judiciary.

(2) The Speaker and the Minority Leader shall be ex officio members of the select committee but shall have no vote in the select committee and may not be counted for purposes of determining a quorum thereof.

(3) The Speaker and Minority Leader each may designate a respective leadership staff member to assist in the capacity of the Speaker or Minority Leader as ex officio member, with the same access to committee meetings, hearings, briefings, and materials as employees of the select committee and subject to the same security clearance and confidentiality requirements as employees of the select committee under this clause.

(4)(A) Except as permitted by subdivision (B), a Member, Delegate, or Resident Commissioner, other than

the Speaker or the Minority Leader, may not serve as a member of the select committee during more than four Congresses in a period of six successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(B) In the case of a Member, Delegate, or Resident Commissioner appointed to serve as the chair or the ranking minority member of the select committee, tenure on the select committee shall not be limited.

(b)(1) There shall be referred to the select committee proposed legislation, messages, petitions, memorials, and other matters relating to the following:

(A) The Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(B) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(C) The organization or reorganization of a department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence or intelligence-related activities.

(D) Authorizations for appropriations, both direct and indirect, for the following:

(i) The Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(ii) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(iii) A department, agency, subdivision, or program that is a successor to an agency or program named or referred to in (i) or (ii).

(2) Proposed legislation initially reported by the select committee (other than provisions solely involving matters specified in subparagraph (1)(A) or subparagraph (1)(D) (i)) containing any matter otherwise within the jurisdiction of a standing committee shall be referred by the Speaker to that standing committee. Proposed legislation initially reported by another committee that contains matter within the jurisdiction of the select committee shall be referred by the Speaker to the select committee if requested by the chair of the select committee.

(3) Nothing in this clause shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review an intelligence or intelligence-related activity to the extent that such activity

directly affects a matter otherwise within the jurisdiction of that committee.

(4) Nothing in this clause shall be construed as amending, limiting, or otherwise changing the authority of a standing committee to obtain full and prompt access to the product of the intelligence and intelligence-related activities of a department or agency of the Government relevant to a matter otherwise within the jurisdiction of that committee.

(c)(1) For purposes of accountability to the House, the select committee shall make regular and periodic reports to the House on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States. The select committee shall promptly call to the attention of the House, or to any other appropriate committee, a matter requiring the attention of the House or another committee. In making such report, the select committee shall proceed in a manner consistent with paragraph (g) to protect national security.

(2) The select committee shall obtain annual reports from the Director of National Intelligence, the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence and intelligence-related activities of the agency or department concerned and the intelligence and

intelligence-related activities of foreign countries directed at the United States or its interests. An unclassified version of each report may be made available to the public at the discretion of the select committee. Nothing herein shall be construed as requiring the public disclosure in such reports of the names of persons engaged in intelligence or intelligence-related activities for the United States or the divulging of intelligence methods employed or the sources of information on which the reports are based or the amount of funds authorized to be appropriated for intelligence and intelligence-related activities.

(3) Within six weeks after the President submits a budget under section 1105(a) of title 31, United States Code, or at such time as the Committee on the Budget may request, the select committee shall submit to the Committee on the Budget the views and estimates described in section 301(d) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.

(d)(1) Except as specified in subparagraph (2), clauses 8(a), (b), and (c) and 9(a), (b), and (c) of this rule, and clauses 1, 2, and 4 of rule XI shall apply to the select committee to the extent not inconsistent with this clause.

(2) Notwithstanding the requirements of the first sentence of clause 2(g)(2) of rule XI, in the presence of the number of members required under the rules of the

select committee for the purpose of taking testimony or receiving evidence, the select committee may vote to close a hearing whenever a majority of those present determines that the testimony or evidence would endanger the national security.

(e) An employee of the select committee, or a person engaged by contract or otherwise to perform services for or at the request of the select committee, may not be given access to any classified information by the select committee unless such employee or person has—

(1) agreed in writing and under oath to be bound by the Rules of the House, including the jurisdiction of the Committee on Ethics and of the select committee concerning the security of classified information during and after the period of the employment or contractual agreement of such employee or person with the select committee; and

(2) received an appropriate security clearance, as determined by the select committee in consultation with the Director of National Intelligence, that is commensurate with the sensitivity of the classified information to which such employee or person will be given access by the select committee.

(f) The select committee shall formulate and carry out such rules and procedures as it considers necessary to prevent the disclosure, without the consent of each person concerned, of information in the possession of the select

committee that unduly infringes on the privacy or that violates the constitutional rights of such person. Nothing herein shall be construed to prevent the select committee from publicly disclosing classified information in a case in which it determines that national interest in the disclosure of classified information clearly outweighs any infringement on the privacy of a person.

(g)(1) The select committee may disclose publicly any information in its possession after a determination by the select committee that the public interest would be served by such disclosure. With respect to the disclosure of information for which this paragraph requires action by the select committee—

(A) the select committee shall meet to vote on the matter within five days after a member of the select committee requests a vote; and

(B) a member of the select committee may not make such a disclosure before a vote by the select committee on the matter, or after a vote by the select committee on the matter except in accordance with this paragraph.

(2)(A) In a case in which the select committee votes to disclose publicly any information that has been classified under established security procedures, that has been submitted to it by the executive branch, and that the executive branch requests be kept secret, the select committee shall notify the President of such vote.

(B) The select committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of the vote to disclose is transmitted to the President unless, before the expiration of the five-day period, the President, personally in writing, notifies the select committee that the President objects to the disclosure of such information, provides reasons therefor, and certifies that the threat to the national interest of the United States posed by the disclosure is of such gravity that it outweighs any public interest in the disclosure.

(C) If the President, personally in writing, notifies the select committee of objections to the disclosure of information as provided in subdivision (B), the select committee may, by majority vote, refer the question of the disclosure of such information, with a recommendation thereon, to the House. The select committee may not publicly disclose such information without leave of the House.

(D) Whenever the select committee votes to refer the question of disclosure of any information to the House under subdivision (C), the chair shall, not later than the first day on which the House is in session following the day on which the vote occurs, report the matter to the House for its consideration.

(E) If the chair of the select committee does not offer in the House a motion to consider in closed session a matter

reported under subdivision (D) within four calendar days on which the House is in session after the recommendation described in subdivision (C) is reported, then such a motion shall be privileged when offered by a Member, Delegate, or Resident Commissioner. In either case such a motion shall be decided without debate or intervening motion except one that the House adjourn.

(F) Upon adoption by the House of a motion to resolve into closed session as described in subdivision (E), the Speaker may declare a recess subject to the call of the Chair. At the expiration of the recess, the pending question, in closed session, shall be, "Shall the House approve the recommendation of the select committee?"

(G) Debate on the question described in subdivision (F) shall be limited to two hours equally divided and controlled by the chair and ranking minority member of the select committee. After such debate the previous question shall be considered as ordered on the question of approving the recommendation without intervening motion except one motion that the House adjourn. The House shall vote on the question in open session but without divulging the information with respect to which the vote is taken. If the recommendation of the select committee is not approved, then the question is considered as recommitted to the select committee for further recommendation.

(3)(A) Information in the possession of the select committee relating to the lawful intelligence or intelligence-related activities of a department or agency of the United States that has been classified under established security procedures, and that the select committee has determined should not be disclosed under subparagraph (1) or (2), may not be made available to any person by a Member, Delegate, Resident Commissioner, officer, or employee of the House except as provided in subdivision (B).

(B) The select committee shall, under such regulations as it may prescribe, make information described in subdivision (A) available to a committee or a Member, Delegate, or Resident Commissioner, and permit a Member, Delegate, or Resident Commissioner to attend a hearing of the select committee that is closed to the public. Whenever the select committee makes such information available, it shall keep a written record showing, in the case of particular information, which committee or which Member, Delegate, or Resident Commissioner received the information. A Member, Delegate, or Resident Commissioner who, and a committee that, receives information under this subdivision may not disclose the information except in a closed session of the House.

(4) The Committee on Ethics shall investigate any unauthorized disclosure of intelligence or intelligence-

related information by a Member, Delegate, Resident Commissioner, officer, or employee of the House in violation of subparagraph (3) and report to the House concerning any allegation that it finds to be substantiated.

(5) Upon the request of a person who is subject to an investigation described in subparagraph (4), the Committee on Ethics shall release to such person at the conclusion of its investigation a summary of its investigation, together with its findings. If, at the conclusion of its investigation, the Committee on Ethics determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, Delegate, Resident Commissioner, officer, or employee of the House, it shall report its findings to the House and recommend appropriate action. Recommendations may include censure, removal from committee membership, or expulsion from the House, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

(h) The select committee may permit a personal representative of the President, designated by the President to serve as a liaison to the select committee, to attend any closed meeting of the select committee.

(i) Subject to the Rules of the House, funds may not be appropriated for a fiscal year, with the exception of a bill or joint resolution continuing appropriations, or an amendment thereto, or a conference report thereon, to, or

for use of, a department or agency of the United States to carry out any of the following activities, unless the funds shall previously have been authorized by a bill or joint resolution passed by the House during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Director of National Intelligence and the Office of the Director of National Intelligence.

(2) The activities of the Central Intelligence Agency.

(3) The activities of the Defense Intelligence Agency.

(4) The activities of the National Security Agency.

(5) The intelligence and intelligence-related activities of other agencies and subdivisions of the Department of Defense.

(6) The intelligence and intelligence-related activities of the Department of State.

(7) The intelligence and intelligence-related activities of the Federal Bureau of Investigation.

(8) The intelligence and intelligence-related activities of all other departments and agencies of the executive branch.

(j)(1) In this clause the term “intelligence and intelligence-related activities” includes—

(A) the collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party,

military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of such information;

(B) activities taken to counter similar activities directed against the United States;

(C) covert or clandestine activities affecting the relations of the United States with a foreign government, political group, party, military force, movement, or other association;

(D) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by a department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States; and

(E) covert or clandestine activities directed against persons described in subdivision (D).

(2) In this clause the term “department or agency” includes any organization, committee, council, establishment, or office within the Federal Government.

(3) For purposes of this clause, reference to a department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that a successor engages in intelligence or intelligence-related activities now conducted by the department, agency, bureau, or subdivision referred to in this clause.

(k) Clause 12(a) of rule XXII does not apply to meetings of a conference committee respecting legislation (or any part thereof) reported by the Permanent Select Committee on Intelligence.

RULE XI

PROCEDURES OF COMMITTEES AND UNFINISHED BUSINESS

In general

1. (a)(1)(A) The Rules of the House are the rules of its committees and subcommittees so far as applicable.

(B) Each subcommittee is a part of its committee and is subject to the authority and direction of that committee and to its rules, so far as applicable.

(2)(A) In a committee or subcommittee—

(i) a motion to recess from day to day, or to recess subject to the call of the Chair (within 24 hours), shall be privileged; and

(ii) a motion to dispense with the first reading (in full) of a bill or resolution shall be privileged if printed

copies are available.

(B) A motion accorded privilege under this subparagraph shall be decided without debate.

(b)(1) Each committee may conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under rule X. Subject to the adoption of expense resolutions as required by clause 6 of rule X, each committee may incur expenses, including travel expenses, in connection with such investigations and studies.

(2) A proposed investigative or oversight report shall be considered as read in committee if it has been available to the members for at least 24 hours (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day).

(3) A report of an investigation or study conducted jointly by more than one committee may be filed jointly, provided that each of the committees complies independently with all requirements for approval and filing of the report.

(4) After an adjournment sine die of the last regular session of a Congress, an investigative or oversight report may be filed with the Clerk at any time, provided that a member who gives timely notice of intention to file supplemental, minority, additional, or dissenting views shall be entitled to not less than seven calendar days in which to submit such views for inclusion in the report.

(c) Each committee may have printed and bound such testimony and other data as may be presented at hearings held by the committee or its subcommittees. All costs of stenographic services and transcripts in connection with a meeting or hearing of a committee shall be paid from the applicable accounts of the House described in clause 1(k)(1) of rule X.

(d)(1) Not later than January 2 of each odd-numbered year, a committee shall submit to the House a report on the activities of that committee.

(2) Such report shall include—

(A) separate sections summarizing the legislative and oversight activities of that committee under this rule and rule X during the Congress;

(B) a summary of the authorization and oversight plans submitted by the committee under clause 2(d) of rule X;

(C) a summary of the actions taken and recommendations made with respect to the authorization and oversight plans specified in subdivision (B);

(D) a summary of any additional oversight activities undertaken by that committee and any recommendations made or actions taken thereon; and

(E) a delineation of any hearings held pursuant to clauses 2(n), (o), or (p) of this rule.

(3) After an adjournment sine die of the last regular session of a Congress, or after December 15 of an even-numbered year, whichever occurs first, the chair of a committee may file the report described in subparagraph (1) with the Clerk at any time and without approval of the committee, provided that—

(A) a copy of the report has been available to each member of the committee for at least seven calendar days; and

(B) the report includes any supplemental, minority, additional, or dissenting views submitted by a member of the committee.

Adoption of written rules

2. (a)(1) Each standing committee shall adopt written rules governing its procedure. Such rules—

(A) shall be adopted in a meeting that is open to the public unless the committee, in open session and with a quorum present, determines by record vote that all or part of the meeting on that day shall be closed to the public;

(B) may not be inconsistent with the Rules of the House or with those provisions of law having the force and effect of Rules of the House;

(C) shall in any event incorporate all of the succeeding provisions of this clause to the extent applicable; and

(D) shall include provisions to govern the implementation of clause 4 as provided in paragraph (f) of such clause.

(2) Each committee shall make its rules publicly available in electronic form and submit such rules for publication in the Congressional Record not later than 30 days after the chair of the committee is elected in each odd-numbered year.

(3) A committee may adopt a rule providing that the chair be directed to offer a motion under clause 1 of rule XXII whenever the chair considers it appropriate.

Regular meeting days

(b) Each standing committee shall establish regular meeting days for the conduct of its business, which shall be not less frequent than monthly. Each such committee shall meet for the consideration of a bill or resolution pending before the committee or the transaction of other committee business on all regular meeting days fixed by the committee if notice is given pursuant to paragraph (g) (3).

Additional and special meetings

(c)(1) The chair of each standing committee may call and convene, as the chair considers necessary, additional and special meetings of the committee for the consideration of a bill or resolution pending before the committee or for the conduct of other committee business,

subject to such rules as the committee may adopt. The committee shall meet for such purpose under that call of the chair.

(2) Three or more members of a standing committee may file in the offices of the committee a written request that the chair call a special meeting of the committee. Such request shall specify the measure or matter to be considered. Immediately upon the filing of the request, the clerk of the committee shall notify the chair of the filing of the request. If the chair does not call the requested special meeting within three calendar days after the filing of the request (to be held within seven calendar days after the filing of the request) a majority of the members of the committee may file in the offices of the committee their written notice that a special meeting of the committee will be held. The written notice shall specify the date and hour of the special meeting and the measure or matter to be considered. The committee shall meet on that date and hour. Immediately upon the filing of the notice, the clerk of the committee shall notify all members of the committee that such special meeting will be held and inform them of its date and hour and the measure or matter to be considered. Such notice shall also be made publicly available in electronic form and shall be deemed to satisfy paragraph (g)(3)(A)(ii). Only the measure or matter specified in that notice may be considered at that special meeting.

Temporary absence of chair

(d) A member of the majority party on each standing committee or subcommittee thereof shall be designated by the chair of the full committee as the vice chair of the committee or subcommittee, as the case may be, and shall preside during the absence of the chair from any meeting. If the chair and vice chair of a committee or subcommittee are not present at any meeting of the committee or subcommittee, the ranking majority member who is present shall preside at that meeting.

Committee records

(e)(1)(A) Each committee shall keep a complete record of all committee action which shall include—

(i) in the case of a meeting or hearing transcript, a substantially verbatim account of remarks actually made during the proceedings, subject only to technical, grammatical, and typographical corrections authorized by the person making the remarks involved; and

(ii) a record of the votes on any question on which a record vote is taken.

(B)(i) Except as provided in subdivision (B)(ii) and subject to paragraph (k)(7), the result of each such record vote shall be made available by the committee for inspection by the public at reasonable times in its offices and also made publicly available in electronic form within 48 hours of such record vote. Information so available shall include a description of the amendment, motion,

order, or other proposition, the name of each member voting for and each member voting against such amendment, motion, order, or proposition, and the names of those members of the committee present but not voting.

(ii) The result of any record vote taken in executive session in the Committee on Ethics may not be made available for inspection by the public without an affirmative vote of a majority of the members of the committee.

(2)(A) Except as provided in subdivision (B), all committee records (including hearings, data, charts, and files) shall be kept separate and distinct from the congressional office records of the member serving as its chair. Such records shall be the property of the House, and each Member, Delegate, and the Resident Commissioner shall have access thereto.

(B) A Member, Delegate, or Resident Commissioner, other than members of the Committee on Ethics, may not have access to the records of that committee respecting the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House without the specific prior permission of that committee.

(3) Each committee shall include in its rules standards for availability of records of the committee delivered to the Archivist of the United States under rule VII. Such standards shall specify procedures for orders of the committee under clause 3(b)(3) and clause 4(b) of rule

VII, including a requirement that nonavailability of a record for a period longer than the period otherwise applicable under that rule shall be approved by vote of the committee.

(4) Each committee shall make its publications available in electronic form to the maximum extent feasible.

(5) To the maximum extent practicable, each committee shall—

(A) provide audio and video coverage of each hearing or meeting for the transaction of business in a manner that allows the public to easily listen to and view the proceedings; and

(B) maintain the recordings of such coverage in a manner that is easily accessible to the public.

(6) Not later than 24 hours after the adoption of any amendment to a measure or matter considered by a committee, the chair of such committee shall cause the text of each such amendment to be made publicly available in electronic form.

Prohibition against proxy voting

(f) A vote by a member of a committee or subcommittee with respect to any measure or matter may not be cast by proxy.

Open meetings and hearings

(g)(1) Each meeting for the transaction of business, including the markup of legislation, by a standing committee or subcommittee thereof (other than the Committee on Ethics or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of the meeting on that day shall be in executive session because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, would tend to defame, degrade, or incriminate any person, or otherwise would violate a law or rule of the House. Persons, other than members of the committee and such noncommittee Members, Delegates, Resident Commissioner, congressional staff, or departmental representatives as the committee may authorize, may not be present at a business or markup session that is held in executive session. This subparagraph does not apply to open committee hearings, which are governed by clause 4(a)(1) of rule X or by subparagraph (2).

(2)(A) Each hearing conducted by a committee or subcommittee (other than the Committee on Ethics or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and

with a majority present, determines by record vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would violate a law or rule of the House.

(B) Notwithstanding the requirements of subdivision (A), in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, a majority of those present may—

(i) agree to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would endanger national security, would compromise sensitive law enforcement information, or would violate clause 2(k)(5); or

(ii) agree to close the hearing as provided in clause 2(k)(5).

(C) A Member, Delegate, or Resident Commissioner may not be excluded from nonparticipatory attendance at a hearing of a committee or subcommittee (other than the Committee on Ethics or its subcommittees) unless the House by majority vote authorizes a particular committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearings to Members, Delegates, and the Resident Commissioner by

the same procedures specified in this subparagraph for closing hearings to the public.

(D) The committee or subcommittee may vote by the same procedure described in this subparagraph to close one subsequent day of hearing, except that the Committee on Appropriations, the Committee on Armed Services, the Committee on Homeland Security, and the Permanent Select Committee on Intelligence, and the subcommittees thereof, may vote by the same procedure to close up to five additional, consecutive days of hearings.

(3)(A) The chair of a committee shall announce the date, place, and subject matter of—

- (i) a committee hearing, which may not commence earlier than one week after such notice; or
- (ii) a committee meeting, which may not commence earlier than the third day on which members have notice thereof.

(B) A hearing or meeting may begin sooner than specified in subdivision (A) in either of the following circumstances (in which case the chair shall make the announcement specified in subdivision (A) at the earliest possible time):

- (i) the chair of the committee, with the concurrence of the ranking minority member, determines that there is good cause; or
- (ii) the committee so determines by majority vote in the presence of the number of members required under

the rules of the committee for the transaction of business.

(C) An announcement made under this subparagraph shall be published promptly in the Daily Digest and made publicly available in electronic form.

(D) This subparagraph and subparagraph (4) shall not apply to the Committee on Rules.

(4) At least 24 hours prior to the commencement of a meeting for the markup of legislation, or at the time of an announcement under subparagraph (3)(B) made within 24 hours before such meeting, the chair of the committee shall cause the text of such legislation to be made publicly available in electronic form.

(5)(A) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof.

(B) In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of any Federal grants or contracts, or contracts or payments originating with a foreign government, received during the current calendar year or either of the two previous calendar years by the witness or by an entity represented by the witness and related to the subject matter of the hearing.

(C) The disclosure referred to in subdivision (B) shall include—

(i) the amount and source of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) related to the subject matter of the hearing; and

(ii) the amount and country of origin of any payment or contract related to the subject matter of the hearing originating with a foreign government.

(D) Such statements, with appropriate redactions to protect the privacy or security of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(6)(A) Except as provided in subdivision (B), a point of order does not lie with respect to a measure reported by a committee on the ground that hearings on such measure were not conducted in accordance with this clause.

(B) A point of order on the ground described in subdivision (A) may be made by a member of the committee that reported the measure if such point of order was timely made and improperly disposed of in the committee.

(7) This paragraph does not apply to hearings of the Committee on Appropriations under clause 4(a)(1) of rule X.

Quorum requirements

(h)(1) A measure or recommendation may not be reported by a committee unless a majority of the

committee is actually present.

(2) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which may not be less than two.

(3) Each committee (other than the Committee on Appropriations, the Committee on the Budget, and the Committee on Ways and Means) may fix the number of its members to constitute a quorum for taking any action other than one for which the presence of a majority of the committee is otherwise required, which may not be less than one-third of the members.

(4)(A) Each committee may adopt a rule authorizing the chair of a committee or subcommittee—

(i) to postpone further proceedings when a record vote is ordered on the question of approving a measure or matter or on adopting an amendment; and

(ii) to resume proceedings on a postponed question at any time after reasonable notice.

(B) A rule adopted pursuant to this subparagraph shall provide that when proceedings resume on a postponed question, notwithstanding any intervening order for the previous question, an underlying proposition shall remain subject to further debate or amendment to the same extent as when the question was postponed.

Limitation on committee sittings

(i) A committee may not sit during a joint session of the House and Senate or during a recess when a joint meeting

of the House and Senate is in progress.

Calling and questioning of witnesses

(j)(1) Whenever a hearing is conducted by a committee on a measure or matter, the minority members of the committee shall be entitled, upon request to the chair by a majority of them before the completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.

(2)(A) Subject to subdivisions (B) and (C), each committee shall apply the five-minute rule during the questioning of witnesses in a hearing until such time as each member of the committee who so desires has had an opportunity to question each witness.

(B) A committee may adopt a rule or motion permitting a specified number of its members to question a witness for longer than five minutes. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

(C) A committee may adopt a rule or motion permitting committee staff for its majority and minority party members to question a witness for equal specified periods. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

Hearing procedures

(k)(1) The chair at a hearing shall announce in an opening statement the subject of the hearing.

(2) A copy of the committee rules and of this clause shall be made available to each witness on request.

(3) Witnesses at hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(4) The chair may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

(5) Whenever it is asserted by a member of the committee that the evidence or testimony at a hearing may tend to defame, degrade, or incriminate any person, or it is asserted by a witness that the evidence or testimony that the witness would give at a hearing may tend to defame, degrade, or incriminate the witness—

(A) notwithstanding paragraph (g)(2), such testimony or evidence shall be presented in executive session if, in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, the committee determines by vote of a majority of those present that such evidence or testimony may tend to defame, degrade, or incriminate any person; and

(B) the committee shall proceed to receive such testimony in open session only if the committee, a majority being present, determines that such evidence or testimony will not tend to defame, degrade, or incriminate any person.

In either case the committee shall afford such person an opportunity voluntarily to appear as a witness, and receive and dispose of requests from such person to subpoena additional witnesses.

(6) Except as provided in subparagraph (5), the chair shall receive and the committee shall dispose of requests to subpoena additional witnesses.

(7) Evidence or testimony taken in executive session, and proceedings conducted in executive session, may be released or used in public sessions only when authorized by the committee, a majority being present.

(8) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinence of testimony and evidence adduced at its hearing.

(9) A witness may obtain a transcript copy of the testimony of such witness given at a public session or, if given at an executive session, when authorized by the committee.

Supplemental, minority, additional, or dissenting views

(l) If at the time of approval of a measure or matter by a committee (other than the Committee on Rules) a member of the committee gives notice of intention to file supplemental, minority, additional, or dissenting views for inclusion in the report to the House thereon, all members shall be entitled to not less than two additional calendar days after the day of such notice (excluding Saturdays, Sundays, and legal holidays except when the House is in session on such a day) to file such written and signed views with the clerk of the committee.

Power to sit and act; subpoena power

(m)(1) For the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII), a committee or subcommittee is authorized (subject to subparagraph (3)(A))—

(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings as it considers necessary; and

(B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.

(2) The chair of the committee, or a member designated by the chair, may administer oaths to witnesses.

(3)(A)(i) Except as provided in subdivision (A)(ii), a subpoena may be authorized and issued by a committee or subcommittee under subparagraph (1)(B) in the conduct of an investigation or series of investigations or activities only when authorized by the committee or subcommittee, a majority being present. The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chair of the committee under such rules and under such limitations as the committee may prescribe. Authorized subpoenas shall be signed by the chair of the committee or by a member designated by the committee.

(ii) In the case of a subcommittee of the Committee on Ethics, a subpoena may be authorized and issued only by an affirmative vote of a majority of its members.

(B) A subpoena duces tecum may specify terms of return other than at a meeting or hearing of the committee or subcommittee authorizing the subpoena.

(C) Compliance with a subpoena issued by a committee or subcommittee under subparagraph (1)(B) may be enforced only as authorized or directed by the House.

(n)(1) Each standing committee, or a subcommittee thereof, shall hold at least one hearing during each 120-day period following the establishment of the committee on the topic of waste, fraud, abuse, or mismanagement in Government programs which that committee may authorize.

(2) A hearing described in subparagraph (1) shall include a focus on the most egregious instances of waste, fraud, abuse, or mismanagement as documented by any report the committee has received from a Federal Office of the Inspector General or the Comptroller General of the United States.

(o) Each committee, or a subcommittee thereof, shall hold at least one hearing in any session in which the committee has received disclaimers of agency financial statements from auditors of any Federal agency that the committee may authorize to hear testimony on such disclaimers from representatives of any such agency.

(p) Each standing committee, or a subcommittee thereof, shall hold at least one hearing on issues raised by reports issued by the Comptroller General of the United States indicating that Federal programs or operations that the committee may authorize are at high risk for waste, fraud, and mismanagement, known as the “high-risk list” or the “high-risk series.”

Committee on Ethics

3. (a) The Committee on Ethics has the following functions:

(1) The committee may recommend to the House from time to time such administrative actions as it may consider appropriate to establish or enforce standards of official conduct for Members, Delegates, the Resident Commissioner, officers, and employees of the House. A

letter of reproof or other administrative action of the committee pursuant to an investigation under subparagraph (2) shall only be issued or implemented as a part of a report required by such subparagraph.

(2) The committee may investigate, subject to paragraph (b), an alleged violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House of the Code of Official Conduct or of a law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, Delegate, Resident Commissioner, officer, or employee in the performance of the duties or the discharge of the responsibilities of such individual. After notice and hearing (unless the right to a hearing is waived by the Member, Delegate, Resident Commissioner, officer, or employee), the committee shall report to the House its findings of fact and recommendations, if any, for the final disposition of any such investigation and such action as the committee may consider appropriate in the circumstances.

(3) The committee may report to the appropriate Federal or State authorities, either with the approval of the House or by an affirmative vote of two-thirds of the members of the committee, any substantial evidence of a violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House, of a law applicable to the performance of the duties or the

discharge of the responsibilities of such individual that may have been disclosed in a committee investigation.

(4) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, Delegate, Resident Commissioner, officer, or employee. With appropriate deletions to ensure the privacy of the person concerned, the committee may publish such opinion for the guidance of other Members, Delegates, the Resident Commissioner, officers, and employees of the House.

(5) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for a written waiver in exceptional circumstances with respect to clause 4 of rule XXIII.

(6)(A) The committee shall offer annual ethics training to each Member, Delegate, Resident Commissioner, officer, and employee of the House. Such training shall—

(i) involve the classes of employees for whom the committee determines such training to be appropriate; and

(ii) include such knowledge of the Code of Official Conduct and related House rules as may be determined appropriate by the committee.

(B)(i) A new Member, Delegate, Resident Commissioner, officer, or employee of the House shall receive training under this paragraph not later than 60 days after beginning service to the House.

(ii) Not later than January 31 of each year, each officer and employee of the House shall file a certification with the committee that the officer or employee attended ethics training in the last year as established by this subparagraph.

(b)(1)(A) Unless approved by an affirmative vote of a majority of its members, the Committee on Ethics may not report a resolution, report, recommendation, or advisory opinion relating to the official conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House, or, except as provided in subparagraph (2), undertake an investigation of such conduct.

(B)(i) Upon the receipt of information offered as a complaint that is in compliance with this rule and the rules of the committee, the chair and ranking minority member jointly may appoint members to serve as an investigative subcommittee.

(ii) The chair and ranking minority member of the committee jointly may gather additional information concerning alleged conduct that is the basis of a complaint or of information offered as a complaint until they have established an investigative subcommittee or either of

them has placed on the agenda of the committee the issue of whether to establish an investigative subcommittee.

(2) Except in the case of an investigation undertaken by the committee on its own initiative, the committee may undertake an investigation relating to the official conduct of an individual Member, Delegate, Resident Commissioner, officer, or employee of the House only—

(A) upon receipt of information offered as a complaint, in writing and under oath, from a Member, Delegate, or Resident Commissioner and transmitted to the committee by such Member, Delegate, or Resident Commissioner;

(B) upon receipt of information offered as a complaint, in writing and under oath, from a person not a Member, Delegate, or Resident Commissioner provided that a Member, Delegate, or Resident Commissioner certifies in writing to the committee that such Member, Delegate, or Resident Commissioner believes the information is submitted in good faith and warrants the review and consideration of the committee; or

(C) upon receipt of a report regarding a referral from the board of the Office of Congressional Ethics.

If a complaint is not disposed of within the applicable periods set forth in the rules of the Committee on Ethics, the chair and ranking minority member shall establish jointly an investigative subcommittee and forward the

complaint, or any portion thereof, to that subcommittee for its consideration. However, if at any time during those periods either the chair or ranking minority member places on the agenda the issue of whether to establish an investigative subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

(3) The committee may not undertake an investigation of an alleged violation of a law, rule, regulation, or standard of conduct that was not in effect at the time of the alleged violation. The committee may not undertake an investigation of such an alleged violation that occurred before the third previous Congress unless the committee determines that the alleged violation is directly related to an alleged violation that occurred in a more recent Congress.

(4) A member of the committee shall be ineligible to participate as a member of the committee in a committee proceeding relating to the member's official conduct. Whenever a member of the committee is ineligible to act as a member of the committee under the preceding sentence, the Speaker shall designate a Member, Delegate, or Resident Commissioner from the same political party as the ineligible member to act in any proceeding of the committee relating to that conduct.

(5) A member of the committee may seek disqualification from participating in an investigation of

the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House upon the submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks to be disqualified. If the committee approves and accepts such affidavit of disqualification, the chair shall so notify the Speaker and request the Speaker to designate a Member, Delegate, or Resident Commissioner from the same political party as the disqualifying member to act in any proceeding of the committee relating to that case.

(6) Information or testimony received, or the contents of a complaint or the fact of its filing, may not be publicly disclosed by any committee or staff member unless specifically authorized in each instance by a vote of the full committee.

(7) The committee shall have the functions designated in titles I and V of the Ethics in Government Act of 1978, in sections 7342, 7351, and 7353 of title 5, United States Code, and in clause 11(g)(4) of rule X.

(8)(A) Except as provided by subdivisions (B), (C), and (D), not later than 45 calendar days or 5 legislative days, whichever is later, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board

pursuant to a request under paragraph (r), the chair of the Committee on Ethics shall make public the written report and findings of the board unless the chair and ranking member, acting jointly, decide or the committee votes to withhold such information for not more than one additional period of the same duration, in which case the chair shall—

(i) upon the termination of such additional period, make public the written report and findings; and

(ii) upon the day of such decision or vote, make a public statement that the matter, relating to the referral made by the board of the Office of Congressional Ethics regarding the Member, officer, or employee of the House who is the subject of the applicable referral, has been extended.

At least one calendar day before the committee makes public any written report and findings of the board, the chair shall notify such board and the applicable Member, officer, or employee of that fact and transmit to such individual a copy of the statement on the committee's disposition of, and any committee report on, the matter.

(B)(i) Notwithstanding subdivision (A)(i), if the committee votes to dismiss a matter which is the subject of a referral from the board of the Office of Congressional Ethics, the committee is not required to make public the written report and findings described in such subdivision unless the committee's vote is inconsistent with the

recommendation of the board. For purposes of the previous sentence, a vote by the committee to dismiss a matter is not inconsistent with a report from the board respecting the matter as unresolved due to a tie vote.

(ii) Notwithstanding subdivision (A)(ii), if the board transmits a report respecting any matter with a recommendation to dismiss or as unresolved due to a tie vote, and the matter is extended for an additional period as provided in subdivision (A), the committee is not required to make a public statement that the matter has been extended.

(iii) Except as provided by subdivision (E), if the committee establishes an investigative subcommittee respecting any such matter, then the report and findings of the board shall not be made public until the conclusion of the investigative subcommittee process and the committee shall issue a public statement of the establishment of an investigative subcommittee, which statement shall include the name of the applicable Member, officer, or employee, and shall set forth the alleged violation. If any such investigative subcommittee does not conclude its review within one year after the board transmits a report respecting any matter, then the committee shall make public the report and upon the expiration of the Congress in which the report is made public, the committee shall make public any findings.

(C)(i) If, after receipt of a written report and any findings and supporting documentation regarding a referral from the board of the Office of Congressional Ethics or of a referral of the matter from the board pursuant to a request under paragraph (r), the committee agrees to a request from an appropriate law enforcement or regulatory authority to defer taking action on the matter

(I) notwithstanding subdivision (A)(i), the committee is not required to make public the written report and findings described in such subdivision, except that if the recommendation of the board with respect to the report is that the matter requires further review, the committee shall make public the written report but not the findings; and

(II) before the end of the first day (excluding Saturdays, Sundays, and public holidays) after the day that the committee agrees to the request, the committee shall make a public statement that it is deferring taking action on the matter at the request of such authority.

(ii) If, upon the expiration of the one-year period that begins on the date the committee makes the public statement described in item (i)(II), the committee has not acted on the matter, the committee shall make a new public statement that it is still deferring taking action on the matter, and shall make a new statement upon the

expiration of each succeeding one-year period during which the committee has not acted on the matter.

(D) The committee may not receive any referral from the board of the Office of Congressional Ethics within 60 days before a Federal, State, or local election in which the subject of the referral is a candidate. The committee may delay any reporting requirement under this subparagraph that falls within that 60-day period until the end of such period and in that case, for purposes of subdivision (A), days within the 60-day period shall not be counted.

(E) If, at the close of any applicable period for a reporting requirement under this subparagraph with respect to a referral from the board of the Office of Congressional Ethics, the vote of the committee is a tie or the committee fails to act, the report and the findings of the board shall be made public by the committee, along with a public statement by the chair explaining the status of the matter.

(c)(1) Notwithstanding clause 2(g)(1) of rule XI, each meeting of the Committee on Ethics or a subcommittee thereof shall occur in executive session unless the committee or subcommittee, by an affirmative vote of a majority of its members, opens the meeting to the public.

(2) Notwithstanding clause 2(g)(2) of rule XI, each hearing of an adjudicatory subcommittee or sanction hearing of the Committee on Ethics shall be held in open session unless the committee or subcommittee, in open

session by an affirmative vote of a majority of its members, closes all or part of the remainder of the hearing on that day to the public.

(d) Before a member, officer, or employee of the Committee on Ethics, including members of a subcommittee of the committee selected under clause 5(a)(4) of rule X and shared staff, may have access to information that is confidential under the rules of the committee, the following oath (or affirmation) shall be executed:

“I do solemnly swear (or affirm) that I will not disclose, to any person or entity outside the Committee on Ethics, any information received in the course of my service with the committee, except as authorized by the committee or in accordance with its rules.”

Copies of the executed oath shall be retained by the Clerk as part of the records of the House. This paragraph establishes a standard of conduct within the meaning of paragraph (a)(2). Breaches of confidentiality shall be investigated by the Committee on Ethics and appropriate action shall be taken.

(e)(1) If a complaint or information offered as a complaint is deemed frivolous by an affirmative vote of a majority of the members of the Committee on Ethics, the committee may take such action as it, by an affirmative vote of a majority of its members, considers appropriate in the circumstances.

(2) Complaints filed before the One Hundred Fifth Congress may not be deemed frivolous by the Committee on Ethics.

Committee agendas

(f) The committee shall adopt rules providing that the chair shall establish the agenda for meetings of the committee, but shall not preclude the ranking minority member from placing any item on the agenda.

Committee staff

(g)(1) The committee shall adopt rules providing that—

(A) the staff be assembled and retained as a professional, nonpartisan staff;

(B) each member of the staff shall be professional and demonstrably qualified for the position for which hired;

(C) the staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner;

(D) no member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election;

(E) no member of the staff or outside counsel may accept public speaking engagements or write for publication on any subject that is in any way related to the employment or duties with the committee of such

individual without specific prior approval from the chair and ranking minority member; and

(F) no member of the staff or outside counsel may make public, unless approved by an affirmative vote of a majority of the members of the committee, any information, document, or other material that is confidential, derived from executive session, or classified and that is obtained during the course of employment with the committee.

(2) Only subdivisions (C), (E), and (F) of subparagraph (1) shall apply to shared staff.

(3)(A) All staff members shall be appointed by an affirmative vote of a majority of the members of the committee. Such vote shall occur at the first meeting of the membership of the committee during each Congress and as necessary during the Congress.

(B) Subject to the approval of the Committee on House Administration, the committee may retain counsel not employed by the House of Representatives whenever the committee determines, by an affirmative vote of a majority of the members of the committee, that the retention of outside counsel is necessary and appropriate.

(C) If the committee determines that it is necessary to retain staff members for the purpose of a particular investigation or other proceeding, then such staff shall be retained only for the duration of that particular investigation or proceeding.

(D) Outside counsel may be dismissed before the end of a contract between the committee and such counsel only by an affirmative vote of a majority of the members of the committee.

(4) In addition to any other staff provided for by law, rule, or other authority, with respect to the committee, the chair and ranking minority member each may appoint one individual as a shared staff member from the respective personal staff of the chair or ranking minority member to perform service for the committee. Such shared staff may assist the chair or ranking minority member on any subcommittee on which the chair or ranking minority member serves.

Meetings and hearings

(h) The committee shall adopt rules providing that—

(1) all meetings or hearings of the committee or any subcommittee thereof, other than any hearing held by an adjudicatory subcommittee or any sanction hearing held by the committee, shall occur in executive session unless the committee or subcommittee by an affirmative vote of a majority of its members opens the meeting or hearing to the public; and

(2) any hearing held by an adjudicatory subcommittee or any sanction hearing held by the committee shall be open to the public unless the committee or subcommittee by an affirmative vote of a

majority of its members closes the hearing to the public.

Public disclosure

(i) The committee shall adopt rules providing that, unless otherwise determined by a vote of the committee, only the chair or ranking minority member, after consultation with each other, may make public statements regarding matters before the committee or any subcommittee thereof.

Requirements to constitute a complaint

(j) The committee shall adopt rules regarding complaints to provide that whenever information offered as a complaint is submitted to the committee, the chair and ranking minority member shall have 14 calendar days or five legislative days, whichever is sooner, to determine whether the information meets the requirements of the rules of the committee for what constitutes a complaint.

Duties of chair and ranking minority member regarding properly filed complaints

(k)(1) The committee shall adopt rules providing that whenever the chair and ranking minority member jointly determine that information submitted to the committee meets the requirements of the rules of the committee for what constitutes a complaint, they shall have 45 calendar days or five legislative days, whichever is later, after that

determination (unless the committee by an affirmative vote of a majority of its members votes otherwise) to—

(A) recommend to the committee that it dispose of the complaint, or any portion thereof, in any manner that does not require action by the House, which may include dismissal of the complaint or resolution of the complaint by a letter to the Member, officer, or employee of the House against whom the complaint is made;

(B) establish an investigative subcommittee; or

(C) request that the committee extend the applicable 45-calendar day or five-legislative day period by one additional 45-calendar day period when they determine more time is necessary in order to make a recommendation under subdivision (A).

(2) The committee shall adopt rules providing that if the chair and ranking minority member jointly determine that information submitted to the committee meets the requirements of the rules of the committee for what constitutes a complaint, and the complaint is not disposed of within the applicable time periods under subparagraph (1), then they shall establish an investigative subcommittee and forward the complaint, or any portion thereof, to that subcommittee for its consideration. However, if, at any time during those periods, either the chair or ranking minority member places on the agenda the issue of whether to establish an investigative

subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

Duties of chair and ranking minority member regarding information not constituting a complaint

(l) The committee shall adopt rules providing that whenever the chair and ranking minority member jointly determine that information submitted to the committee does not meet the requirements of the rules of the committee for what constitutes a complaint, they may—

(1) return the information to the complainant with a statement that it fails to meet the requirements of the rules of the committee for what constitutes a complaint; or

(2) recommend to the committee that it authorize the establishment of an investigative subcommittee.

Investigative and adjudicatory subcommittees

(m) The committee shall adopt rules providing that—

(1)(A) an investigative subcommittee shall be composed of four Members (with equal representation from the majority and minority parties) whenever such a subcommittee is established pursuant to the rules of the committee;

(B) an adjudicatory subcommittee shall be composed of the members of the committee who did not serve on the pertinent investigative subcommittee (with equal

representation from the majority and minority parties) whenever such a subcommittee is established pursuant to the rules of the committee; and

(C) notwithstanding any other provision of this clause, the chair and ranking minority member of the committee may consult with an investigative subcommittee either on their own initiative or on the initiative of the subcommittee, shall have access to information before a subcommittee with which they so consult, and shall not thereby be precluded from serving as full, voting members of any adjudicatory subcommittee;

(2) at the time of appointment, the chair shall designate one member of a subcommittee to serve as chair and the ranking minority member shall designate one member of the subcommittee to serve as the ranking minority member; and

(3) the chair and ranking minority member of the committee may serve as members of an investigative subcommittee, but may not serve as non-voting, ex officio members.

Standard of proof for adoption of statement of alleged violation

(n) The committee shall adopt rules to provide that an investigative subcommittee may adopt a statement of alleged violation only if it determines by an affirmative vote of a majority of the members of the subcommittee

that there is substantial reason to believe that a violation of the Code of Official Conduct, or of a law, rule, regulation, or other standard of conduct applicable to the performance of official duties or the discharge of official responsibilities by a Member, officer, or employee of the House of Representatives, has occurred.

Subcommittee powers

(o)(1) The committee shall adopt rules providing that an investigative subcommittee or an adjudicatory subcommittee may authorize and issue subpoenas only when authorized by an affirmative vote of a majority of the members of the subcommittee.

(2) The committee shall adopt rules providing that an investigative subcommittee may, upon an affirmative vote of a majority of its members, expand the scope of its investigation when approved by an affirmative vote of a majority of the members of the committee.

(3) The committee shall adopt rules to provide that—

(A) an investigative subcommittee may, upon an affirmative vote of a majority of its members, amend its statement of alleged violation anytime before the statement of alleged violation is transmitted to the committee; and

(B) if an investigative subcommittee amends its statement of alleged violation, the respondent shall be notified in writing and shall have 30 calendar days from

the date of that notification to file an answer to the amended statement of alleged violation.

Due process rights of respondents

(p) The committee shall adopt rules to provide that—

(1) not less than 10 calendar days before a scheduled vote by an investigative subcommittee on a statement of alleged violation, the subcommittee shall provide the respondent with a copy of the statement of alleged violation it intends to adopt together with all evidence it intends to use to prove those charges which it intends to adopt, including documentary evidence, witness testimony, memoranda of witness interviews, and physical evidence, unless the subcommittee by an affirmative vote of a majority of its members decides to withhold certain evidence in order to protect a witness; but if such evidence is withheld, the subcommittee shall inform the respondent that evidence is being withheld and of the count to which such evidence relates;

(2) neither the respondent nor the counsel of the respondent shall, directly or indirectly, contact the subcommittee or any member thereof during the period of time set forth in paragraph (1) except for the sole purpose of settlement discussions where counsel for the respondent and the subcommittee are present;

(3) if, at any time after the issuance of a statement of alleged violation, the committee or any subcommittee thereof determines that it intends to use evidence not

provided to a respondent under paragraph (1) to prove the charges contained in the statement of alleged violation (or any amendment thereof), such evidence shall be made immediately available to the respondent, and it may be used in any further proceeding under the rules of the committee;

(4) evidence provided pursuant to paragraph (1) or (3) shall be made available to the respondent and the counsel of the respondent only after each agrees, in writing, that no document, information, or other materials obtained pursuant to that paragraph shall be made public until—

(A) such time as a statement of alleged violation is made public by the committee if the respondent has waived the adjudicatory hearing; or

(B) the commencement of an adjudicatory hearing if the respondent has not waived an adjudicatory hearing;

but the failure of respondent and the counsel of the respondent to so agree in writing, and their consequent failure to receive the evidence, shall not preclude the issuance of a statement of alleged violation at the end of the period referred to in paragraph (1);

(5) a respondent shall receive written notice whenever—

(A) the chair and ranking minority member determine that information the committee has

received constitutes a complaint;

(B) a complaint or allegation is transmitted to an investigative subcommittee;

(C) an investigative subcommittee votes to authorize its first subpoena or to take testimony under oath, whichever occurs first; or

(D) an investigative subcommittee votes to expand the scope of its investigation;

(6) whenever an investigative subcommittee adopts a statement of alleged violation and a respondent enters into an agreement with that subcommittee to settle a complaint on which that statement is based, that agreement, unless the respondent requests otherwise, shall be in writing and signed by the respondent and respondent's counsel, the chair and ranking minority member of the subcommittee, and the outside counsel, if any;

(7) statements or information derived solely from a respondent or the counsel of a respondent during any settlement discussions between the committee or a subcommittee thereof and the respondent shall not be included in any report of the subcommittee or the committee or otherwise publicly disclosed without the consent of the respondent; and

(8) whenever a motion to establish an investigative subcommittee does not prevail, the committee shall

promptly send a letter to the respondent informing the respondent of such vote.

Committee reporting requirements

(q) The committee shall adopt rules to provide that—

(1) whenever an investigative subcommittee does not adopt a statement of alleged violation and transmits a report to that effect to the committee, the committee may by an affirmative vote of a majority of its members transmit such report to the House of Representatives;

(2) whenever an investigative subcommittee adopts a statement of alleged violation, the respondent admits to the violations set forth in such statement, the respondent waives the right to an adjudicatory hearing, and the respondent's waiver is approved by the committee—

(A) the subcommittee shall prepare a report for transmittal to the committee, a final draft of which shall be provided to the respondent not less than 15 calendar days before the subcommittee votes on whether to adopt the report;

(B) the respondent may submit views in writing regarding the final draft to the subcommittee within seven calendar days of receipt of that draft;

(C) the subcommittee shall transmit a report to the committee regarding the statement of alleged violation together with any views submitted by the respondent pursuant to subdivision (B), and the

committee shall make the report together with the respondent's views available to the public before the commencement of any sanction hearing; and

(D) the committee shall by an affirmative vote of a majority of its members issue a report and transmit such report to the House of Representatives, together with the respondent's views previously submitted pursuant to subdivision (B) and any additional views respondent may submit for attachment to the final report; and

(3) members of the committee shall have not less than 72 hours to review any report transmitted to the committee by an investigative subcommittee before both the commencement of a sanction hearing and the committee vote on whether to adopt the report.

(r) Upon receipt of any written notification from the board of the Office of Congressional Ethics that the board is undertaking a review of any alleged conduct of any Member, officer, or employee of the House and if the committee is investigating such matter, the committee may at any time so notify the board and request that the board cease its review and refer the matter to the committee for its consideration. If at the end of the applicable time period (including any permissible extension) the committee has not reached a final resolution of the matter or has not referred the matter to the appropriate Federal or State authorities, the committee

shall so notify the board of the Office of Congressional Ethics in writing. The committee may not request the same matter from the board more than one time.

(s) The committee may not take any action that would deny any person any right or protection provided under the Constitution of the United States.

Audio and visual coverage of committee proceedings

4. (a) The purpose of this clause is to provide a means, in conformity with acceptable standards of dignity, propriety, and decorum, by which committee hearings or committee meetings that are open to the public may be covered by audio and visual means—

(1) for the education, enlightenment, and information of the general public, on the basis of accurate and impartial news coverage, regarding the operations, procedures, and practices of the House as a legislative and representative body, and regarding the measures, public issues, and other matters before the House and its committees, the consideration thereof, and the action taken thereon; and

(2) for the development of the perspective and understanding of the general public with respect to the role and function of the House under the Constitution as an institution of the Federal Government.

(b) In addition, it is the intent of this clause that radio and television tapes and television film of any coverage under this clause may not be used for any partisan

political campaign purpose or be made available for such use.

(c) It is, further, the intent of this clause that the general conduct of each meeting (whether of a hearing or otherwise) covered under authority of this clause by audio or visual means, and the personal behavior of the committee members and staff, other Government officials and personnel, witnesses, television, radio, and press media personnel, and the general public at the hearing or other meeting, shall be in strict conformity with and observance of the acceptable standards of dignity, propriety, courtesy, and decorum traditionally observed by the House in its operations, and may not be such as to—

(1) distort the objects and purposes of the hearing or other meeting or the activities of committee members in connection with that hearing or meeting or in connection with the general work of the committee or of the House; or

(2) cast discredit or dishonor on the House, the committee, or a Member, Delegate, or Resident Commissioner or bring the House, the committee, or a Member, Delegate, or Resident Commissioner into disrepute.

(d) The coverage of committee hearings and meetings by audio and visual means shall be permitted and conducted only in strict conformity with the purposes, provisions, and requirements of this clause.

(e) Whenever a hearing or meeting conducted by a committee or subcommittee is open to the public, those proceedings shall be open to coverage by audio and visual means. A committee or subcommittee chair may not limit the number of television or still cameras to fewer than two representatives from each medium (except for legitimate space or safety considerations, in which case pool coverage shall be authorized).

(f) Written rules adopted by each committee pursuant to clause 2(a)(1)(D) shall contain provisions to the following effect:

(1) If audio or visual coverage of the hearing or meeting is to be presented to the public as live coverage, that coverage shall be conducted and presented without commercial sponsorship.

(2) The allocation among the television media of the positions or the number of television cameras permitted by a committee or subcommittee chair in a hearing or meeting room shall be in accordance with fair and equitable procedures devised by the Executive Committee of the Radio and Television Correspondents' Galleries.

(3) Television cameras shall be placed so as not to obstruct in any way the space between a witness giving evidence or testimony and any member of the committee or the visibility of that witness and that member to each other.

(4) Television cameras shall operate from fixed positions but may not be placed in positions that obstruct unnecessarily the coverage of the hearing or meeting by the other media.

(5) Equipment necessary for coverage by the television and radio media may not be installed in, or removed from, the hearing or meeting room while the committee is in session.

(6)(A) Except as provided in subdivision (B), floodlights, spotlights, strobelights, and flashguns may not be used in providing any method of coverage of the hearing or meeting.

(B) The television media may install additional lighting in a hearing or meeting room, without cost to the Government, in order to raise the ambient lighting level in a hearing or meeting room to the lowest level necessary to provide adequate television coverage of a hearing or meeting at the current state of the art of television coverage.

(7) If requests are made by more of the media than will be permitted by a committee or subcommittee chair for coverage of a hearing or meeting by still photography, that coverage shall be permitted on the basis of a fair and equitable pool arrangement devised by the Standing Committee of Press Photographers.

(8) Photographers may not position themselves between the witness table and the members of the

committee at any time during the course of a hearing or meeting.

(9) Photographers may not place themselves in positions that obstruct unnecessarily the coverage of the hearing by the other media.

(10) Personnel providing coverage by the television and radio media shall be currently accredited to the Radio and Television Correspondents' Galleries.

(11) Personnel providing coverage by still photography shall be currently accredited to the Press Photographers' Gallery.

(12) Personnel providing coverage by the television and radio media and by still photography shall conduct themselves and their coverage activities in an orderly and unobtrusive manner.

Pay of witnesses

5. Witnesses appearing before the House or any of its committees shall be paid the same per diem rate as established, authorized, and regulated by the Committee on House Administration for Members, Delegates, the Resident Commissioner, and employees of the House, plus actual expenses of travel to or from the place of examination. Such per diem may not be paid when a witness has been summoned at the place of examination.

Unfinished business of the session

6. All business of the House at the end of one session shall be resumed at the commencement of the next session of the same Congress in the same manner as if no adjournment had taken place.

RULE XII

RECEIPT AND REFERRAL OF MEASURES AND MATTERS

Messages

1. Messages received from the Senate, or from the President, shall be entered on the Journal and published in the Congressional Record of the proceedings of that day.

Referral

2. (a) The Speaker shall refer each bill, resolution, or other matter that relates to a subject listed under a standing committee named in clause 1 of rule X in accordance with the provisions of this clause.

(b) The Speaker shall refer matters under paragraph (a) in such manner as to ensure to the maximum extent feasible that each committee that has jurisdiction under clause 1 of rule X over the subject matter of a provision thereof may consider such provision and report to the House thereon. Precedents, rulings, or procedures in effect before the Ninety-Fourth Congress shall be applied to referrals under this clause only to the extent that they will

contribute to the achievement of the objectives of this clause.

(c) In carrying out paragraphs (a) and (b) with respect to the referral of a matter, the Speaker—

(1) shall designate a committee of primary jurisdiction (except where the Speaker determines that extraordinary circumstances justify review by more than one committee as though primary);

(2) may refer the matter to one or more additional committees for consideration in sequence, either initially or after the matter has been reported by the committee of primary jurisdiction;

(3) may refer portions of the matter reflecting different subjects and jurisdictions to one or more additional committees;

(4) may refer the matter to a special, ad hoc committee appointed by the Speaker with the approval of the House, and including members of the committees of jurisdiction, for the specific purpose of considering that matter and reporting to the House thereon;

(5) may subject a referral to appropriate time limitations; and

(6) may make such other provision as may be considered appropriate.

(d) A bill for the payment or adjudication of a private claim against the Government may not be referred to a committee other than the Committee on Foreign Affairs or

the Committee on the Judiciary, except by unanimous consent.

Petitions, memorials, and private bills

3. If a Member, Delegate, or Resident Commissioner has a petition, memorial, or private bill to present, the Member, Delegate, or Resident Commissioner shall sign it, deliver it to the Clerk, and may specify the reference or disposition to be made thereof. Such petition, memorial, or private bill (except when judged by the Speaker to be obscene or insulting) shall be entered on the Journal with the name of the Member, Delegate, or Resident Commissioner presenting it and shall be printed in the Congressional Record.

4. A private bill or private resolution (including an omnibus claim or pension bill), or amendment thereto, may not be received or considered in the House if it authorizes or directs—

(a) the payment of money for property damages, for personal injuries or death for which suit may be instituted under the Tort Claims Procedure provided in title 28, United States Code, or for a pension (other than to carry out a provision of law or treaty stipulation);

(b) the construction of a bridge across a navigable stream; or

(c) the correction of a military or naval record.

Prohibition on commemorations

5. (a) A bill or resolution, or an amendment thereto, may not be introduced or considered in the House if it establishes or expresses a commemoration.

(b) In this clause the term “commemoration” means a remembrance, celebration, or recognition for any purpose through the designation of a specified period of time.

Excluded matters

6. A petition, memorial, bill, or resolution excluded under this rule shall be returned to the Member, Delegate, or Resident Commissioner from whom it was received. A petition or private bill that has been inappropriately referred may, by direction of the committee having possession of it, be properly referred in the manner originally presented. An erroneous reference of a petition or private bill under this clause does not confer jurisdiction on a committee to consider or report it.

Sponsorship

7. (a) Bills, memorials, petitions, and resolutions, endorsed with the names of Members, Delegates, or the Resident Commissioner introducing them, may be delivered to the Speaker to be referred. The titles and references of all bills, memorials, petitions, resolutions, and other documents referred under this rule shall be entered on the Journal and printed in the Congressional Record. An erroneous reference may be corrected by the House in accordance with rule X on any day immediately

after the Pledge of Allegiance to the Flag by unanimous consent or motion. Such a motion shall be privileged if offered by direction of a committee to which the bill has been erroneously referred or by direction of a committee claiming jurisdiction and shall be decided without debate.

(b)(1) The sponsor of a public bill or public resolution may name cosponsors. The name of a cosponsor added after the initial printing of a bill or resolution shall appear in the next printing of the bill or resolution on the written request of the sponsor. Such a request may be submitted to the Speaker at any time until the last committee authorized to consider and report the bill or resolution reports it to the House or is discharged from its consideration.

(2) The name of a cosponsor of a bill or resolution may be deleted by unanimous consent. The Speaker may entertain such a request only by the Member, Delegate, or Resident Commissioner whose name is to be deleted or by the sponsor of the bill or resolution, and only until the last committee authorized to consider and report the bill or resolution reports it to the House or is discharged from its consideration. The Speaker may not entertain a request to delete the name of the sponsor of a bill or resolution. A deletion shall be indicated by date in the next printing of the bill or resolution.

(3) The addition or deletion of the name of a cosponsor of a bill or resolution shall be entered on the Journal and

printed in the Congressional Record of that day.

(4) A bill or resolution shall be reprinted on the written request of the sponsor. Such a request may be submitted to the Speaker only when 20 or more cosponsors have been added since the last printing of the bill or resolution.

(5) When a bill or resolution is introduced “by request,” those words shall be entered on the Journal and printed in the Congressional Record.

(c)(1) A bill or joint resolution may not be introduced unless the sponsor submits for printing in the Congressional Record a statement citing as specifically as practicable the power or powers granted to Congress in the Constitution to enact the bill or joint resolution. The statement shall appear in a portion of the Record designated for that purpose and be made publicly available in electronic form by the Clerk.

(2) Before consideration of a Senate bill or joint resolution, the chair of a committee of jurisdiction may submit the statement required under subparagraph (1) as though the chair were the sponsor of the Senate bill or joint resolution.

Executive communications

8. Estimates of appropriations and all other communications from the executive departments intended for the consideration of any committees of the House shall be addressed to the Speaker for referral as provided in clause 2 of rule XIV.

RULE XIII

CALENDARS AND COMMITTEE REPORTS

Calendars

1. (a) All business reported by committees shall be referred to one of the following three calendars:

(1) A Calendar of the Committee of the Whole House on the state of the Union, to which shall be referred public bills and public resolutions raising revenue, involving a tax or charge on the people, directly or indirectly making appropriations of money or property or requiring such appropriations to be made, authorizing payments out of appropriations already made, or releasing any liability to the United States for money or property.

(2) A House Calendar, to which shall be referred all public bills and public resolutions not requiring referral to the Calendar of the Committee of the Whole House on the state of the Union.

(3) A Private Calendar as provided in clause 5 of rule XV, to which shall be referred all private bills and private resolutions.

(b) There is established a Calendar of Motions to Discharge Committees as provided in clause 2 of rule XV.

Filing and printing of reports

2. (a)(1) Except as provided in subparagraph (2), all reports of committees (other than those filed from the floor) shall be delivered to the Clerk for printing and reference to the proper calendar under the direction of the Speaker in accordance with clause 1. The title or subject of each report shall be entered on the Journal and printed in the Congressional Record.

(2) A bill or resolution reported adversely (other than those filed as privileged) shall be laid on the table unless a committee to which the bill or resolution was referred requests at the time of the report its referral to an appropriate calendar under clause 1 or unless, within three days thereafter, a Member, Delegate, or Resident Commissioner makes such a request.

(b)(1) It shall be the duty of the chair of each committee to report or cause to be reported promptly to the House a measure or matter approved by the committee and to take or cause to be taken steps necessary to bring the measure or matter to a vote.

(2) In any event, the report of a committee on a measure that has been approved by the committee shall be filed within seven calendar days (exclusive of days on which the House is not in session) after the day on which a written request for the filing of the report, signed by a majority of the members of the committee, has been filed with the clerk of the committee. The clerk of the committee shall immediately notify the chair of the filing

of such a request. This subparagraph does not apply to a report of the Committee on Rules with respect to a rule, joint rule, or order of business of the House, or to the reporting of a resolution of inquiry addressed to the head of an executive department.

(c) All supplemental, minority, additional, or dissenting views filed under clause 2(1) of rule XI by one or more members of a committee shall be included in, and shall be a part of, the report filed by the committee with respect to a measure or matter. When time guaranteed by clause 2(1) of rule XI has expired (or, if sooner, when all separate views have been received), the committee may arrange to file its report with the Clerk not later than one hour after the expiration of such time. This clause and provisions of clause 2(1) of rule XI do not preclude the immediate filing or printing of a committee report in the absence of a timely request for the opportunity to file supplemental, minority, additional, or dissenting views as provided in clause 2(1) of rule XI.

Content of reports

3. (a)(1) Except as provided in subparagraph (2), the report of a committee on a measure or matter shall be printed in a single volume that—

(A) shall include all supplemental, minority, additional, or dissenting views that have been submitted by the time of the filing of the report; and

(B) shall bear on its cover a recital that any such supplemental, minority, additional, or dissenting views (and any material submitted under paragraph (c)(3)) are included as part of the report.

(2) A committee may file a supplemental report for the correction of a technical error in its previous report on a measure or matter. A supplemental report only correcting errors in the depiction of record votes under paragraph (b) may be filed under this subparagraph and shall not be subject to the requirement in clause 4 or clause 6 concerning the availability of reports.

(b) With respect to each record vote on a motion to report a measure or matter of a public nature, and on any amendment offered to the measure or matter, the total number of votes cast for and against, and the names of members voting for and against, shall be included in the committee report. The preceding sentence does not apply to votes taken in executive session by the Committee on Ethics.

(c) The report of a committee on a measure that has been approved by the committee shall include, separately set out and clearly identified, the following:

(1) Oversight findings and recommendations under clause 2(b)(1) of rule X.

(2) The statement required by section 308(a) of the Congressional Budget Act of 1974, except that an estimate of new budget authority shall include, when

practicable, a comparison of the total estimated funding level for the relevant programs to the appropriate levels under current law.

(3) An estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 if timely submitted to the committee before the filing of the report.

(4) A statement of general performance goals and objectives, including outcome-related goals and objectives, for which the measure authorizes funding.

(5) On a bill or joint resolution that establishes or reauthorizes a Federal program, a statement indicating whether any such program is known to be duplicative of another such program, including at a minimum an explanation of whether any such program was included in a report to Congress pursuant to section 21 of Public Law 111–139 or whether the most recent Catalog of Federal Domestic Assistance (published pursuant to section 6104 of title 31, United States Code) identified other programs related to the program established or reauthorized by the measure.

(d) Each report of a committee on a public bill or public joint resolution shall contain the following:

(1)(A) An estimate by the committee of the costs that would be incurred in carrying out the bill or joint resolution in the fiscal year in which it is reported and

in each of the five fiscal years following that fiscal year (or for the authorized duration of any program authorized by the bill or joint resolution if less than five years);

(B) a comparison of the estimate of costs described in subdivision (A) made by the committee with any estimate of such costs made by a Government agency and submitted to such committee; and

(C) when practicable, a comparison of the total estimated funding level for the relevant programs with the appropriate levels under current law.

(2)(A) In subparagraph (1) the term “Government agency” includes any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or the government of the District of Columbia.

(B) Subparagraph (1) does not apply to the Committee on Appropriations, the Committee on House Administration, the Committee on Rules, or the Committee on Ethics, and does not apply when a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been included in the report under paragraph (c)(3).

(e)(1) Whenever a committee reports a bill or joint resolution proposing to repeal or amend a statute or part thereof, it shall include in its report or in an

accompanying document (showing by appropriate typographical devices the omissions and insertions proposed)—

(A) the entire text of each section of a statute that is proposed to be repealed; and

(B) a comparative print of each amendment to the entire text of a section of a statute that the bill or joint resolution proposes to make.

(2) If a committee reports a bill or joint resolution proposing to repeal or amend a statute or part thereof with a recommendation that the bill or joint resolution be amended, the comparative print required by subparagraph (1) shall reflect the changes in existing law proposed to be made by the bill or joint resolution as proposed to be amended.

(f)(1) A report of the Committee on Appropriations on a general appropriation bill shall include—

(A) a concise statement describing the effect of any provision of the accompanying bill that directly or indirectly changes the application of existing law; and

(B) a list of all appropriations contained in the bill for expenditures not currently authorized by law for the period concerned (excepting classified intelligence or national security programs, projects, or activities), along with a statement of the last year for which such expenditures were authorized, the level of expenditures authorized for that year, the actual level of expenditures

for that year, and the level of appropriations in the bill for such expenditures.

(2) Whenever the Committee on Appropriations reports a bill or joint resolution including matter specified in clause 1(b)(2) or (3) of rule X, it shall include—

(A) in the bill or joint resolution, separate headings for “Rescissions” and “Transfers of Unexpended Balances”; and

(B) in the report of the committee, a separate section listing such rescissions and transfers.

(g) Whenever the Committee on Rules reports a resolution proposing to repeal or amend a standing rule of the House, it shall include in its report or in an accompanying document—

(1) the text of any rule or part thereof that is proposed to be repealed; and

(2) a comparative print of any part of the resolution proposing to amend the rule and of the rule or part thereof proposed to be amended, showing by appropriate typographical devices the omissions and insertions proposed.

(h) It shall not be in order to consider a bill or joint resolution reported by the Committee on Ways and Means that proposes to amend the Internal Revenue Code of 1986 unless—

(1) the report includes a tax complexity analysis prepared by the Joint Committee on Taxation in

accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998; or

(2) the chair of the Committee on Ways and Means causes such a tax complexity analysis to be printed in the Congressional Record before consideration of the bill or joint resolution.

Availability of reports

4. (a)(1) Except as specified in subparagraph (2), it shall not be in order to consider in the House a measure or matter reported by a committee until the third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which each report of a committee on that measure or matter has been available to Members, Delegates, and the Resident Commissioner.

(2) Subparagraph (1) does not apply to—

(A) a resolution providing a rule, joint rule, or order of business reported by the Committee on Rules considered under clause 6;

(B) a resolution providing amounts from the applicable accounts described in clause 1(k)(1) of rule X reported by the Committee on House Administration considered under clause 6 of rule X;

(C) a resolution presenting a question of the privileges of the House reported by any committee;

(D) a measure for the declaration of war, or the declaration of a national emergency, by Congress; and

(E) a measure providing for the disapproval of a decision, determination, or action by a Government agency that would become, or continue to be, effective unless disapproved or otherwise invalidated by one or both Houses of Congress. In this subdivision the term “Government agency” includes any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or of the government of the District of Columbia.

(b) A committee that reports a measure or matter shall make every reasonable effort to have its hearings thereon (if any) printed and available for distribution to Members, Delegates, and the Resident Commissioner before the consideration of the measure or matter in the House.

Privileged reports, generally

5. (a) The following committees shall have leave to report at any time on the following matters, respectively:

(1) The Committee on Appropriations, on general appropriation bills and on joint resolutions continuing appropriations for a fiscal year after September 15 in the preceding fiscal year.

(2) The Committee on the Budget, on the matters required to be reported by such committee under titles III and IV of the Congressional Budget Act of 1974.

(3) The Committee on House Administration, on enrolled bills, on contested elections, on matters referred to it concerning printing for the use of the House or the two Houses, on expenditure of the applicable accounts of the House described in clause 1(k)(1) of rule X, and on matters relating to preservation and availability of noncurrent records of the House under rule VII.

(4) The Committee on Rules, on rules, joint rules, and the order of business.

(5) The Committee on Ethics, on resolutions recommending action by the House with respect to a Member, Delegate, Resident Commissioner, officer, or employee of the House as a result of an investigation by the committee relating to the official conduct of such Member, Delegate, Resident Commissioner, officer, or employee.

(b) A report filed from the floor as privileged under paragraph (a) may be called up as a privileged question by direction of the reporting committee, subject to any requirement concerning its availability to Members, Delegates, and the Resident Commissioner under clause 4 or concerning the timing of its consideration under clause 6.

Privileged reports by the Committee on Rules

6. (a) A report by the Committee on Rules on a rule, joint rule, or the order of business may not be called up

for consideration on the same day it is presented to the House except—

(1) when so determined by a vote of two-thirds of the Members voting, a quorum being present;

(2) in the case of a resolution proposing only to waive a requirement of clause 4 or of clause 8 of rule XXII concerning the availability of reports; or

(3) during the last three days of a session of Congress.

(b) Pending the consideration of a report by the Committee on Rules on a rule, joint rule, or the order of business, the Speaker may entertain one motion that the House adjourn but may not entertain any other dilatory motion until the report shall have been disposed of.

(c) The Committee on Rules may not report a rule or order that would prevent the motion to recommit a bill or joint resolution from being made as provided in clause 2(b) of rule XIX, including a motion to recommit with instructions to report back an amendment otherwise in order, if offered by the Minority Leader or a designee, except with respect to a Senate bill or joint resolution for which the text of a House-passed measure has been substituted.

(d) The Committee on Rules shall present to the House reports concerning rules, joint rules, and the order of business, within three legislative days of the time when they are ordered. If such a report is not considered

immediately, it shall be referred to the calendar. If such a report on the calendar is not called up by the member of the committee who filed the report within seven legislative days, any member of the committee may call it up as a privileged question on the day after the calendar day on which the member announces to the House intention to do so. The Speaker shall recognize a member of the committee who seeks recognition for that purpose.

(e) An adverse report by the Committee on Rules on a resolution proposing a special order of business for the consideration of a public bill or public joint resolution may be called up as a privileged question by a Member, Delegate, or Resident Commissioner on a day when it is in order to consider a motion to discharge committees under clause 2 of rule XV.

(f) If the House has adopted a resolution making in order a motion to consider a bill or resolution, and such a motion has not been offered within seven calendar days thereafter, such a motion shall be privileged if offered by direction of all reporting committees having initial jurisdiction of the bill or resolution.

(g) Whenever the Committee on Rules reports a resolution providing for the consideration of a measure, it shall to the maximum extent possible specify in the accompanying report any waiver of a point of order against the measure or against its consideration.

Resolutions of inquiry

7. A report on a resolution of inquiry addressed to the head of an executive department may be filed from the floor as privileged. If such a resolution is not reported to the House within 14 legislative days after its introduction, a motion to discharge a committee from its consideration shall be privileged.

Estimates of major legislation

8. (a) An estimate provided by the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 for any major legislation shall, to the extent practicable, incorporate the budgetary effects of changes in economic output, employment, capital stock, and other macroeconomic variables resulting from such legislation.

(b) An estimate provided by the Joint Committee on Taxation to the Director of the Congressional Budget Office under section 201(f) of the Congressional Budget Act of 1974 for any major legislation shall, to the extent practicable, incorporate the budgetary effects of changes in economic output, employment, capital stock, and other macroeconomic variables resulting from such legislation.

(c) An estimate referred to in this clause shall, to the extent practicable, include—

(1) a qualitative assessment of the budgetary effects (including macroeconomic variables described in paragraphs (a) and (b)) of such legislation in the 20-fiscal year period beginning after the last fiscal year of

the most recently agreed to concurrent resolution on the budget that set forth appropriate levels required by section 301 of the Congressional Budget Act of 1974; and

(2) an identification of the critical assumptions and the source of data underlying that estimate.

(d) As used in this clause—

(1) the term “major legislation” means any bill or joint resolution—

(A) for which an estimate is required to be prepared pursuant to section 402 of the Congressional Budget Act of 1974 and that causes a gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year over the years of the most recently agreed to concurrent resolution on the budget equal to or greater than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; or

(B) designated as such by the chair of the Committee on the Budget for all direct spending legislation other than revenue legislation or the Member who is chair or vice chair, as applicable, of the Joint Committee on Taxation for revenue legislation; and

(2) the term “budgetary effects” means changes in revenues, outlays, and deficits.

RULE XIV

ORDER AND PRIORITY OF BUSINESS

1. The daily order of business (unless varied by the application of other rules and except for the disposition of matters of higher precedence) shall be as follows:

First. Prayer by the Chaplain.

Second. Reading and approval of the Journal, unless postponed under clause 8 of rule XX.

Third. The Pledge of Allegiance to the Flag.

Fourth. Correction of reference of public bills.

Fifth. Disposal of business on the Speaker's table as provided in clause 2.

Sixth. Unfinished business as provided in clause 3.

Seventh. The morning hour for the consideration of bills called up by committees as provided in clause 4.

Eighth. Motions that the House resolve into the Committee of the Whole House on the state of the Union subject to clause 5.

Ninth. Orders of the day.

2. Business on the Speaker's table shall be disposed of as follows:

(a) Messages from the President shall be referred to the appropriate committees without debate.

(b) Communications addressed to the House, including reports and communications from heads of departments and bills, resolutions, and messages from the Senate, may be referred to the appropriate committees in the same manner and with the same right

of correction as public bills and public resolutions presented by Members, Delegates, or the Resident Commissioner.

(c) Motions to dispose of Senate amendments on the Speaker's table may be entertained as provided in clauses 1, 2, and 4 of rule XXII.

(d) Senate bills and resolutions substantially the same as House measures already favorably reported and not required to be considered in the Committee of the Whole House on the state of the Union may be disposed of by motion. Such a motion shall be privileged if offered by direction of all reporting committees having initial jurisdiction of the House measure.

3. Consideration of unfinished business in which the House may have been engaged at an adjournment, except business in the morning hour and proceedings postponed under clause 8 of rule XX, shall be resumed as soon as the business on the Speaker's table is finished, and at the same time each day thereafter until disposed of. The consideration of all other unfinished business shall be resumed whenever the class of business to which it belongs shall be in order under the rules.

4. After the unfinished business has been disposed of, the Speaker shall call each standing committee in regular order and then select committees. Each committee when named may call up for consideration a bill or resolution

reported by it on a previous day and on the House Calendar. If the Speaker does not complete the call of the committees before the House passes to other business, the next call shall resume at the point it left off, giving preference to the last bill or resolution under consideration. A committee that has occupied the call for two days may not call up another bill or resolution until the other committees have been called in their turn.

5. After consideration of bills or resolutions under clause 4 for one hour, it shall be in order, pending consideration thereof, to entertain a motion that the House resolve into the Committee of the Whole House on the state of the Union or, when authorized by a committee, that the House resolve into the Committee of the Whole House on the state of the Union to consider a particular bill. Such a motion shall be subject to only one amendment designating another bill. If such a motion is decided in the negative, another such motion may not be considered until the matter that was pending when such motion was offered is disposed of.

6. All questions relating to the priority of business shall be decided by a majority without debate.

RULE XV

BUSINESS IN ORDER ON SPECIAL DAYS

Suspensions

1. (a) A rule may not be suspended except by a vote of two-thirds of the Members voting, a quorum being present. The Speaker may not entertain a motion that the House suspend the rules except on Mondays, Tuesdays, and Wednesdays and during the last six days of a session of Congress.

(b) Pending a motion that the House suspend the rules, the Speaker may entertain one motion that the House adjourn but may not entertain any other motion until the vote is taken on the suspension.

(c) A motion that the House suspend the rules is debatable for 40 minutes, one-half in favor of the motion and one-half in opposition thereto.

Discharge motions, second and fourth Mondays

2. (a) Motions to discharge committees shall be in order on the second and fourth Mondays of a month.

(b)(1) A Member may present to the Clerk a motion in writing to discharge—

(A) a committee from consideration of a public bill or public resolution that has been referred to it for 30 legislative days; or

(B) the Committee on Rules from consideration of a resolution that has been referred to it for seven legislative days and that proposes a special order of business for the consideration of a public bill or public resolution that has been reported by a committee or has been referred to a committee for 30 legislative days.

(2) Only one motion may be presented for a bill or resolution. A Member may not file a motion to discharge the Committee on Rules from consideration of a resolution providing for the consideration of more than one public bill or public resolution or admitting or effecting a nongermane amendment to a public bill or public resolution.

(c) A motion presented under paragraph (b) shall be placed in the custody of the Clerk, who shall arrange a convenient place for the signatures of Members. A signature may be withdrawn by a Member in writing at any time before a motion is entered on the Journal. The Clerk shall make the signatories a matter of public record, causing the names of the Members who have signed a discharge motion during a week to be published in a portion of the Congressional Record designated for that purpose on the last legislative day of the week and making cumulative lists of such names available each day for public inspection in an appropriate office of the House. The Clerk shall devise a means for making such lists available to offices of the House and to the public in electronic form. When a majority of the total membership of the House shall have signed the motion, it shall be entered on the Journal, published with the signatories thereto in the Record, and referred to the Calendar of Motions to Discharge Committees.

(d)(1) On the second and fourth Mondays of a month (except during the last six days of a session of Congress), immediately after the Pledge of Allegiance to the Flag, a motion to discharge that has been on the calendar for at least seven legislative days shall be privileged if called up by a Member whose signature appears thereon. When such a motion is called up, the House shall proceed to its consideration under this paragraph without intervening motion except one motion to adjourn. Privileged motions to discharge shall have precedence in the order of their entry on the Journal.

(2) When a motion to discharge is called up, the bill or resolution to which it relates shall be read by title only. The motion is debatable for 20 minutes, one-half in favor of the motion and one-half in opposition thereto.

(e)(1) If a motion prevails to discharge the Committee on Rules from consideration of a resolution, the House shall immediately consider the resolution, pending which the Speaker may entertain one motion that the House adjourn but may not entertain any other dilatory motion until the resolution has been disposed of. If the resolution is adopted, the House shall immediately proceed to its execution.

(2) If a motion prevails to discharge a committee from consideration of a public bill or public resolution, a motion that the House proceed to the immediate consideration of such bill or resolution shall be privileged

if offered by a Member whose signature appeared on the motion to discharge. The motion to proceed is not debatable. If the motion to proceed is adopted, the bill or resolution shall be considered immediately under the general rules of the House. If unfinished before adjournment of the day on which it is called up, the bill or resolution shall remain the unfinished business until it is disposed of. If the motion to proceed is rejected, the bill or resolution shall be referred to the appropriate calendar, where it shall have the same status as if the committee from which it was discharged had duly reported it to the House.

(f)(1) When a motion to discharge originated under this clause has once been acted on by the House, it shall not be in order to entertain during the same session of Congress

(A) a motion to discharge a committee from consideration of that bill or resolution or of any other bill or resolution that, by relating in substance to or dealing with the same subject matter, is substantially the same; or

(B) a motion to discharge the Committee on Rules from consideration of a resolution providing a special order of business for the consideration of that bill or resolution or of any other bill or resolution that, by relating in substance to or dealing with the same subject matter, is substantially the same.

(2) A motion to discharge on the Calendar of Motions to Discharge Committees that is rendered out of order under subparagraph (1) shall be stricken from that calendar.

Adverse report by the Committee on Rules, second and fourth Mondays

3. An adverse report by the Committee on Rules on a resolution proposing a special order of business for the consideration of a public bill or public joint resolution may be called up under clause 6(e) of rule XIII as a privileged question by a Member, Delegate, or Resident Commissioner on a day when it is in order to consider a motion to discharge committees under clause 2.

District of Columbia business, second and fourth Mondays

4. The second and fourth Mondays of a month shall be set apart for the consideration of such District of Columbia business as may be called up by the Committee on Oversight and Government Reform after the disposition of motions to discharge committees and after the disposal of such business on the Speaker's table as requires reference only.

Private Calendar, first and third Tuesdays

5. (a) On the first Tuesday of a month, the Speaker shall direct the Clerk to call the bills and resolutions on the

Private Calendar after disposal of such business on the Speaker's table as requires reference only. If two or more Members, Delegates, or the Resident Commissioner object to the consideration of a bill or resolution so called, it shall be recommitted to the committee that reported it. No other business shall be in order before completion of the call of the Private Calendar on this day unless two-thirds of the Members voting, a quorum being present, agree to a motion that the House dispense with the call.

(b)(1) On the third Tuesday of a month, after the disposal of such business on the Speaker's table as requires reference only, the Speaker may direct the Clerk to call the bills and resolutions on the Private Calendar. Preference shall be given to omnibus bills containing the texts of bills or resolutions that have previously been objected to on a call of the Private Calendar. If two or more Members, Delegates, or the Resident Commissioner object to the consideration of a bill or resolution so called (other than an omnibus bill), it shall be recommitted to the committee that reported it. Two-thirds of the Members voting, a quorum being present, may adopt a motion that the House dispense with the call on this day.

(2) Omnibus bills shall be read for amendment by paragraph. No amendment shall be in order except to strike or to reduce amounts of money or to provide limitations. An item or matter stricken from an omnibus bill may not thereafter during the same session of

Congress be included in an omnibus bill. Upon passage such an omnibus bill shall be resolved into the several bills and resolutions of which it is composed. The several bills and resolutions, with any amendments adopted by the House, shall be engrossed, when necessary, and otherwise considered as passed severally by the House as distinct bills and resolutions.

(c) The Speaker may not entertain a reservation of the right to object to the consideration of a bill or resolution under this clause. A bill or resolution considered under this clause shall be considered in the House as in the Committee of the Whole. A motion to dispense with the call of the Private Calendar under this clause shall be privileged. Debate on such a motion shall be limited to five minutes in support and five minutes in opposition.

Calendar Call of Committees, Wednesdays

6. (a) On Wednesday of each week, business shall not be in order before completion of the call of those committees (except as provided by clause 4 of rule XIV) whose chair, or other member authorized by the committee, has announced to the House a request for such call on the preceding legislative day.

(b) A bill or resolution on either the House or the Union Calendar, except bills or resolutions that are privileged under the Rules of the House, may be called under this clause. A bill or resolution called up from the Union Calendar shall be considered in the Committee of the

Whole House on the state of the Union without motion, subject to clause 3 of rule XVI. General debate on a measure considered under this clause shall be confined to the measure and may not exceed two hours equally divided between a proponent and an opponent.

(c) This clause does not apply during the last two weeks of a session of Congress.

(d) Precedents, rulings, or procedures in effect before the One Hundred Eleventh Congress regarding the priority of business and the availability of other business on Wednesday shall be applied only to the extent consistent with this clause.

RULE XVI

MOTIONS AND AMENDMENTS

Motions

1. Every motion entertained by the Speaker shall be reduced to writing on the demand of a Member, Delegate, or Resident Commissioner and, unless it is withdrawn the same day, shall be entered on the Journal with the name of the Member, Delegate, or Resident Commissioner offering it. A dilatory motion may not be entertained by the Speaker.

Withdrawal

2. When a motion is entertained, the Speaker shall state it or cause it to be read aloud by the Clerk before it is debated. The motion then shall be in the possession of the House but may be withdrawn at any time before a decision or amendment thereon.

Question of consideration

3. When a motion or proposition is entertained, the question, “Will the House now consider it?” may not be put unless demanded by a Member, Delegate, or Resident Commissioner.

Precedence of motions

4. (a) When a question is under debate, only the following motions may be entertained (which shall have precedence in the following order):

- (1) To adjourn.
- (2) To lay on the table.
- (3) For the previous question.
- (4) To postpone to a day certain.
- (5) To refer.
- (6) To amend.
- (7) To postpone indefinitely.

(b) A motion to adjourn, to lay on the table, or for the previous question shall be decided without debate. A motion to postpone to a day certain, to refer, or to postpone indefinitely, being decided, may not be allowed again on the same day at the same stage of the question.

(c)(1) It shall be in order at any time for the Speaker, in the discretion of the Speaker, to entertain a motion—

(A) that the Speaker be authorized to declare a recess; or

(B) that when the House adjourns it stand adjourned to a day and time certain.

(2) Either motion shall be of equal privilege with the motion to adjourn and shall be decided without debate.

Divisibility

5. (a) Except as provided in paragraph (b), a question shall be divided on the demand of a Member, Delegate, or Resident Commissioner before the question is put if it includes propositions so distinct in substance that, one being taken away, a substantive proposition remains.

(b)(1) A motion or resolution to elect members to a standing committee of the House, or to a joint standing committee, is not divisible.

(2) A resolution or order reported by the Committee on Rules providing a special order of business is not divisible.

(c) A motion to strike and insert is not divisible, but rejection of a motion to strike does not preclude another motion to amend.

Amendments

6. When an amendable proposition is under consideration, a motion to amend and a motion to amend

that amendment shall be in order, and it also shall be in order to offer a further amendment by way of substitute for the original motion to amend, to which one amendment may be offered but which may not be voted on until the original amendment is perfected. An amendment may be withdrawn in the House at any time before a decision or amendment thereon. An amendment to the title of a bill or resolution shall not be in order until after its passage or adoption and shall be decided without debate.

Germaneness

7. No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.

Readings

8. Bills and joint resolutions are subject to readings as follows:

(a) A first reading is in full when the bill or joint resolution is first considered.

(b) A second reading occurs only when the bill or joint resolution is read for amendment in a Committee of the Whole House on the state of the Union under clause 5 of rule XVIII.

(c) A third reading precedes passage when the Speaker states the question: "Shall the bill [or joint resolution] be engrossed [when applicable] and read a

third time?” If that question is decided in the affirmative, then the bill or joint resolution shall be read the final time by title and then the question shall be put on its passage.

RULE XVII

DECORUM AND DEBATE

Decorum

1. (a) A Member, Delegate, or Resident Commissioner who desires to speak or deliver a matter to the House shall respectfully address the Speaker and, on being recognized, may address the House from any place on the floor. When invited by the Chair, a Member, Delegate, or Resident Commissioner may speak from the Clerk’s desk.

(b) Remarks in debate (which may include references to the Senate or its Members) shall be confined to the question under debate, avoiding personality.

Recognition

2. When two or more Members, Delegates, or the Resident Commissioner seek recognition, the Speaker shall name the Member, Delegate, or Resident Commissioner who is first to speak. A Member, Delegate, or Resident Commissioner may not occupy more than one hour in debate on a question in the House or in the

Committee of the Whole House on the state of the Union except as otherwise provided in this rule.

Managing debate

3. (a) The Member, Delegate, or Resident Commissioner who calls up a measure may open and close debate thereon. When general debate extends beyond one day, that Member, Delegate, or Resident Commissioner shall be entitled to one hour to close without regard to the time used in opening.

(b) Except as provided in paragraph (a), a Member, Delegate, or Resident Commissioner may not speak more than once to the same question without leave of the House.

(c) A manager of a measure who opposes an amendment thereto is entitled to close controlled debate thereon.

Call to order

4. (a) If a Member, Delegate, or Resident Commissioner, in speaking or otherwise, transgresses the Rules of the House, the Speaker shall, or a Member, Delegate, or Resident Commissioner may, call to order the offending Member, Delegate, or Resident Commissioner, who shall immediately sit down unless permitted on motion of another Member, Delegate, or the Resident Commissioner to explain. If a Member, Delegate, or Resident Commissioner is called to order, the Member,

Delegate, or Resident Commissioner making the call to order shall indicate the words excepted to, which shall be taken down in writing at the Clerk's desk and read aloud to the House.

(b) The Speaker shall decide the validity of a call to order. The House, if appealed to, shall decide the question without debate. If the decision is in favor of the Member, Delegate, or Resident Commissioner called to order, the Member, Delegate, or Resident Commissioner shall be at liberty to proceed, but not otherwise. If the case requires it, an offending Member, Delegate, or Resident Commissioner shall be liable to censure or such other punishment as the House may consider proper. A Member, Delegate, or Resident Commissioner may not be held to answer a call to order, and may not be subject to the censure of the House therefor, if further debate or other business has intervened.

Comportment

5. When the Speaker is putting a question or addressing the House, a Member, Delegate, or Resident Commissioner may not exit or cross the Hall. When a Member, Delegate, or Resident Commissioner is speaking, a Member, Delegate, or Resident Commissioner may not pass between the person speaking and the Chair. During the session of the House, a Member, Delegate, or Resident Commissioner may not wear a hat or remain by the Clerk's desk during the call of the roll or the counting

of ballots. A person on the floor of the House may not smoke or use a mobile electronic device that impairs decorum. The Sergeant-at-Arms is charged with the strict enforcement of this clause.

Exhibits

6. When the use of an exhibit in debate is objected to by a Member, Delegate, or Resident Commissioner, the Chair, in the discretion of the Chair, may submit the question of its use to the House without debate.

Galleries

7. During a session of the House, it shall not be in order for a Member, Delegate, or Resident Commissioner to introduce to or to bring to the attention of the House an occupant in the galleries of the House. The Speaker may not entertain a request for the suspension of this rule by unanimous consent or otherwise.

Congressional Record

8. (a) The Congressional Record shall be a substantially verbatim account of remarks made during the proceedings of the House, subject only to technical, grammatical, and typographical corrections authorized by the Member, Delegate, or Resident Commissioner making the remarks.

(b) Unparliamentary remarks may be deleted only by permission or order of the House.

(c) This clause establishes a standard of conduct within the meaning of clause 3(a)(2) of rule XI.

Legislative Proceedings

9. (a) A Member, Delegate, the Resident Commissioner, officer, or employee of the House may not engage in disorderly or disruptive conduct in the Chamber, including—

(1) intentionally obstructing or impeding the passage of others in the Chamber;

(2) the use of an exhibit to impede, disrupt, or disturb the proceedings of the House; and

(3) the denial of legislative instruments to others seeking to engage in legislative proceedings.

(b) This clause establishes a standard of conduct within the meaning of clause 3(a)(2) of rule XI.

Secret sessions

10. When confidential communications are received from the President, or when the Speaker or a Member, Delegate, or Resident Commissioner informs the House that such individual has communications that such individual believes ought to be kept secret for the present, the House shall be cleared of all persons except the Members, Delegates, Resident Commissioner, and officers of the House for the reading of such communications, and debates and proceedings thereon, unless otherwise ordered by the House.

RULE XVIII

THE COMMITTEE OF THE WHOLE HOUSE ON THE STATE OF THE UNION

Resolving into the Committee of the Whole

1. Whenever the House resolves into the Committee of the Whole House on the state of the Union, the Speaker shall leave the chair after appointing a Member, Delegate, or the Resident Commissioner as Chair to preside. In case of disturbance or disorderly conduct in the galleries or lobby, the Chair may cause the same to be cleared.

2. (a) Except as provided in paragraph (b) and in clause 6 of rule XV, the House resolves into the Committee of the Whole House on the state of the Union by motion. When such a motion is entertained, the Speaker shall put the question without debate: “Shall the House resolve itself into the Committee of the Whole House on the state of the Union for consideration of this matter?”, naming it.

(b) After the House has adopted a resolution reported by the Committee on Rules providing a special order of business for the consideration of a measure in the Committee of the Whole House on the state of the Union, the Speaker may at any time, when no question is pending before the House, declare the House resolved into the Committee of the Whole for the consideration of that measure without intervening motion, unless the special order of business provides otherwise.

Measures requiring initial consideration in the Committee of the Whole

3. All public bills, resolutions, or Senate amendments (as provided in clause 3 of rule XXII) involving a tax or charge on the people, raising revenue, directly or indirectly making appropriations of money or property or requiring such appropriations to be made, authorizing payments out of appropriations already made, or releasing any liability to the United States for money or property, shall be first considered in the Committee of the Whole House on the state of the Union. A bill, resolution, or Senate amendment that fails to comply with this clause is subject to a point of order against its consideration.

Order of business

4. (a) Subject to subparagraph (b) business on the calendar of the Committee of the Whole House on the state of the Union may be taken up in regular order, or in such order as the Committee may determine, unless the measure to be considered was determined by the House at the time of resolving into the Committee of the Whole.

(b) Motions to resolve into the Committee of the Whole for consideration of bills and joint resolutions making general appropriations have precedence under this clause.

Reading for amendment

5. (a) Before general debate commences on a measure in the Committee of the Whole House on the state of the

Union, it shall be read in full. When general debate is concluded or closed by order of the House, the measure under consideration shall be read for amendment. A Member, Delegate, or Resident Commissioner who offers an amendment shall be allowed five minutes to explain it, after which the Member, Delegate, or Resident Commissioner who shall first obtain the floor shall be allowed five minutes to speak in opposition to it. There shall be no further debate thereon, but the same privilege of debate shall be allowed in favor of and against any amendment that may be offered to an amendment. An amendment, or an amendment to an amendment, may be withdrawn by its proponent only by the unanimous consent of the Committee of the Whole.

(b) When a Member, Delegate, or Resident Commissioner offers an amendment in the Committee of the Whole House on the state of the Union, the Clerk shall promptly transmit five copies of the amendment to the majority committee table and five copies to the minority committee table. The Clerk also shall deliver at least one copy of the amendment to the majority cloakroom and at least one copy to the minority cloakroom.

Quorum and voting

6. (a) A quorum of a Committee of the Whole House on the state of the Union is 100 Members. The first time that a Committee of the Whole finds itself without a quorum during a day, the Chair shall invoke the procedure for a

quorum call set forth in clause 2 of rule XX, unless the Chair elects to invoke an alternate procedure set forth in clause 3 or clause 4(a) of rule XX. If a quorum appears, the Committee of the Whole shall continue its business. If a quorum does not appear, the Committee of the Whole shall rise, and the Chair shall report the names of absentees to the House.

(b)(1) The Chair may refuse to entertain a point of order that a quorum is not present during general debate.

(2) After a quorum has once been established on a day, the Chair may entertain a point of order that a quorum is not present only when the Committee of the Whole House on the state of the Union is operating under the five-minute rule and the Chair has put the pending proposition to a vote.

(3) Upon sustaining a point of order that a quorum is not present, the Chair may announce that, following a regular quorum call under paragraph (a), the minimum time for electronic voting on the pending question shall be not less than two minutes.

(c) When ordering a quorum call in the Committee of the Whole House on the state of the Union, the Chair may announce an intention to declare that a quorum is constituted at any time during the quorum call when the Chair determines that a quorum has appeared. If the Chair interrupts the quorum call by declaring that a quorum is constituted, proceedings under the quorum call shall be

considered as vacated, and the Committee of the Whole shall continue its sitting and resume its business.

(d) A quorum is not required in the Committee of the Whole House on the state of the Union for adoption of a motion that the Committee rise.

(e) In the Committee of the Whole House on the state of the Union, the Chair shall order a recorded vote on a request supported by at least 25 Members.

(f) In the Committee of the Whole House on the state of the Union, the Chair may reduce to not less than two minutes the minimum time for electronic voting without any intervening business or debate on any or all pending amendments after a record vote has been taken on the first pending amendment.

(g) The Chair may postpone a request for a recorded vote on any amendment. The Chair may resume proceedings on a postponed request at any time. The Chair may reduce to not less than two minutes the minimum time for electronic voting—

(1) on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes; or

(2) on any postponed question taken without intervening debate or motion after the Committee of the Whole resumes its sitting if in the discretion of the

Chair Members would be afforded an adequate opportunity to vote.

Dispensing with the reading of an amendment

7. It shall be in order in the Committee of the Whole House on the state of the Union to move that the Committee of the Whole dispense with the reading of an amendment that has been printed in the bill or resolution as reported by a committee, or an amendment that a Member, Delegate, or Resident Commissioner has caused to be printed in the Congressional Record. Such a motion shall be decided without debate.

Closing debate

8. (a) Subject to paragraph (b) at any time after the Committee of the Whole House on the state of the Union has begun five-minute debate on amendments to any portion of a bill or resolution, it shall be in order to move that the Committee of the Whole close all debate on that portion of the bill or resolution or on the pending amendments only. Such a motion shall be decided without debate. The adoption of such a motion does not preclude further amendment, to be decided without debate.

(b) If the Committee of the Whole House on the state of the Union closes debate on any portion of a bill or resolution before there has been debate on an amendment that a Member, Delegate, or Resident Commissioner has caused to be printed in the Congressional Record at least

one day before its consideration, the Member, Delegate, or Resident Commissioner who caused the amendment to be printed in the Record shall be allowed five minutes to explain it, after which the Member, Delegate, or Resident Commissioner who shall first obtain the floor shall be allowed five minutes to speak in opposition to it. There shall be no further debate thereon.

(c) Material submitted for printing in the Congressional Record under this clause shall indicate the full text of the proposed amendment, the name of the Member, Delegate, or Resident Commissioner proposing it, the number of the bill or resolution to which it will be offered, and the point in the bill or resolution or amendment thereto where the amendment is intended to be offered. The amendment shall appear in a portion of the Record designated for that purpose. Amendments to a specified measure submitted for printing in that portion of the Record shall be numbered in the order printed.

Striking the enacting clause

9. A motion that the Committee of the Whole House on the state of the Union rise and report a bill or resolution to the House with the recommendation that the enacting or resolving clause be stricken shall have precedence of a motion to amend, and, if carried in the House, shall constitute a rejection of the bill or resolution. Whenever a bill or resolution is reported from the Committee of the Whole with such adverse recommendation and the

recommendation is rejected by the House, the bill or resolution shall stand recommitted to the Committee of the Whole without further action by the House. Before the question of concurrence is submitted, it shall be in order to move that the House refer the bill or resolution to a committee, with or without instructions. If a bill or resolution is so referred, then when it is again reported to the House it shall be referred to the Committee of the Whole without debate.

Concurrent resolution on the budget

10. (a) At the conclusion of general debate in the Committee of the Whole House on the state of the Union on a concurrent resolution on the budget under section 305(a) of the Congressional Budget Act of 1974, the concurrent resolution shall be considered as read for amendment.

(b) It shall not be in order in the House or in the Committee of the Whole House on the state of the Union to consider an amendment to a concurrent resolution on the budget, or an amendment thereto, unless the concurrent resolution, as amended by such amendment or amendments—

(1) would be mathematically consistent except as limited by paragraph (c); and

(2) would contain all the matter set forth in paragraphs (1) through (5) of section 301(a) of the Congressional Budget Act of 1974.

(c)(1) Except as specified in subparagraph (2), it shall not be in order in the House or in the Committee of the Whole House on the state of the Union to consider an amendment to a concurrent resolution on the budget, or an amendment thereto, that proposes to change the amount of the appropriate level of the public debt set forth in the concurrent resolution, as reported.

(2) Amendments to achieve mathematical consistency under section 305(a)(5) of the Congressional Budget Act of 1974, if offered by direction of the Committee on the Budget, may propose to adjust the amount of the appropriate level of the public debt set forth in the concurrent resolution, as reported, to reflect changes made in other figures contained in the concurrent resolution.

Applicability of Rules of the House

11. The Rules of the House are the rules of the Committee of the Whole House on the state of the Union so far as applicable.

RULE XIX

MOTIONS FOLLOWING THE AMENDMENT STAGE

Previous question

1. (a) There shall be a motion for the previous question, which, being ordered, shall have the effect of cutting off all debate and bringing the House to a direct vote on the

immediate question or questions on which it has been ordered. Whenever the previous question has been ordered on an otherwise debatable question on which there has been no debate, it shall be in order to debate that question for 40 minutes, equally divided and controlled by a proponent of the question and an opponent. The previous question may be moved and ordered on a single question, on a series of questions allowable under the rules, or on an amendment or amendments, or may embrace all authorized motions or amendments and include the bill or resolution to its passage, adoption, or rejection.

(b) Incidental questions of order arising during the pendency of a motion for the previous question shall be decided, whether on appeal or otherwise, without debate.

(c) Notwithstanding paragraph (a), when the previous question is operating to adoption or passage of a measure pursuant to a special order of business, the Chair may postpone further consideration of such measure in the House to such time as may be designated by the Speaker.

Recommit

2. (a) After the previous question has been ordered on passage or adoption of a measure, or pending a motion to that end, it shall be in order to move that the House recommit (or commit, as the case may be) the measure, with or without instructions, to a standing or select committee. For such a motion to recommit, the Speaker

shall give preference in recognition to a Member, Delegate, or Resident Commissioner who is opposed to the measure.

(b)(1) Except as provided in paragraph (c), a motion that the House recommit a bill or joint resolution on which the previous question has been ordered to passage shall be debatable for 10 minutes equally divided between the proponent and an opponent.

(2) A motion to recommit a bill or joint resolution may include instructions only in the form of a direction to report an amendment or amendments back to the House forthwith.

(c) On demand of the floor manager for the majority, it shall be in order to debate the motion for one hour equally divided and controlled by the proponent and an opponent.

Reconsideration

3. When a motion has been carried or lost, it shall be in order on the same or succeeding day for a Member on the prevailing side of the question to enter a motion for the reconsideration thereof. The entry of such a motion shall take precedence over all other questions except the consideration of a conference report or a motion to adjourn, and may not be withdrawn after such succeeding day without the consent of the House. Once entered, a motion may be called up for consideration by any Member. During the last six days of a session of

Congress, such a motion shall be disposed of when entered.

4. A bill, petition, memorial, or resolution referred to a committee, or reported therefrom for printing and recommitment, may not be brought back to the House on a motion to reconsider.

RULE XX

VOTING AND QUORUM CALLS

1. (a) The House shall divide after the Speaker has put a question to a vote by voice as provided in clause 6 of rule I if the Speaker is in doubt or division is demanded. Those in favor of the question shall first rise or otherwise indicate from their seats and be counted, and then those opposed.

(b) If a Member, Delegate, or Resident Commissioner requests a recorded vote, and that request is supported by at least one-fifth of a quorum, the vote shall be taken by electronic device unless the Speaker invokes another procedure for recording votes provided in this rule. A recorded vote taken in the House under this paragraph shall be considered a vote by the yeas and nays.

(c) In case of a tie vote, a question shall be lost.

2. (a) Unless the Speaker directs otherwise, the Clerk shall conduct a record vote or quorum call by electronic device. In such a case the Clerk shall enter on the Journal

and publish in the Congressional Record, in alphabetical order in each category, the names of Members recorded as voting in the affirmative, the names of Members recorded as voting in the negative, and the names of Members answering present as if they had been called in the manner provided in clause 3. Except as otherwise permitted under clause 8 or 9 of this rule or under clause 6 of rule XVIII, the minimum time for a record vote or quorum call by electronic device shall be 15 minutes.

(b) When the electronic voting system is inoperable or is not used, the Speaker or Chair may direct the Clerk to conduct a record vote or quorum call as provided in clause 3 or 4.

3. The Speaker may direct the Clerk to conduct a record vote or quorum call by call of the roll. In such a case the Clerk shall call the names of Members, alphabetically by surname. When two or more have the same surname, the name of the State (and, if necessary to distinguish among Members from the same State, the given names of the Members) shall be added. After the roll has been called once, the Clerk shall call the names of those not recorded, alphabetically by surname. Members appearing after the second call, but before the result is announced, may vote or announce a pair.

4. (a) The Speaker may direct a record vote or quorum call to be conducted by tellers. In such a case the tellers named by the Speaker shall record the names of the

Members voting on each side of the question or record their presence, as the case may be, which the Clerk shall enter on the Journal and publish in the Congressional Record. Absentees shall be noted, but the doors may not be closed except when ordered by the Speaker. The minimum time for a record vote or quorum call by tellers shall be 15 minutes.

(b) On the demand of a Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote shall be noted by the Clerk, entered on the Journal, reported to the Speaker with the names of the Members voting, and be counted and announced in determining the presence of a quorum to do business.

5. (a) In the absence of a quorum, a majority comprising at least 15 Members, which may include the Speaker, may compel the attendance of absent Members.

(b) Subject to clause 7(b) a majority described in paragraph (a) may order the Sergeant-at-Arms to send officers appointed by the Sergeant-at-Arms to arrest those Members for whom no sufficient excuse is made and shall secure and retain their attendance. The House shall determine on what condition they shall be discharged. Unless the House otherwise directs, the Members who voluntarily appear shall be admitted immediately to the Hall of the House and shall report their names to the Clerk to be entered on the Journal as present.

(c)(1) If the House should be without a quorum due to catastrophic circumstances, then—

(A) until there appear in the House a sufficient number of Representatives to constitute a quorum among the whole number of the House, a quorum in the House shall be determined based upon the provisional number of the House; and

(B) the provisional number of the House, as of the close of the call of the House described in subparagraph (3)(C), shall be the number of Representatives responding to that call of the House.

(2) If a Representative counted in determining the provisional number of the House thereafter ceases to be a Representative, or if a Representative not counted in determining the provisional number of the House thereafter appears in the House, the provisional number of the House shall be adjusted accordingly.

(3) For the purposes of subparagraph (1), the House shall be considered to be without a quorum due to catastrophic circumstances if, after a motion under paragraph (a) has been disposed of and without intervening adjournment, each of the following occurs in the stated sequence:

(A) A call of the House (or a series of calls of the House) is closed after aggregating a period in excess of 72 hours (excluding time the House is in recess) without producing a quorum.

(B) The Speaker—

(i) with the Majority Leader and the Minority Leader (or their respective designees), receives from the Sergeant-at-Arms (or a designee) a catastrophic quorum failure report, as described in subparagraph (4);

(ii) consults with the Majority Leader and the Minority Leader (or their respective designees) on the content of that report; and

(iii) announces the content of that report to the House.

(C) A further call of the House (or a series of calls of the House) is closed after aggregating a period in excess of 24 hours (excluding time the House is in recess) without producing a quorum.

(4)(A) For purposes of subparagraph (3), a catastrophic quorum failure report is a report advising that the inability of the House to establish a quorum is attributable to catastrophic circumstances involving natural disaster, attack, contagion, or similar calamity rendering Representatives incapable of attending the proceedings of the House.

(B) Such report shall specify the following:

(i) The number of vacancies in the House and the names of former Representatives whose seats are vacant.

(ii) The names of Representatives considered incapacitated.

(iii) The names of Representatives not incapacitated but otherwise incapable of attending the proceedings of the House.

(iv) The names of Representatives unaccounted for.

(C) Such report shall be prepared on the basis of the most authoritative information available after consultation with the Attending Physician to the Congress and the Clerk (or their respective designees) and pertinent public health and law enforcement officials.

(D) Such report shall be updated every legislative day for the duration of any proceedings under or in reliance on this paragraph. The Speaker shall make such updates available to the House.

(5) An announcement by the Speaker under subparagraph (3)(B)(iii) shall not be subject to appeal.

(6) Subparagraph (1) does not apply to a proposal to create a vacancy in the representation from any State in respect of a Representative not incapacitated but otherwise incapable of attending the proceedings of the House.

(7) For purposes of this paragraph:

(A) The term “provisional number of the House” means the number of Representatives upon which a quorum will be computed in the House until Representatives sufficient in number to constitute a

quorum among the whole number of the House appear in the House.

(B) The term “whole number of the House” means the number of Representatives chosen, sworn, and living whose membership in the House has not been terminated by resignation or by the action of the House.

(d) Upon the death, resignation, expulsion, disqualification, removal, or swearing of a Member, the whole number of the House shall be adjusted accordingly. The Speaker shall announce the adjustment to the House. Such an announcement shall not be subject to appeal. In the case of a death, the Speaker may lay before the House such documentation from Federal, State, or local officials as the Speaker deems pertinent.

6. (a) When a quorum fails to vote on a question, a quorum is not present, and objection is made for that cause (unless the House shall adjourn)—

- (1) there shall be a call of the House;
- (2) the Sergeant-at-Arms shall proceed forthwith to bring in absent Members; and
- (3) the yeas and nays on the pending question shall at the same time be considered as ordered.

(b) The Clerk shall record Members by the yeas and nays on the pending question, using such procedure as the Speaker may invoke under clause 2, 3, or 4. Each Member arrested under this clause shall be brought by the Sergeant-at-Arms before the House, whereupon the

Member shall be noted as present, discharged from arrest, and given an opportunity to vote; and such vote shall be recorded. If those voting on the question and those who are present and decline to vote together make a majority of the House, the Speaker shall declare that a quorum is constituted, and the pending question shall be decided as the requisite majority of those voting shall have determined. Thereupon further proceedings under the call shall be considered as dispensed with.

(c) At any time after Members have had the requisite opportunity to respond by the yeas and nays ordered under this clause, but before a result has been announced, a motion that the House adjourn shall be in order if seconded by a majority of those present, to be ascertained by actual count by the Speaker. If the House adjourns on such a motion, all proceedings under this clause shall be considered as vacated.

7. (a) The Speaker may not entertain a point of order that a quorum is not present unless a question has been put to a vote.

(b) Subject to paragraph (c) the Speaker may recognize a Member, Delegate, or Resident Commissioner to move a call of the House at any time. When a quorum is established pursuant to a call of the House, further proceedings under the call shall be considered as dispensed with unless the Speaker recognizes for a motion to compel attendance of Members under clause 5(b).

(c) A call of the House shall not be in order after the previous question is ordered unless the Speaker determines by actual count that a quorum is not present.

Postponement of proceedings

8. (a)(1) When a recorded vote is ordered, or the yeas and nays are ordered, or a vote is objected to under clause 6—

(A) on any of the questions specified in subparagraph (2), the Speaker may postpone further proceedings to a designated place in the legislative schedule within two additional legislative days; and

(B) on the question of agreeing to the Speaker's approval of the Journal, the Speaker may postpone further proceedings to a designated place in the legislative schedule on that legislative day.

(2) The questions described in subparagraph (1) are as follows:

(A) The question of passing a bill or joint resolution.

(B) The question of adopting a resolution or concurrent resolution.

(C) The question of agreeing to a motion to instruct managers on the part of the House (except that proceedings may not resume on such a motion under clause 7(c) of rule XXII if the managers have filed a report in the House).

(D) The question of agreeing to a conference report.

(E) The question of adopting a motion to recommit.

(F) The question of adopting a motion to concur in a Senate amendment, with or without amendment.

(G) The question of ordering the previous question on a question described in subdivisions (A) through (F).

(H) The question of agreeing to a motion to suspend the rules.

(I) The question of agreeing to a motion to reconsider or the question of agreeing to a motion to lay on the table a motion to reconsider.

(J) The question of agreeing to an amendment reported from the Committee of the Whole.

(b) At the time designated by the Speaker for further proceedings on questions postponed under paragraph (a), the Speaker shall resume proceedings on each postponed question.

(c) The Speaker may reduce to five minutes the minimum time for electronic voting on a question postponed under this clause, or on a question incidental thereto, that—

(1) follows another electronic vote without intervening business, so long as the minimum time for electronic voting on the first in any series of questions is 15 minutes; or

(2) follows a report from the Committee of the Whole without intervening debate or motion if in the discretion of the Speaker Members would be afforded an adequate opportunity to vote.

(d) If the House adjourns on a legislative day designated for further proceedings on questions postponed under this clause without disposing of such questions, then on the next legislative day the unfinished business is the disposition of such questions.

Five-minute votes

9. The Speaker may reduce to five minutes the minimum time for electronic voting—

(a) on any question arising without intervening business after an electronic vote on another question if notice of possible five-minute voting for a given series of votes was issued before the preceding electronic vote; or

(b) if in the discretion of the Speaker Members would be afforded an adequate opportunity to vote—

(1) on any question arising after a report from the Committee of the Whole without debate or intervening motion; or

(2) on the question of adoption of a motion to recommit (or ordering the previous question thereon) arising without intervening motion or debate other than debate on the motion.

Automatic yeas and nays

10. The yeas and nays shall be considered as ordered when the Speaker puts the question on passage of a bill or joint resolution, or on adoption of a conference report,

making general appropriations, or increasing Federal income tax rates (within the meaning of clause 5 of rule XXI), or on final adoption of a concurrent resolution on the budget or conference report thereon.

Ballot votes

11. In a case of ballot for election, a majority of the votes shall be necessary to an election. When there is not such a majority on the first ballot, the process shall be repeated until a majority is obtained. In all balloting blanks shall be rejected, may not be counted in the enumeration of votes, and may not be reported by the tellers.

RULE XXI

RESTRICTIONS ON CERTAIN BILLS

Reservation of certain points of order

1. At the time a general appropriation bill is reported, all points of order against provisions therein shall be considered as reserved.

General appropriation bills and amendments

2. (a)(1) An appropriation may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, for an expenditure not previously authorized by law, except to continue appropriations for

public works and objects that are already in progress.

(2) A reappropriation of unexpended balances of appropriations may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, except to continue appropriations for public works and objects that are already in progress. This subparagraph does not apply to transfers of unexpended balances within the department or agency for which they were originally appropriated that are reported by the Committee on Appropriations.

(b) A provision changing existing law may not be reported in a general appropriation bill, including a provision making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation, except germane provisions that retrench expenditures by the reduction of amounts of money covered by the bill (which may include those recommended to the Committee on Appropriations by direction of a legislative committee having jurisdiction over the subject matter) and except rescissions of appropriations contained in appropriation Acts.

(c) An amendment to a general appropriation bill shall not be in order if changing existing law, including an amendment making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation. Except as

provided in paragraph (d), an amendment proposing a limitation not specifically contained or authorized in existing law for the period of the limitation shall not be in order during consideration of a general appropriation bill.

(d) After a general appropriation bill has been read for amendment, a motion that the Committee of the Whole House on the state of the Union rise and report the bill to the House with such amendments as may have been adopted shall, if offered by the Majority Leader or a designee, have precedence over motions to amend the bill. If such a motion to rise and report is rejected or not offered, amendments proposing limitations not specifically contained or authorized in existing law for the period of the limitation or proposing germane amendments that retrench expenditures by reductions of amounts of money covered by the bill may be considered.

(e) A provision other than an appropriation designated an emergency under section 251(b)(2) or section 252(e) of the Balanced Budget and Emergency Deficit Control Act, a rescission of budget authority, or a reduction in direct spending or an amount for a designated emergency may not be reported in an appropriation bill or joint resolution containing an emergency designation under section 251(b)(2) or section 252(e) of such Act and may not be in order as an amendment thereto.

(f) During the reading of an appropriation bill for amendment in the Committee of the Whole House on the

state of the Union, it shall be in order to consider en bloc amendments proposing only to transfer appropriations among objects in the bill without increasing the levels of budget authority or outlays in the bill. When considered en bloc under this paragraph, such amendments may amend portions of the bill not yet read for amendment (following disposition of any points of order against such portions) and are not subject to a demand for division of the question in the House or in the Committee of the Whole.

(g) An amendment to a general appropriation bill shall not be in order if proposing a net increase in the level of budget authority in the bill.

3. It shall not be in order to consider a general appropriation bill or joint resolution, or conference report thereon, that—

(a) provides spending authority derived from receipts deposited in the Highway Trust Fund (excluding any transfers from the General Fund of the Treasury); or

(b) reduces or otherwise limits the accruing balances of the Highway Trust Fund,

for any purpose other than for those activities authorized for the highway or mass transit categories.

Appropriations on legislative bills

4. A bill or joint resolution carrying an appropriation may not be reported by a committee not having jurisdiction to report appropriations, and an amendment

proposing an appropriation shall not be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A point of order against an appropriation in such a bill, joint resolution, or amendment thereto may be raised at any time during pendency of that measure for amendment.

Tax and tariff measures and amendments

5. (a)(1) A bill or joint resolution carrying a tax or tariff measure may not be reported by a committee not having jurisdiction to report tax or tariff measures, and an amendment in the House or proposed by the Senate carrying a tax or tariff measure shall not be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A point of order against a tax or tariff measure in such a bill, joint resolution, or amendment thereto may be raised at any time during pendency of that measure for amendment.

(2) For purposes of paragraph (1), a tax or tariff measure includes an amendment proposing a limitation on funds in a general appropriation bill for the administration of a tax or tariff.

Passage of tax rate increases

(b) A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members

voting, a quorum being present. In this paragraph the term “Federal income tax rate increase” means any amendment to subsection (a), (b), (c), (d), or (e) of section 1, or to section 11(b) or 55(b), of the Internal Revenue Code of 1986, that imposes a new percentage as a rate of tax and thereby increases the amount of tax imposed by any such section.

Consideration of retroactive tax rate increases

(c) It shall not be in order to consider a bill, joint resolution, amendment, or conference report carrying a retroactive Federal income tax rate increase. In this paragraph—

(1) the term “Federal income tax rate increase” means any amendment to subsection (a), (b), (c), (d), or (e) of section 1, or to section 11(b) or 55(b), of the Internal Revenue Code of 1986, that imposes a new percentage as a rate of tax and thereby increases the amount of tax imposed by any such section; and

(2) a Federal income tax rate increase is retroactive if it applies to a period beginning before the enactment of the provision.

Designation of public works

6. It shall not be in order to consider a bill, joint resolution, amendment, or conference report that provides for the designation or redesignation of a public work in

honor of an individual then serving as a Member, Delegate, Resident Commissioner, or Senator.

7. It shall not be in order to consider a concurrent resolution on the budget, or an amendment thereto, or a conference report thereon that contains reconciliation directives under section 310 of the Congressional Budget Act of 1974 that specify changes in law such that the reconciliation legislation reported pursuant to such directives would cause an increase in net direct spending (as such term is defined in clause 10) for the period covered by such concurrent resolution.

8. With respect to measures considered pursuant to a special order of business, points of order under title III of the Congressional Budget Act of 1974 shall operate without regard to whether the measure concerned has been reported from committee. Such points of order shall operate with respect to (as the case may be)—

(a) the form of a measure recommended by the reporting committee where the statute uses the term “as reported” (in the case of a measure that has been so reported);

(b) the form of the measure made in order as an original bill or joint resolution for the purpose of amendment; or

(c) the form of the measure on which the previous question is ordered directly to passage.

9. (a) It shall not be in order to consider—

(1) a bill or joint resolution reported by a committee unless the report includes a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the bill or in the report (and the name of any Member, Delegate, or Resident Commissioner who submitted a request to the committee for each respective item included in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits;

(2) a bill or joint resolution not reported by a committee unless the chair of each committee of initial referral has caused a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the bill (and the name of any Member, Delegate, or Resident Commissioner who submitted a request to the committee for each respective item included in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits to be printed in the Congressional Record prior to its consideration;

(3) an amendment to a bill or joint resolution to be offered at the outset of its consideration for amendment by a member of a committee of initial referral as designated in a report of the Committee on Rules to accompany a resolution prescribing a special order of business unless the proponent has caused a list of

congressional earmarks, limited tax benefits, and limited tariff benefits in the amendment (and the name of any Member, Delegate, or Resident Commissioner who submitted a request to the proponent for each respective item included in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits to be printed in the Congressional Record prior to its consideration; or

(4) a conference report to accompany a bill or joint resolution unless the joint explanatory statement prepared by the managers on the part of the House and the managers on the part of the Senate includes a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the conference report or joint statement (and the name of any Member, Delegate, Resident Commissioner, or Senator who submitted a request to the House or Senate committees of jurisdiction for each respective item included in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits.

(b) It shall not be in order to consider a conference report to accompany a regular general appropriation bill unless the joint explanatory statement prepared by the managers on the part of the House and the managers on the part of the Senate includes—

(1) a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the conference report or joint statement (and the name of any Member, Delegate, Resident Commissioner, or Senator who submitted a request to the House or Senate committees of jurisdiction for each respective item included in such list) that were neither committed to the conference committee by either House nor in a report of a committee of either House on such bill or on a companion measure; or

(2) a statement that the proposition contains no such congressional earmarks, limited tax benefits, or limited tariff benefits.

(c) It shall not be in order to consider a rule or order that waives the application of paragraph (a) or (b). As disposition of a point of order under this paragraph or paragraph (b), the Chair shall put the question of consideration with respect to the rule or order or conference report, as applicable. The question of consideration shall be debatable for 10 minutes by the Member initiating the point of order and for 10 minutes by an opponent, but shall otherwise be decided without intervening motion except one that the House adjourn.

(d) In order to be cognizable by the Chair, a point of order raised under paragraph (a) may be based only on the failure of a report, submission to the Congressional Record, or joint explanatory statement to include a list

required by paragraph (a) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits.

(e) For the purpose of this clause, the term “congressional earmark” means a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

(f) For the purpose of this clause, the term “limited tax benefit” means—

(1) any revenue-losing provision that—

(A) provides a Federal tax deduction, credit, exclusion, or preference to 10 or fewer beneficiaries under the Internal Revenue Code of 1986, and

(B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; or

(2) any Federal tax provision which provides one beneficiary temporary or permanent transition relief from a change to the Internal Revenue Code of 1986.

(g) For the purpose of this clause, the term “limited tariff benefit” means a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

10. (a)(1) Except as provided in paragraphs (b) and (c), it shall not be in order to consider a bill or joint resolution, or an amendment thereto or a conference report thereon, if the provisions of such measure have the net effect of increasing mandatory spending for the period of either—

(A) the current year, the budget year, and the four fiscal years following that budget year; or

(B) the current year, the budget year, and the nine fiscal years following that budget year.

(2) For the purpose of this clause, the terms “budget year” and “current year” have the meanings specified in section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985, and the term “mandatory spending” has the meaning of “direct spending” specified in such section 250 except that such term shall also include provisions in appropriation Acts that make outyear modifications to substantive law as described in section 3(4)(C) of the Statutory Pay-As-You-Go Act of 2010.

(b) If a bill or joint resolution, or an amendment thereto, is considered pursuant to a special order of the House directing the Clerk to add as new matter at the end of such bill or joint resolution the entire text of a separate

measure or measures as passed by the House, the new matter proposed to be added shall be included in the evaluation under paragraph (a) of the bill, joint resolution, or amendment.

(c)(1) Except as provided in subparagraph (2), the evaluation under paragraph (a) shall exclude a provision expressly designated as an emergency for the Statutory Pay-As-You-Go Act of 2010, in the case of a point of order under this clause against consideration of—

(A) a bill or joint resolution;

(B) an amendment made in order as original text by a special order of business;

(C) a conference report; or

(D) an amendment between the Houses.

(2) In the case of an amendment (other than one specified in subparagraph (1)) to a bill or joint resolution, the evaluation under paragraph (a) shall give no cognizance to any designation of emergency.

11. It shall not be in order to consider a bill or joint resolution which has not been reported by a committee until the third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which such measure has been available to Members, Delegates, and the Resident Commissioner.

12. (a)(1) Before a bill or joint resolution proposing to repeal or amend a statute or part thereof may be

considered, there shall be made available on a publicly available website of the House an easily searchable electronic comparative print that shows how the bill or joint resolution proposes to change current law, showing (to the greatest extent practicable) by appropriate typographical devices the omissions and insertions proposed.

(2) Before an amendment in the nature of a substitute may be considered if the amendment proposes to repeal or amend a statute or part thereof, there shall be made available on a publicly available website of the House an easily searchable electronic comparative print that shows (to the greatest extent practicable) how the amendment proposes to change current law, showing by appropriate typographical devices the omissions and insertions proposed.

(b) If a committee reports a bill or joint resolution, before the bill or joint resolution may be considered with text different from the text reported, there shall be made available on a publicly available website of the House a document that shows, by appropriate typographical devices, the differences between the text of the bill or joint resolution as proposed to be considered and the text of the bill or joint resolution as reported.¹

¹ The effective date of clause 12 is December 31, 2017.

RULE XXII

HOUSE AND SENATE RELATIONS

Senate amendments

1. A motion to disagree to Senate amendments to a House proposition and to request or agree to a conference with the Senate, or a motion to insist on House amendments to a Senate proposition and to request or agree to a conference with the Senate, shall be privileged in the discretion of the Speaker if offered by direction of the primary committee and of all reporting committees that had initial referral of the proposition.

2. A motion to dispose of House bills with Senate amendments not requiring consideration in the Committee of the Whole House on the state of the Union shall be privileged.

3. Except as permitted by clause 1, before the stage of disagreement, a Senate amendment to a House bill or resolution shall be subject to the point of order that it must first be considered in the Committee of the Whole House on the state of the Union if, originating in the House, it would be subject to such a point under clause 3 of rule XVIII.

4. When the stage of disagreement has been reached on a bill or resolution with House or Senate amendments, a motion to dispose of any amendment shall be privileged.

5. (a) Managers on the part of the House may not agree to a Senate amendment described in paragraph (b) unless specific authority to agree to the amendment first is given

by the House by a separate vote with respect thereto. If specific authority is not granted, the Senate amendment shall be reported in disagreement by the conference committee back to the two Houses for disposition by separate motion.

(b) The managers on the part of the House may not agree to a Senate amendment described in paragraph (a) that—

(1) would violate clause 2(a)(1) or (c) of rule XXI if originating in the House; or

(2) proposes an appropriation on a bill other than a general appropriation bill.

6. A Senate amendment carrying a tax or tariff measure in violation of clause 5(a) of rule XXI may not be agreed to.

Conference reports; amendments reported in disagreement

7. (a) The presentation of a conference report shall be in order at any time except during a reading of the Journal or the conduct of a record vote, a vote by division, or a quorum call.

(b)(1) Subject to subparagraph (2) the time allotted for debate on a motion to instruct managers on the part of the House shall be equally divided between the majority and minority parties.

(2) If the proponent of a motion to instruct managers on the part of the House and the Member, Delegate, or

Resident Commissioner of the other party identified under subparagraph (1) both support the motion, one-third of the time for debate thereon shall be allotted to a Member, Delegate, or Resident Commissioner who opposes the motion on demand of that Member, Delegate, or Resident Commissioner.

(c)(1) A motion to instruct managers on the part of the House, or a motion to discharge all managers on the part of the House and to appoint new conferees, shall be privileged after a conference committee has been appointed for 45 calendar days and 25 legislative days without making a report, but only on the day after the calendar day on which the Member, Delegate, or Resident Commissioner offering the motion announces to the House intention to do so and the form of the motion.

(2) The Speaker may designate a time in the legislative schedule on that legislative day for consideration of a motion described in subparagraph (1).

(3) During the last six days of a session of Congress, a motion under subparagraph (1) shall be privileged after a conference committee has been appointed for 36 hours without making a report and the proponent meets the notice requirement in subparagraph (1).

(d) Instructions to conferees in a motion to instruct or in a motion to recommit to conference may not include argument.

(e) Each conference report to the House shall be printed as a report of the House. Each such report shall be accompanied by a joint explanatory statement prepared jointly by the managers on the part of the House and the managers on the part of the Senate. The joint explanatory statement shall be sufficiently detailed and explicit to inform the House of the effects of the report on the matters committed to conference.

8. (a)(1) Except as specified in subparagraph (2), it shall not be in order to consider a conference report until

(A) the third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which the conference report and the accompanying joint explanatory statement have been available to Members, Delegates, and the Resident Commissioner in the Congressional Record or pursuant to clause 3 of rule XXIX; and

(B) printed or electronic copies of the conference report and the accompanying joint explanatory statement have been available to Members, Delegates, and the Resident Commissioner for at least two hours.

(2) Subparagraph (1)(A) does not apply during the last six days of a session of Congress.

(b)(1) Except as specified in subparagraph (2), it shall not be in order to consider a motion to dispose of a Senate amendment reported in disagreement by a conference

committee until—

(A) the third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which the report in disagreement and any accompanying statement have been available to Members, Delegates, and the Resident Commissioner in the Congressional Record; and

(B) copies of the report in disagreement and any accompanying statement, together with the text of the Senate amendment, have been available to Members, Delegates, and the Resident Commissioner for at least two hours.

(2) Subparagraph (1)(A) does not apply during the last six days of a session of Congress.

(3) During consideration of a Senate amendment reported in disagreement by a conference committee on a general appropriation bill, a motion to insist on disagreement to the Senate amendment shall be preferential to any other motion to dispose of that amendment if the original motion offered by the floor manager proposes to change existing law and the motion to insist is offered before debate on the original motion by the chair of the committee having jurisdiction of the subject matter of the amendment or a designee. Such a preferential motion shall be separately debatable for one hour equally divided between its proponent and the proponent of the original motion. The previous question

shall be considered as ordered on the preferential motion to its adoption without intervening motion.

(c) A conference report or a Senate amendment reported in disagreement by a conference committee that has been available as provided in paragraph (a) or (b) shall be considered as read when called up.

(d)(1) Subject to subparagraph (2), the time allotted for debate on a conference report or on a motion to dispose of a Senate amendment reported in disagreement by a conference committee shall be equally divided between the majority and minority parties.

(2) If the floor manager for the majority and the floor manager for the minority both support the conference report or motion, one-third of the time for debate thereon shall be allotted to a Member, Delegate, or Resident Commissioner who opposes the conference report or motion on demand of that Member, Delegate, or Resident Commissioner.

(e) Under clause 6(a)(2) of rule XIII, a resolution proposing only to waive a requirement of this clause concerning the availability of reports to Members, Delegates, and the Resident Commissioner may be considered by the House on the same day it is reported by the Committee on Rules.

9. Whenever a disagreement to an amendment has been committed to a conference committee, the managers on the part of the House may propose a substitute that is a

germane modification of the matter in disagreement. The introduction of any language presenting specific additional matter not committed to the conference committee by either House does not constitute a germane modification of the matter in disagreement. Moreover, a conference report may not include matter not committed to the conference committee by either House and may not include a modification of specific matter committed to the conference committee by either or both Houses if that modification is beyond the scope of that specific matter as committed to the conference committee.

10. (a)(1) A Member, Delegate, or Resident Commissioner may raise a point of order against nongermane matter, as specified in subparagraph (2), before the commencement of debate on—

(A) a conference report;

(B) a motion that the House recede from its disagreement to a Senate amendment reported in disagreement by a conference committee and concur therein, with or without amendment; or

(C) a motion that the House recede from its disagreement to a Senate amendment on which the stage of disagreement has been reached and concur therein, with or without amendment.

(2) A point of order against nongermane matter is one asserting that a proposition described in subparagraph (1) contains specified matter that would violate clause 7 of

rule XVI if it were offered in the House as an amendment to the underlying measure in the form it was passed by the House.

(b) If a point of order under paragraph (a) is sustained, a motion that the House reject the nongermane matter identified by the point of order shall be privileged. Such a motion is debatable for 40 minutes, one-half in favor of the motion and one-half in opposition thereto.

(c) After disposition of a point of order under paragraph (a) or a motion to reject under paragraph (b), any further points of order under paragraph (a) not covered by a previous point of order, and any consequent motions to reject under paragraph (b), shall be likewise disposed of.

(d)(1) If a motion to reject under paragraph (b) is adopted, then after disposition of all points of order under paragraph (a) and any consequent motions to reject under paragraph (b), the conference report or motion, as the case may be, shall be considered as rejected and the matter remaining in disagreement shall be disposed of under subparagraph (2) or (3), as the case may be.

(2) After the House has adopted one or more motions to reject nongermane matter contained in a conference report under the preceding provisions of this clause—

(A) if the conference report accompanied a House measure amended by the Senate, the pending question shall be whether the House shall recede and concur in the Senate amendment with an amendment consisting

of so much of the conference report as was not rejected;
and

(B) if the conference report accompanied a Senate measure amended by the House, the pending question shall be whether the House shall insist further on the House amendment.

(3) After the House has adopted one or more motions to reject nongermane matter contained in a motion that the House recede and concur in a Senate amendment, with or without amendment, the following motions shall be privileged and shall have precedence in the order stated:

(A) A motion that the House recede and concur in the Senate amendment with an amendment in writing then available on the floor.

(B) A motion that the House insist on its disagreement to the Senate amendment and request a further conference with the Senate.

(C) A motion that the House insist on its disagreement to the Senate amendment.

(e) If, on a division of the question on a motion described in paragraph (a)(1)(B) or (C), the House agrees to recede, then a Member, Delegate, or Resident Commissioner may raise a point of order against nongermane matter, as specified in paragraph (a)(2), before the commencement of debate on concurring in the Senate amendment, with or without amendment. A point of order under this paragraph shall be disposed of

according to the preceding provisions of this clause in the same manner as a point of order under paragraph (a).

11. It shall not be in order to consider a conference report to accompany a bill or joint resolution that proposes to amend the Internal Revenue Code of 1986 unless—

(a) the joint explanatory statement of the managers includes a tax complexity analysis prepared by the Joint Committee on Taxation in accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998; or

(b) the chair of the Committee on Ways and Means causes such a tax complexity analysis to be printed in the Congressional Record before consideration of the conference report.

12. (a)(1) Subject to subparagraph (2), a meeting of each conference committee shall be open to the public.

(2) In open session of the House, a motion that managers on the part of the House be permitted to close to the public a meeting or meetings of their conference committee shall be privileged, shall be decided without debate, and shall be decided by the yeas and nays.

(3) In conducting conferences with the Senate, managers on the part of the House should endeavor to ensure—

(A) that meetings for the resolution of differences between the two Houses occur only under

circumstances in which every manager on the part of the House has notice of the meeting and a reasonable opportunity to attend;

(B) that all provisions on which the two Houses disagree are considered as open to discussion at any meeting of a conference committee; and

(C) that papers reflecting a conference agreement are held inviolate to change without renewal of the opportunity of all managers on the part of the House to reconsider their decisions to sign or not to sign the agreement.

(4) Managers on the part of the House shall be provided a unitary time and place with access to at least one complete copy of the final conference agreement for the purpose of recording their approval (or not) of the final conference agreement by placing their signatures (or not) on the sheets prepared to accompany the conference report and joint explanatory statement of the managers.

(b) A point of order that a conference committee failed to comply with paragraph (a) may be raised immediately after the conference report is read or considered as read. If such a point of order is sustained, the conference report shall be considered as rejected, the House shall be considered to have insisted on its amendments or on disagreement to the Senate amendments, as the case may be, and to have requested a further conference with the

Senate, and the Speaker may appoint new conferees without intervening motion.

13. It shall not be in order to consider a conference report the text of which differs in any way, other than clerical, from the text that reflects the action of the conferees on all of the differences between the two Houses, as recorded by their placement of their signatures (or not) on the sheets prepared to accompany the conference report and joint explanatory statement of the managers.

RULE XXIII

CODE OF OFFICIAL CONDUCT

There is hereby established by and for the House the following code of conduct, to be known as the “Code of Official Conduct”:

1. A Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House.

2. A Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof.

3. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive compensation and may not permit compensation to accrue

to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress.

4. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept gifts except as provided by clause 5 of rule XXV.

5. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept an honorarium for a speech, a writing for publication, or other similar activity, except as otherwise provided under rule XXV.

6. A Member, Delegate, or Resident Commissioner—

(a) shall keep the campaign funds of such individual separate from the personal funds of such individual;

(b) may not convert campaign funds to personal use in excess of an amount representing reimbursement for legitimate and verifiable campaign expenditures; and

(c) except as provided in clause 1(b) of rule XXIV, may not expend funds from a campaign account of such individual that are not attributable to bona fide campaign or political purposes.

7. A Member, Delegate, or Resident Commissioner shall treat as campaign contributions all proceeds from testimonial dinners or other fund-raising events.

8. (a) A Member, Delegate, Resident Commissioner, or officer of the House may not retain an employee who does

not perform duties for the offices of the employing authority commensurate with the compensation such employee receives.

(b) In the case of a committee employee who works under the direct supervision of a member of the committee other than a chair, the chair may require that such member affirm in writing that the employee has complied with clause 8(a) (subject to clause 9 of rule X) as evidence of compliance by the chair with this clause and with clause 9 of rule X.

(c)(1) Except as specified in subparagraph (2)—

(A) a Member, Delegate, or Resident Commissioner may not retain the relative of such individual in a paid position; and

(B) an employee of the House may not accept compensation for work for a committee on which the relative of such employee serves as a member.

(2) Subparagraph (1) shall not apply in the case of a relative whose pertinent employment predates the One Hundred Thirteenth Congress.

(3) As used in this paragraph, the term “relative” means an individual who is related to the Member, Delegate, or Resident Commissioner as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather,

stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandson, or granddaughter.

9. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not discharge and may not refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the race, color, religion, sex (including marital or parental status), disability, age, or national origin of such individual, but may take into consideration the domicile or political affiliation of such individual.

10. A Member, Delegate, or Resident Commissioner who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which such individual is a member, and a Member should refrain from voting on any question at a meeting of the House or of the Committee of the Whole House on the state of the Union, unless or until judicial or executive proceedings result in reinstatement of the presumption of the innocence of such Member or until the Member is reelected to the House after the date of such conviction.

11. A Member, Delegate, or Resident Commissioner may not authorize or otherwise allow an individual, group, or organization not under the direction and control

of the House to use the words “Congress of the United States,” “House of Representatives,” or “Official Business,” or any combination of words thereof, on any letterhead or envelope.

12. (a) Except as provided in paragraph (b), an employee of the House who is required to file a report under rule XXVI may not participate personally and substantially as an employee of the House in a contact with an agency of the executive or judicial branches of Government with respect to nonlegislative matters affecting any nongovernmental person in which the employee has a significant financial interest.

(b) Paragraph (a) does not apply if an employee first advises the employing authority of such employee of a significant financial interest described in paragraph (a) and obtains from such employing authority a written waiver stating that the participation of the employee in the activity described in paragraph (a) is necessary. A copy of each such waiver shall be filed with the Committee on Ethics.

13. Before a Member, Delegate, Resident Commissioner, officer, or employee of the House may have access to classified information, the following oath (or affirmation) shall be executed:

“I do solemnly swear (or affirm) that I will not disclose any classified information received in the course of my service with the House of

Representatives, except as authorized by the House of Representatives or in accordance with its Rules.”

Copies of the executed oath (or affirmation) shall be retained as part of the records of the House, in the case of a Member, Delegate, or the Resident Commissioner, by the Clerk, and in the case of an officer or employee of the House, by the Sergeant-at-Arms. The Clerk shall make the signatories a matter of public record, causing the names of each Member, Delegate, or Resident Commissioner who has signed the oath during a week (if any) to be published in a portion of the Congressional Record designated for that purpose on the last legislative day of the week and making cumulative lists of such names available each day for public inspection in an appropriate office of the House.

14. A Member, Delegate, or Resident Commissioner may not, with the intent to influence on the basis of partisan political affiliation an employment decision or employment practice of any private entity—

(a) take or withhold, or offer or threaten to take or withhold, an official act; or

(b) influence, or offer or threaten to influence, the official act of another.

15. (a) Except as provided in paragraphs (b) and (c), a Member, Delegate, or Resident Commissioner may not use personal funds, official funds, or campaign funds for a flight on an aircraft.

(b) Paragraph (a) does not apply if—

(1) the aircraft is operated by an air carrier or commercial operator certificated by the Federal Aviation Administration and the flight is required to be conducted under air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority and the flight is required to be conducted under air carrier safety rules;

(2) the aircraft is owned or leased by a Member, Delegate, Resident Commissioner or a family member of a Member, Delegate, or Resident Commissioner (including an aircraft owned by an entity that is not a public corporation in which the Member, Delegate, Resident Commissioner or a family member of a Member, Delegate, or Resident Commissioner has an ownership interest, provided that such Member, Delegate, or Resident Commissioner does not use the aircraft any more than the Member, Delegate, Resident Commissioner, or family member's proportionate share of ownership allows);

(3) the flight consists of the personal use of an aircraft by a Member, Delegate, or the Resident Commissioner that is supplied by—

(A) an individual on the basis of personal friendship; or

(B) another Member, Delegate, or the Resident Commissioner;

(4) the aircraft is operated by an entity of the Federal government or an entity of the government of any State; or

(5) the owner or operator of the aircraft is paid a pro rata share of the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size as determined by dividing such cost by the number of Members, Delegates, or the Resident Commissioner, officers, or employees of Congress on the flight.

(c) An advance written request for a waiver of the restriction in paragraph (a) may be granted jointly by the chair and ranking minority member of the Committee on Ethics, subject to such conditions as they may prescribe.

(d) In this clause—

(1) the term “campaign funds” includes funds of any political committee under the Federal Election Campaign Act of 1971, without regard to whether the committee is an authorized committee of the Member, Delegate, or Resident Commissioner involved under such Act;

(2) the term “family member” means an individual who is related to the Member, Delegate, or Resident Commissioner, as father, mother, son, daughter, brother,

sister, husband, wife, father-in-law, or mother-in-law; and

(3) the term “on the basis of personal friendship” has the same meaning as in clause 5 of rule XXV and shall be determined as under clause 5(a)(3)(D)(ii) of rule XXV.

16. A Member, Delegate, or Resident Commissioner may not condition the inclusion of language to provide funding for a congressional earmark, a limited tax benefit, or a limited tariff benefit in any bill or joint resolution (or an accompanying report) or in any conference report on a bill or joint resolution (including an accompanying joint explanatory statement of managers) on any vote cast by another Member, Delegate, or Resident Commissioner. For purposes of this clause and clause 17, the terms “congressional earmark,” “limited tax benefit,” and “limited tariff benefit” shall have the meanings given them in clause 9 of rule XXI.

17. (a) A Member, Delegate, or Resident Commissioner who requests a congressional earmark, a limited tax benefit, or a limited tariff benefit in any bill or joint resolution (or an accompanying report) or in any conference report on a bill or joint resolution (or an accompanying joint statement of managers) shall provide a written statement to the chair and ranking minority

member of the committee of jurisdiction, including—

(1) the name of the Member, Delegate, or Resident Commissioner;

(2) in the case of a congressional earmark, the name and address of the intended recipient or, if there is no specifically intended recipient, the intended location of the activity;

(3) in the case of a limited tax or tariff benefit, identification of the individual or entities reasonably anticipated to benefit, to the extent known to the Member, Delegate, or Resident Commissioner;

(4) the purpose of such congressional earmark or limited tax or tariff benefit; and

(5) a certification that the Member, Delegate, or Resident Commissioner or spouse has no financial interest in such congressional earmark or limited tax or tariff benefit.

(b) Each committee shall maintain the information transmitted under paragraph (a), and the written disclosures for any congressional earmarks, limited tax benefits, or limited tariff benefits included in any measure reported by the committee or conference report filed by the chair of the committee or any subcommittee thereof shall be open for public inspection.

18. (a) In this Code of Official Conduct, the term “officer or employee of the House” means an individual

whose compensation is disbursed by the Chief Administrative Officer.

(b) An individual whose services are compensated by the House pursuant to a consultant contract shall be considered an employee of the House for purposes of clauses 1, 2, 3, 4, 8, 9, and 13 of this rule. An individual whose services are compensated by the House pursuant to a consultant contract may not lobby the contracting committee or the members or staff of the contracting committee on any matter. Such an individual may lobby other Members, Delegates, or the Resident Commissioner or staff of the House on matters outside the jurisdiction of the contracting committee. In the case of such an individual who is a member or employee of a firm, partnership, or other business organization, the other members and employees of the firm, partnership, or other business organization shall be subject to the same restrictions on lobbying that apply to the individual under this paragraph.

RULE XXIV

LIMITATIONS ON USE OF OFFICIAL FUNDS

Limitations on use of official and unofficial accounts

1. (a) Except as provided in paragraph (b), a Member, Delegate, or Resident Commissioner may not maintain, or have maintained for the use of such individual, an

unofficial office account. Funds may not be paid into an unofficial office account.

(b)(1) Except as provided in subparagraph (2), a Member, Delegate, or Resident Commissioner may defray official expenses with funds of the principal campaign committee of such individual under the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.).

(2) The funds specified in subparagraph (1) may not be used to defray official expenses for mail or other communications, compensation for services, office space, office furniture, office equipment, or any associated information technology services (excluding handheld communications devices).

2. Notwithstanding any other provision of this rule, if an amount from the Official Expenses Allowance of a Member, Delegate, or Resident Commissioner is paid into the House Recording Studio revolving fund for telecommunications satellite services, the Member, Delegate, or Resident Commissioner may accept reimbursement from nonpolitical entities in that amount for transmission to the Chief Administrative Officer for credit to the Official Expenses Allowance.

3. In this rule the term “unofficial office account” means an account or repository in which funds are received for the purpose of defraying otherwise unreimbursed expenses allowable under section 162(a) of the Internal Revenue Code of 1986 as ordinary and

necessary in the operation of a congressional office, and includes a newsletter fund referred to in section 527(g) of the Internal Revenue Code of 1986.

Limitations on use of the frank

4. A Member, Delegate, or Resident Commissioner shall mail franked mail under section 3210(d) of title 39, United States Code at the most economical rate of postage practicable.

5. Before making a mass mailing, a Member, Delegate, or Resident Commissioner shall submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether the proposed mailing is in compliance with applicable provisions of law, rule, or regulation.

6. A mass mailing that is otherwise frankable by a Member, Delegate, or Resident Commissioner under the provisions of section 3210(e) of title 39, United States Code, is not frankable unless the cost of preparing and printing it is defrayed exclusively from funds made available in an appropriation Act.

7. A Member, Delegate, or Resident Commissioner may not send a mass mailing outside the congressional district from which elected.

8. In the case of a Member, Delegate, or Resident Commissioner, a mass mailing is not frankable under section 3210 of title 39, United States Code, when it is

postmarked less than 90 days before the date of a primary or general election (whether regular, special, or runoff) in which such individual is a candidate for public office. If the mail matter is of a type that is not customarily postmarked, the date on which it would have been postmarked, if it were of a type customarily postmarked, applies.

9. In this rule the term “mass mailing” means, with respect to a session of Congress, a mailing of newsletters or other pieces of mail with substantially identical content (whether such pieces of mail are deposited singly or in bulk, or at the same time or different times), totaling more than 500 pieces of mail in that session, except that such term does not include a mailing—

(a) of matter in direct response to a communication from a person to whom the matter is mailed;

(b) from a Member, Delegate, or Resident Commissioner to other Members, Delegates, the Resident Commissioner, or Senators, or to Federal, State, or local government officials; or

(c) of a news release to the communications media.

Prohibition on use of funds by Members not elected to succeeding Congress

10. Funds from the applicable accounts described in clause 1(k)(1) of rule X, including funds from committee expense resolutions, and funds in any local currencies owned by the United States may not be made available for

travel by a Member, Delegate, Resident Commissioner, or Senator after the date of a general election in which such individual was not elected to the succeeding Congress or, in the case of a Member, Delegate, or Resident Commissioner who is not a candidate in a general election, after the earlier of the date of such general election or the adjournment sine die of the last regular session of the Congress.

RULE XXV

LIMITATIONS ON OUTSIDE EARNED INCOME AND ACCEPTANCE OF GIFTS

Outside earned income; honoraria

1. (a) Except as provided by paragraph (b), a Member, Delegate, Resident Commissioner, officer, or employee of the House may not—

(1) have outside earned income attributable to a calendar year that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year; or

(2) receive any honorarium, except that an officer or employee of the House who is paid at a rate less than 120 percent of the minimum rate of basic pay for GS–15 of the General Schedule may receive an honorarium unless the subject matter is directly related to the

official duties of the individual, the payment is made because of the status of the individual with the House, or the person offering the honorarium has interests that may be substantially affected by the performance or nonperformance of the official duties of the individual.

(b) In the case of an individual who becomes a Member, Delegate, Resident Commissioner, officer, or employee of the House, such individual may not have outside earned income attributable to the portion of a calendar year that occurs after such individual becomes a Member, Delegate, Resident Commissioner, officer, or employee that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year multiplied by a fraction, the numerator of which is the number of days the individual is a Member, Delegate, Resident Commissioner, officer, or employee during that calendar year and the denominator of which is 365.

(c) A payment in lieu of an honorarium that is made to a charitable organization on behalf of a Member, Delegate, Resident Commissioner, officer, or employee of the House may not be received by that Member, Delegate, Resident Commissioner, officer, or employee. Such a payment may not exceed \$2,000 or be made to a charitable organization from which the Member, Delegate, Resident Commissioner, officer, or employee or a parent,

sibling, spouse, child, or dependent relative of the Member, Delegate, Resident Commissioner, officer, or employee, derives a financial benefit.

2. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not—

(a) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity that provides professional services involving a fiduciary relationship except for the practice of medicine;

(b) permit the name of such individual to be used by such a firm, partnership, association, corporation, or other entity;

(c) receive compensation for practicing a profession that involves a fiduciary relationship except for the practice of medicine;

(d) serve for compensation as an officer or member of the board of an association, corporation, or other entity; or

(e) receive compensation for teaching, without the prior notification and approval of the Committee on Ethics.

Copyright royalties

3. (a) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive an advance payment on copyright royalties. This paragraph does not prohibit a literary agent, researcher, or other

individual (other than an individual employed by the House or a relative of a Member, Delegate, Resident Commissioner, officer, or employee) working on behalf of a Member, Delegate, Resident Commissioner, officer, or employee with respect to a publication from receiving an advance payment of a copyright royalty directly from a publisher and solely for the benefit of that literary agent, researcher, or other individual.

(b) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive copyright royalties under a contract entered into on or after January 1, 1996, unless that contract is first approved by the Committee on Ethics as complying with the requirement of clause 4(d)(1)(E) (that royalties are received from an established publisher under usual and customary contractual terms).

Definitions

4. (a)(1) In this rule, except as provided in subparagraph (2), the term “officer or employee of the House” means an individual (other than a Member, Delegate, or Resident Commissioner) whose pay is disbursed by the Chief Administrative Officer, who is paid at a rate equal to or greater than 120 percent of the minimum rate of basic pay for GS–15 of the General Schedule, and who is so employed for more than 90 days

in a calendar year.

(2)(A) When used with respect to an honorarium, the term “officer or employee of the House” means an individual (other than a Member, Delegate, or Resident Commissioner) whose salary is disbursed by the Chief Administrative Officer.

(B) When used in clause 5 of this rule, the terms “officer” and “employee” have the same meanings as in rule XXIII.

(b) In this rule the term “honorarium” means a payment of money or a thing of value for an appearance, speech, or article (including a series of appearances, speeches, or articles) by a Member, Delegate, Resident Commissioner, officer, or employee of the House, excluding any actual and necessary travel expenses incurred by that Member, Delegate, Resident Commissioner, officer, or employee (and one relative) to the extent that such expenses are paid or reimbursed by any other person. The amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not so paid or reimbursed.

(c) In this rule the term “travel expenses” means, with respect to a Member, Delegate, Resident Commissioner, officer, or employee of the House, or a relative of such Member, Delegate, Resident Commissioner, officer, or employee, the cost of transportation, and the cost of

lodging and meals while away from the residence or principal place of employment of such individual.

(d)(1) In this rule the term “outside earned income” means, with respect to a Member, Delegate, Resident Commissioner, officer, or employee of the House, wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually rendered, but does not include—

(A) the salary of a Member, Delegate, Resident Commissioner, officer, or employee;

(B) any compensation derived by a Member, Delegate, Resident Commissioner, officer, or employee of the House for personal services actually rendered before the adoption of this rule or before such individual became a Member, Delegate, Resident Commissioner, officer, or employee;

(C) any amount paid by, or on behalf of, a Member, Delegate, Resident Commissioner, officer, or employee of the House to a tax-qualified pension, profit-sharing, or stock bonus plan and received by such individual from such a plan;

(D) in the case of a Member, Delegate, Resident Commissioner, officer, or employee of the House engaged in a trade or business in which such individual or the family of such individual holds a controlling interest and in which both personal services and capital are income-producing factors, any amount received by

the Member, Delegate, Resident Commissioner, officer, or employee, so long as the personal services actually rendered by such individual in the trade or business do not generate a significant amount of income; or

(E) copyright royalties received from established publishers under usual and customary contractual terms; and

(2) outside earned income shall be determined without regard to community property law.

(e) In this rule the term “charitable organization” means an organization described in section 170(c) of the Internal Revenue Code of 1986.

Gifts

5. (a)(1)(A)(i) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift except as provided in this clause.

(ii) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift from a registered lobbyist or agent of a foreign principal or from a private entity that retains or employs registered lobbyists or agents of a foreign principal except as provided in subparagraph (3) of this paragraph.

(B)(i) A Member, Delegate, Resident Commissioner, officer, or employee of the House may accept a gift (other than cash or cash equivalent) not prohibited by subdivision (A)(ii) that the Member, Delegate, Resident

Commissioner, officer, or employee reasonably and in good faith believes to have a value of less than \$50 and a cumulative value from one source during a calendar year of less than \$100. A gift having a value of less than \$10 does not count toward the \$100 annual limit. The value of perishable food sent to an office shall be allocated among the individual recipients and not to the Member, Delegate, or Resident Commissioner. Formal recordkeeping is not required by this subdivision, but a Member, Delegate, Resident Commissioner, officer, or employee of the House shall make a good faith effort to comply with this subdivision.

(ii) A gift of a ticket to a sporting or entertainment event shall be valued at the face value of the ticket or, in the case of a ticket without a face value, at the highest cost of a ticket with a face value for the event. The price printed on a ticket to an event shall be deemed its face value only if it also is the price at which the issuer offers that ticket for sale to the public.

(2)(A) In this clause the term “gift” means a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(B)(i) A gift to a family member of a Member, Delegate, Resident Commissioner, officer, or employee of the House, or a gift to any other individual based on that individual's relationship with the Member, Delegate, Resident Commissioner, officer, or employee, shall be considered a gift to the Member, Delegate, Resident Commissioner, officer, or employee if it is given with the knowledge and acquiescence of the Member, Delegate, Resident Commissioner, officer, or employee and the Member, Delegate, Resident Commissioner, officer, or employee has reason to believe the gift was given because of the official position of such individual.

(ii) If food or refreshment is provided at the same time and place to both a Member, Delegate, Resident Commissioner, officer, or employee of the House and the spouse or dependent thereof, only the food or refreshment provided to the Member, Delegate, Resident Commissioner, officer, or employee shall be treated as a gift for purposes of this clause.

(3) The restrictions in subparagraph (1) do not apply to the following:

(A) Anything for which the Member, Delegate, Resident Commissioner, officer, or employee of the House pays the market value, or does not use and promptly returns to the donor.

(B) A contribution, as defined in section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C.

431) that is lawfully made under that Act, a lawful contribution for election to a State or local government office, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

(C) A gift from a relative as described in section 109(16) of title I of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(16)).

(D)(i) Anything provided by an individual on the basis of a personal friendship unless the Member, Delegate, Resident Commissioner, officer, or employee of the House has reason to believe that, under the circumstances, the gift was provided because of the official position of such individual and not because of the personal friendship.

(ii) In determining whether a gift is provided on the basis of personal friendship, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall consider the circumstances under which the gift was offered, such as:

(I) The history of the relationship of such individual with the individual giving the gift, including any previous exchange of gifts between them.

(II) Whether to the actual knowledge of such individual the individual who gave the gift

personally paid for the gift or sought a tax deduction or business reimbursement for the gift.

(III) Whether to the actual knowledge of such individual the individual who gave the gift also gave the same or similar gifts to other Members, Delegates, the Resident Commissioners, officers, or employees of the House.

(E) Except as provided in paragraph (e)(3), a contribution or other payment to a legal expense fund established for the benefit of a Member, Delegate, Resident Commissioner, officer, or employee of the House that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Ethics.

(F) A gift from another Member, Delegate, Resident Commissioner, officer, or employee of the House or Senate.

(G) Food, refreshments, lodging, transportation, and other benefits—

(i) resulting from the outside business or employment activities of the Member, Delegate, Resident Commissioner, officer, or employee of the House (or other outside activities that are not connected to the duties of such individual as an officeholder), or of the spouse of such individual, if such benefits have not been offered or enhanced because of the official position of such individual

and are customarily provided to others in similar circumstances;

(ii) customarily provided by a prospective employer in connection with bona fide employment discussions; or

(iii) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fundraising or campaign event sponsored by such organization.

(H) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

(I) Informational materials that are sent to the office of the Member, Delegate, Resident Commissioner, officer, or employee of the House in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.

(J) Awards or prizes that are given to competitors in contests or events open to the public, including random drawings.

(K) Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, nonmonetary awards presented in recognition of public service (and associated food, refreshments, and entertainment provided in the presentation of such degrees and awards).

(L) Training (including food and refreshments furnished to all attendees as an integral part of the training) if such training is in the interest of the House.

(M) Bequests, inheritances, and other transfers at death.

(N) An item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute.

(O) Anything that is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

(P) A gift of personal hospitality (as defined in section 109(14) of the Ethics in Government Act) of an individual other than a registered lobbyist or agent of a foreign principal.

(Q) Free attendance at an event permitted under subparagraph (4).

(R) Opportunities and benefits that are—

(i) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration;

(ii) offered to members of a group or class in which membership is unrelated to congressional employment;

(iii) offered to members of an organization, such as an employees' association or congressional credit

union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;

(iv) offered to a group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

(v) in the form of loans from banks and other financial institutions on terms generally available to the public; or

(vi) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

(S) A plaque, trophy, or other item that is substantially commemorative in nature and that is intended for presentation.

(T) Anything for which, in an unusual case, a waiver is granted by the Committee on Ethics.

(U) Food or refreshments of a nominal value offered other than as a part of a meal.

(V) Donations of products from the district or State that the Member, Delegate, or Resident Commissioner represents that are intended primarily for promotional

purposes, such as display or free distribution, and are of minimal value to any single recipient.

(W) An item of nominal value such as a greeting card, baseball cap, or a T-shirt.

(4)(A) A Member, Delegate, Resident Commissioner, officer, or employee of the House may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if—

(i) the Member, Delegate, Resident Commissioner, officer, or employee of the House participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the official position of such individual; or

(ii) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, Delegate, Resident Commissioner, officer, or employee of the House.

(B) A Member, Delegate, Resident Commissioner, officer, or employee of the House who attends an event described in subdivision (A) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual.

(C) A Member, Delegate, Resident Commissioner, officer, or employee of the House, or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging may not be accepted in connection with the event unless—

(i) all of the net proceeds of the event are for the benefit of an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;

(ii) reimbursement for the transportation and lodging in connection with the event is paid by such organization; and

(iii) the offer of free attendance at the event is made by such organization.

(D) In this paragraph the term “free attendance” may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. The term does not include entertainment collateral to the event, nor does it include food or refreshments taken other than in a group setting with all or substantially all other attendees.

(5) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept a gift the value of which exceeds \$250 on the basis of the

personal friendship exception in subparagraph (3)(D) unless the Committee on Ethics issues a written determination that such exception applies. A determination under this subparagraph is not required for gifts given on the basis of the family relationship exception in subparagraph (3)(C).

(6) When it is not practicable to return a tangible item because it is perishable, the item may, at the discretion of the recipient, be given to an appropriate charity or destroyed.

(b)(1)(A) A reimbursement (including payment in kind) to a Member, Delegate, Resident Commissioner, officer, or employee of the House for necessary transportation, lodging, and related expenses for travel to a meeting, speaking engagement, factfinding trip, or similar event in connection with the duties of such individual as an officeholder shall be considered as a reimbursement to the House and not a gift prohibited by this clause when it is from a private source other than a registered lobbyist or agent of a foreign principal or a private entity that retains or employs registered lobbyists or agents of a foreign principal (except as provided in subdivision (C)), if the Member, Delegate, Resident Commissioner, officer, or employee—

(i) in the case of an employee, receives advance authorization, from the Member, Delegate, Resident Commissioner, or officer under whose direct

supervision the employee works, to accept reimbursement; and

(ii) discloses the expenses reimbursed or to be reimbursed and the authorization to the Clerk within 15 days after the travel is completed.

(B) For purposes of subdivision (A), events, the activities of which are substantially recreational in nature, are not considered to be in connection with the duties of a Member, Delegate, Resident Commissioner, officer, or employee of the House as an officeholder.

(C) A reimbursement (including payment in kind) to a Member, Delegate, Resident Commissioner, officer, or employee of the House for any purpose described in subdivision (A) also shall be considered as a reimbursement to the House and not a gift prohibited by this clause (without regard to whether the source retains or employs registered lobbyists or agents of a foreign principal) if it is, under regulations prescribed by the Committee on Ethics to implement this provision—

(i) directly from an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965; or

(ii) provided only for attendance at or participation in a one-day event (exclusive of travel time and an overnight stay).

Regulations prescribed to implement this provision may permit a two-night stay when determined by the

committee on a case-by-case basis to be practically required to participate in the one-day event.

(2) Each advance authorization to accept reimbursement shall be signed by the Member, Delegate, Resident Commissioner, or officer of the House under whose direct supervision the employee works and shall include—

(A) the name of the employee;

(B) the name of the person who will make the reimbursement;

(C) the time, place, and purpose of the travel; and

(D) a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.

(3) Each disclosure made under subparagraph (1)(A) shall be signed by the Member, Delegate, Resident Commissioner, or officer (in the case of travel by that Member, Delegate, Resident Commissioner, or officer) or by the Member, Delegate, Resident Commissioner, or officer under whose direct supervision the employee works (in the case of travel by an employee) and shall include—

(A) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;

(B) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;

(C) a good faith estimate of total meal expenses reimbursed or to be reimbursed;

(D) a good faith estimate of the total of other expenses reimbursed or to be reimbursed;

(E) a determination that all such expenses are necessary transportation, lodging, and related expenses as defined in subparagraph (4);

(F) a description of meetings and events attended; and

(G) in the case of a reimbursement to a Member, Delegate, Resident Commissioner, or officer, a determination that the travel was in connection with the duties of such individual as an officeholder and would not create the appearance that the Member, Delegate, Resident Commissioner, or officer is using public office for private gain.

(4) In this paragraph the term “necessary transportation, lodging, and related expenses”—

(A) includes reasonable expenses that are necessary for travel for a period not exceeding four days within the United States or seven days exclusive of travel time outside of the United States unless approved in advance by the Committee on Ethics;

(B) is limited to reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments, including reimbursement for necessary transportation, whether or not such

transportation occurs within the periods described in subdivision (A);

(C) does not include expenditures for recreational activities, nor does it include entertainment other than that provided to all attendees as an integral part of the event, except for activities or entertainment otherwise permissible under this clause; and

(D) may include travel expenses incurred on behalf of a relative of the Member, Delegate, Resident Commissioner, officer, or employee.

(5) The Clerk of the House shall make all advance authorizations, certifications, and disclosures filed pursuant to this paragraph available for public inspection as soon as possible after they are received.

(c)(1)(A) Except as provided in subdivision (B), a Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept a reimbursement (including payment in kind) for transportation, lodging, or related expenses for a trip on which the traveler is accompanied on any segment by a registered lobbyist or agent of a foreign principal.

(B) Subdivision (A) does not apply to a trip for which the source of reimbursement is an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965.

(2) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept a

reimbursement (including payment in kind) for transportation, lodging, or related expenses under the exception in paragraph (b)(1)(C)(ii) of this clause for a trip that is financed in whole or in part by a private entity that retains or employs registered lobbyists or agents of a foreign principal unless any involvement of a registered lobbyist or agent of a foreign principal in the planning, organization, request, or arrangement of the trip is de minimis under rules prescribed by the Committee on Ethics to implement paragraph (b)(1)(C) of this clause.

(3) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept a reimbursement (including payment in kind) for transportation, lodging, or related expenses for a trip (other than a trip permitted under paragraph (b)(1)(C) of this clause) if such trip is in any part planned, organized, requested, or arranged by a registered lobbyist or agent of a foreign principal.

(d) A Member, Delegate, Resident Commissioner, officer, or employee of the House shall, before accepting travel otherwise permissible under paragraph (b)(1) of this clause from any private source—

(1) provide to the Committee on Ethics before such trip a written certification signed by the source or (in the case of a corporate person) by an officer of the source—

(A) that the trip will not be financed in any part by a registered lobbyist or agent of a foreign principal;

(B) that the source either—

(i) does not retain or employ registered lobbyists or agents of a foreign principal; or

(ii) is an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965; or

(iii) certifies that the trip meets the requirements specified in rules prescribed by the Committee on Ethics to implement paragraph (b)(1)(C)(ii) of this clause and specifically details the extent of any involvement of a registered lobbyist or agent of a foreign principal in the planning, organization, request, or arrangement of the trip considered to qualify as de minimis under such rules;

(C) that the source will not accept from another source any funds earmarked directly or indirectly for the purpose of financing any aspect of the trip;

(D) that the traveler will not be accompanied on any segment of the trip by a registered lobbyist or agent of a foreign principal (except in the case of a trip for which the source of reimbursement is an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965); and

(E) that (except as permitted in paragraph (b)(1)(C) of this clause) the trip will not in any part be planned, organized, requested, or arranged by a registered lobbyist or agent of a foreign principal; and

(2) after the Committee on Ethics has promulgated the regulations mandated in paragraph (i)(1)(B) of this clause, obtain the prior approval of the committee for such trip.

(e) A gift prohibited by paragraph (a)(1) includes the following:

(1) Anything provided by a registered lobbyist or an agent of a foreign principal to an entity that is maintained or controlled by a Member, Delegate, Resident Commissioner, officer, or employee of the House.

(2) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal on the basis of a designation, recommendation, or other specification of a Member, Delegate, Resident Commissioner, officer, or employee of the House (not including a mass mailing or other solicitation directed to a broad category of persons or entities), other than a charitable contribution permitted by paragraph (f).

(3) A contribution or other payment by a registered lobbyist or an agent of a foreign principal to a legal

expense fund established for the benefit of a Member, Delegate, Resident Commissioner, officer, or employee of the House.

(4) A financial contribution or expenditure made by a registered lobbyist or an agent of a foreign principal relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of Members, Delegates, the Resident Commissioner, officers, or employees of the House.

(f)(1) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal in lieu of an honorarium to a Member, Delegate, Resident Commissioner, officer, or employee of the House is not considered a gift under this clause if it is reported as provided in subparagraph (2).

(2) A Member, Delegate, Resident Commissioner, officer, or employee who designates or recommends a contribution to a charitable organization in lieu of an honorarium described in subparagraph (1) shall report within 30 days after such designation or recommendation to the Clerk—

(A) the name and address of the registered lobbyist who is making the contribution in lieu of an honorarium;

(B) the date and amount of the contribution; and

(C) the name and address of the charitable organization designated or recommended by the Member, Delegate, or Resident Commissioner.

The Clerk shall make public information received under this subparagraph as soon as possible after it is received.

(g) In this clause—

(1) the term “registered lobbyist” means a lobbyist registered under the Federal Regulation of Lobbying Act or any successor statute;

(2) the term “agent of a foreign principal” means an agent of a foreign principal registered under the Foreign Agents Registration Act; and

(3) the terms “officer” and “employee” have the same meanings as in rule XXIII.

(h) All the provisions of this clause shall be interpreted and enforced solely by the Committee on Ethics. The Committee on Ethics is authorized to issue guidance on any matter contained in this clause.

(i)(1) Not later than 45 days after the date of adoption of this paragraph and at annual intervals thereafter, the Committee on Ethics shall develop and revise, as necessary—

(A) guidelines on judging the reasonableness of an expense or expenditure for purposes of this clause, including the factors that tend to establish—

(i) a connection between a trip and official duties;

(ii) the reasonableness of an amount spent by a sponsor;

(iii) a relationship between an event and an officially connected purpose; and

(iv) a direct and immediate relationship between a source of funding and an event; and

(B) regulations describing the information it will require individuals subject to this clause to submit to the committee in order to obtain the prior approval of the committee for any travel covered by this clause, including any required certifications.

(2) In developing and revising guidelines under subparagraph (1)(A), the committee shall take into account the maximum per diem rates for official Government travel published annually by the General Services Administration, the Department of State, and the Department of Defense.

Claims against the Government

6. A person may not be an officer or employee of the House, or continue in its employment, if acting as an agent for the prosecution of a claim against the Government or if interested in such claim, except as an original claimant or in the proper discharge of official duties.

7. A Member, Delegate, or Resident Commissioner shall prohibit all staff employed by that Member, Delegate, or Resident Commissioner (including staff in

personal, committee, and leadership offices) from making any lobbying contact (as defined in section 3 of the Lobbying Disclosure Act of 1995) with that individual's spouse if that spouse is a lobbyist under the Lobbying Disclosure Act of 1995 or is employed or retained by such a lobbyist for the purpose of influencing legislation.

8. During the dates on which the national political party to which a Member (including a Delegate or Resident Commissioner) belongs holds its convention to nominate a candidate for the office of President or Vice President, the Member may not participate in an event honoring that Member, other than in the capacity as a candidate for such office, if such event is directly paid for by a registered lobbyist under the Lobbying Disclosure Act of 1995 or a private entity that retains or employs such a registered lobbyist.

RULE XXVI

FINANCIAL DISCLOSURE

1. The Clerk shall send a copy of each report filed with the Clerk under title I of the Ethics in Government Act of 1978 within the seven-day period beginning on the date on which the report is filed to the Committee on Ethics.

2. For the purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be considered Rules of the House as they pertain to

Members, Delegates, the Resident Commissioner, officers, and employees of the House.

3. Members of the board of the Office of Congressional Ethics shall file annual financial disclosure reports with the Clerk of the House on or before May 15 of each calendar year after any year in which they perform the duties of that position. Such reports shall be on a form prepared by the Clerk that is substantially similar to form 450 of the Office of Government Ethics. The Clerk shall send a copy of each such report filed with the Clerk within the seven-day period beginning on the date on which the report is filed to the Committee on Ethics and shall have them printed as a House document and made available to the public by August 1 of each year.

RULE XXVII

DISCLOSURE BY MEMBERS AND STAFF OF EMPLOYMENT NEGOTIATIONS

1. A Member, Delegate, or Resident Commissioner shall not directly negotiate or have any agreement of future employment or compensation, unless such Member, Delegate, or Resident Commissioner, within 3 business days after the commencement of such negotiation or agreement of future employment or compensation, files with the Committee on Ethics a statement, which must be signed by the Member,

Delegate, or Resident Commissioner, regarding such negotiations or agreement, including the name of the private entity or entities involved in such negotiations or agreement, and the date such negotiations or agreement commenced.

2. An officer or an employee of the House earning in excess of 75 percent of the salary paid to a Member shall notify the Committee on Ethics that such individual is negotiating or has any agreement of future employment or compensation.

3. The disclosure and notification under this rule shall be made within 3 business days after the commencement of such negotiation or agreement of future employment or compensation.

4. A Member, Delegate, or Resident Commissioner, and an officer or employee to whom this rule applies, shall recuse himself or herself from any matter in which there is a conflict of interest or an appearance of a conflict for that Member, Delegate, Resident Commissioner, officer, or employee under this rule and shall notify the Committee on Ethics of such recusal. A Member, Delegate, or Resident Commissioner making such recusal shall, upon such recusal, submit to the Clerk for public disclosure the statement of disclosure under clause 1 with respect to which the recusal was made.

RULE XXVIII

(RESERVED.)

RULE XXIX

GENERAL PROVISIONS

1. The provisions of law that constituted the Rules of the House at the end of the previous Congress shall govern the House in all cases to which they are applicable, and the rules of parliamentary practice comprised by Jefferson's Manual shall govern the House in all cases to which they are applicable and in which they are not inconsistent with the Rules and orders of the House.

2. In these rules words importing one gender include the other as well.

3. If a measure or matter is publicly available at an electronic document repository operated by the Clerk, it shall be considered as having been available to Members, Delegates, and the Resident Commissioner for purposes of these rules.

4. Authoritative guidance from the Committee on the Budget concerning the impact of a legislative proposition on the levels of new budget authority, outlays, direct spending, new entitlement authority and revenues may be provided by the chair of the committee.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit YY

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7 COMMITTEE ON THE JUDICIARY,

8 U.S. HOUSE OF REPRESENTATIVES,

9 WASHINGTON, D.C.

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15 INTERVIEW OF: LESLEY WOLF

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20 Thursday, December 14, 2023

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22 Washington, D.C.

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25 The interview in the above matter was held in room 6220, O'Neill House Office

1 Building, commencing at 10:01 a.m.

2 Present: Representatives Jordan, Spartz, and Ivey.

1 Appearances:

2

3

4

5 For the COMMITTEE ON THE JUDICIARY:

6

7 CLARK ABOURISK, COUNSEL

8 STEVE CASTOR, GENERAL COUNSEL

9 SEAN CLERGET, COUNSEL

10 RUSSELL DYE, COMMUNICATIONS DIRECTOR AND COUNSEL

11 MATT ESGUERRA, SENIOR COMMUNICATIONS ADVISER

12 BETSY FERGUSON, DEPUTY GENERAL COUNSEL

13 BRITTANY HAVENS, PROFESSIONAL STAFF MEMBER

14 JOEY HUNGERFORD, DIGITAL DIRECTOR

15 RACHEL JAG, COUNSEL

16 LILLIAN MEADOWS, COUNSEL

17 CAROLINE NABITY, CHIEF COUNSEL FOR OVERSIGHT

18 LUKE ZARO, COUNSEL

19 ██████████, MINORITY CHIEF OVERSIGHT COUNSEL

20 ██████████, MINORITY LEGAL INTERN

21 ██████████, MINORITY STAFF ASSISTANT

22 ██████████, MINORITY OVERSIGHT COUNSEL

23 ████████████████████, MINORITY PROFESSIONAL STAFF MEMBER

24

25

1 For the SUBCOMMITTEE ON CRIME AND
2 FEDERAL GOVERNMENT SURVEILLANCE:

3

4 [REDACTED], MINORITY DETAILEE

5

6

7 For LESLEY WOLF:

8

9 JENNY KRAMER

10 STEPHEN SIMRILL

11 Alston & Bird

12

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2 Mr. Castor. Good morning. This is a transcribed interview of Ms. Lesley Wolf,
3 former Assistant United States Attorney for the District of Delaware. Chairman Jordan
4 has requested this interview as part of the committee's oversight of the Justice
5 Department's handling of the Hunter Biden investigation and the impeachment inquiry.

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

7 Ms. Wolf. Lesley Wolf.

8 Mr. Castor. And we encourage witnesses who appear before the committee to
9 freely consult with counsel if they so choose. It's my understanding you're appearing
10 here today with personal counsel.

11 Would you identify yourself for the record.

12 Ms. Kramer. Of course. Jenny Kramer. I'm with the firm of Alston & Bird.
13 And with me here today is Stephen Simrill, also with Alston & Bird --

14 Mr. Castor. Okay.

15 Ms. Kramer. -- on behalf of Ms. Wolf.

16 Mr. Castor. Okay. On behalf of the committee and Chairman Jordan, I want to
17 thank you for appearing here today and agreeing to participate in what is now a
18 transcribed interview.

19 And my name is Steve Castor. I'm a staffer on the House Judiciary Committee.

20 I'll now have the other staffers here in the room introduce themselves.

21 Ms. Nabity. Caroline Nabity with Chairman Jordan.

22 Mr. Clerget. Sean Clerget, Chairman Jordan.

23 [REDACTED] [REDACTED] with Ranking Member Nadler.

24 [REDACTED] [REDACTED], oversight counsel with Ranking Member Nadler's
25 staff.

1 [REDACTED] [REDACTED], Ranking Member Nadler's staff.

2 [REDACTED] [REDACTED] with Ranking Member Nadler's staff.

3 [REDACTED] [REDACTED] with Ranking Member Nadler.

4 [REDACTED] [REDACTED] with Ranking Member Nadler.

5 Ms. Havens. Brittany Havens, Chairman Jordan's staff.

6 Mr. Zaro. Luke Zaro, Chairman Jordan's staff.

7 Mr. Abourisk. Clark Abourisk, Chairman Jordan's staff.

8 Mr. Hungerford. Joey Hungerford, Chairman Jordan's staff.

9 Mr. Esguerra. Matthew Esguerra, Chairman Jordan's staff.

10 Ms. Jag. Rachel Jag, Chairman Jordan's staff.

11 Ms. Meadows. Lillian Meadows, Chairman Jordan's staff.

12 Mr. Castor. Mr. Jordan issued two deposition subpoenas to Ms. Wolf, one for
13 last Thursday, December 7th. Based on scheduling conflicts we issued a second one for
14 today. We've agreed to withdraw that subpoena in lieu of a voluntary transcribed
15 interview.

16 That being said, there may be questions that we ask today and in a voluntary
17 setting you choose not to answer, and we just want to make clear that it's likely we will
18 follow up with the list of questions that you didn't answer, identifying ones that are
19 important to us, and that'll start a second process, and we can go from there.

20 I'll go over the ground rules and guidelines that we'll follow during today's
21 interview. Our questioning will proceed in rounds. The majority will ask questions for
22 an hour, then we'll switch around; the minority staff will come over and they'll have a
23 chance to answer [sic] questions for an hour as well.

24 We can take breaks whenever you need to if you need to confer with counsel or
25 for whatever reason or no reason. Often we do that at the end of the hour. If you

1 need to take a lunch break, if we're going long, you just let us know. We really -- it's
2 whatever the witness wants to do. Many witnesses don't want lunch. They want to
3 plow through. That's fine. So you let us know.

4 So the court reporter can take down a clear record and everyone around the room
5 can hear each other, we'll do our best to limit the number of people asking you questions
6 to just one at a time. Sometimes others may chime in if they didn't hear something or
7 they need clarification.

8 We want you to answer our questions in the most complete and truthful manner
9 as possible. I'm sure you understand that it's a criminal offense to knowingly make false
10 statements to Congress. You're aware of that?

11 Ms. Wolf. Yes.

12 Mr. Castor. And 18 United States Code 1001 deals with that, and that statute is
13 the statute that is often used when individuals fail to tell the truth. Are you aware of
14 that?

15 Ms. Wolf. Yes, I'm familiar with 1001.

16 Mr. Castor. We might use some exhibits -- of course we'll use some exhibits
17 today. We'll keep those as part of our record. So to the extent there are exhibits that
18 we share with you, we'd ask that you leave them here in the room.

19 That's the end of my welcoming remarks.

20 Ms. Kramer. If you will --

21 Mr. Castor. Of course.

22 Ms. Kramer. -- just briefly, I'll just remind everyone here that Ms. Wolf is here
23 voluntarily. We have provided to you the authorization letter that the Department
24 provided to us. So I think it comes as no surprise that she will be severely limited in the
25 scope of what she can and cannot provide information about today.

1 Having said that, Ms. Wolf would like to give some opening remarks, so --

2 Mr. Castor. Okay.

3 Ms. Kramer. -- if you'll allow her to do so, we do appreciate that.

4 Mr. Castor. We will. And I just want to defer to -- I'm sorry.

5 Chairman Jordan. No, I just want to thank you for being here today. I'm going
6 to have to run out here in a few minutes to go vote on the House floor, but then I'll be
7 back. And thank you for coming.

8 Mr. Castor. And before that, I wanted to ask [REDACTED] if she has anything.

9 [REDACTED]. We thank the witness for joining us today. I do want to note, I think
10 there is a vote on the House floor. I think once that wraps, we will have a couple
11 members coming in. It's a little odd setting here, so I didn't want them to surprise you.

12 Ms. Wolf. Thank you.

13 Ms. Kramer. Great. All right.

14 Ms. Wolf. I would like to thank you for the opportunity to speak briefly this
15 morning.

16 Only a few short weeks ago, I left the Department of Justice after serving as an
17 Assistant United States Attorney for more than 16 years. It is because of my work as an
18 Assistant United States Attorney that I find myself sitting here today.

19 During my tenure with DOJ, and in particular with the United States Attorney's
20 Office for the District of Delaware, I took great pride in being part of the work done and
21 the mission of the Department to seek justice, exercise reason judgment, and to do so in
22 a fair and even-handed manner.

23 When I started with the Department, Alberto Gonzales was the attorney general.
24 I served through Attorneys General Mukasey, Holder, Lynch, Sessions, Barr, and finally
25 Garland. My time in the office spanned four different Presidential administrations and

1 three different United States Attorneys.

2 Despite these changes and at times evolving priorities of the Department and the
3 district, the core mission did not waver, nor did my own commitment to the fair and just
4 administration of Federal criminal laws. At no time did politics play a role in or in any
5 way impact my work as a Federal prosecutor.

6 Guided by the Principles of Federal Prosecution and the Justice Manual, as well as
7 steadfastly complying with my statutory mandates and my ethical obligations, throughout
8 my career, I followed the facts and applied the law in each and every case I handled.
9 When there were decisions to be made, I sought the input of and collaborated with my
10 colleagues, attorneys and investigators alike, and made the decisions that I believed
11 would best serve the investigation while still complying with law and policy. This was
12 not always an easy task.

13 There is no one size fits all for Federal prosecutions. Each case presents its own
14 unique circumstances and challenges. Different and, at times, evolving policies,
15 guidelines, and statutory and ethical obligations are often at play due to the particular
16 nature of an investigation. And against this backdrop, there is room for disagreement.
17 A proper and appropriate decision and course of action did not always please everyone.
18 But, again, such decisions were never made in a vacuum and were always guided by the
19 principles of justice and fairness, as I've described. Throughout my career, I've prided
20 myself on being able to adeptly navigate those challenges and to maintain positive
21 relationships with investigators, even in times when we may not have seen eye to eye.

22 I have worked with so many wonderful people, many of whom I consider to be the
23 truest of friends. Having spent the majority of my career as a Federal prosecutor, the
24 people with whom I have collaborated over the years have become like family.
25 Together we have celebrated marriages and the arrival of children, reluctantly cheered

1 retirements, and grieved the losses of loved ones.

2 While it may seem odd to those outside of the DOJ, this closeness is not
3 uncommon when you have a unified dedication to such a critically important
4 mission -- the pursuit of justice.

5 In each and every case, I maintained a professional and collaborative relationship,
6 because doing so is in the best interest of an investigation, and it enabled me to be the
7 best I could as a Federal prosecutor.

8 Just as politics have no place in the work of the Justice Department, neither do
9 personal feelings, unchecked emotions, or ego. And I don't think there's any mystery
10 surrounding the fact that sleepless nights tend to accompany serving as an AUSA. One
11 thing, however, that has never kept me awake is wondering whether I deviated from my
12 own moral compass, ethical obligations, or, critically, what I genuinely believed to be in
13 the best interest of an investigation.

14 As I was reminded daily by the words of Justice Sutherland in *Berger*
15 *v. United States*, which remain prominently posted on the wall of the U.S. Attorney's
16 Office in Delaware, the end goal was not to win at all costs and by any means, but instead
17 to vigorously and fairly pursue justice.

18 My voluntary appearance here today is not without an overwhelming feeling of
19 frustration and disappointment, because as much as I would invite the opportunity to
20 explain the decisions made and accurately describe the actions taken, I will not be
21 permitted to answer most of the questions you have for me. It should come as no
22 surprise to the committee that as a former DOJ employee, I am significantly constrained
23 by and must strictly adhere to the authorization provided by the Department of Justice,
24 as well as those obligations independently imposed by the Federal Rule of Criminal
25 Procedure, including rule 6(e), and the relevant laws governing disclosure of tax

1 information.

2 I am here voluntarily precisely because I respect the law. I loved being an AUSA
3 and have always taken enormous pride in doing the right thing.

4 The allegations made against my colleagues and me have had a profound impact
5 on me both professionally and personally. In light of the ongoing nature of the
6 investigation, I am legally obligated at this time to largely remain silent as to those
7 allegations, beyond stating the truth, which is, at all times while serving as an AUSA, I
8 acted consistently with the Justice Manual, DOJ policy directives, and my statutory legal
9 and ethical obligations.

10 I followed the facts where they led and made decisions in the best interests of the
11 investigation. This includes, but is by no means limited to, policies and rules governing
12 politically sensitive investigations, election-year sensitivities, attorney search warrants,
13 search warrant filter requirements, and professional conduct rules barring contact with
14 represented parties.

15 My desire to serve my community and my country, such a great source of pride,
16 has recently come at significant cost. As a private person, the once routine and
17 mundane details of my life have become the subject of public interest in an invasive and
18 disturbing manner. Far worse, I've been threatened and harassed, causing me to fear
19 for my own and my family's safety.

20 I mentioned earlier that I recently left the U.S. Attorney's Office. My decision to
21 do so long predated and was unconnected to the baseless allegations made against me.
22 In fact, I agreed to stay with the office months longer than planned because of my belief
23 that my family and I were safer while I remained an AUSA.

24 I have no doubt that after today the threats of harassment and my own fear
25 stemming from them will heighten. This not only scares me, but as someone who loves

1 this country, it also breaks my heart.

2 We are living in a day and age where politics and winning seem to be paramount,
3 and the truth has become collateral damage.

4 It is my sincere hope that at least by my voluntary appearance here today, I can
5 convey that, as far as I'm aware, any narrative that suggests, much less insists, that
6 political influence played a role in any matter I handled is a false one.

7 Nonetheless, I am here today, again, voluntarily, and sincerely hope that the
8 limited information I am permitted to share with you provides some reassurance, if not to
9 the committee, then at least to the American people whom I have been so proud to have
10 served for the majority of my professional life.

11 Mr. Castor. Thank you.

12 We'll go on the record. It's 10:14. We'll go on the first round. We'll start.

13 And I'll note at the outset that we may have, as I indicated, questions that you're
14 not going to answer today. And if you would just bear with us while we ask the
15 question, and you can tell us -- you know, you can give us your response.

16 We are going to go through most of the questions that we'd like to ask for
17 purposes of making a record and outlining the information we seek so we can go back to
18 the Department and pursue it.

19 So just wanted to alert you to that. We're not trying to badger you in any way,
20 okay?

21 Ms. Wolf. Yes.

22 EXAMINATION

23 BY MR. CASTOR:

24 Q So you indicated that you joined the Department of Justice during the tenure
25 of Attorney General Gonzales. Was that in 2007?

1 A Yes. I joined the Department in August 2007.

2 Q And have you always been in the District of Delaware U.S. Attorney's Office?

3 A Yes.

4 Q Okay. And in that office, have you always been a Assistant United States
5 Attorney?

6 A Yes.

7 Q Did you have any specific leadership role in the office?

8 A I had, since 2018, a designation as a section chief for economic crimes, which
9 was not an official supervisory role but one that allowed me to assist the criminal chief
10 help supervise AUSA's handling financial crime and economic case matters.

11 Q So you've been with the Department, what -- how many years total?
12 Sixteen?

13 A Sixteen.

14 Q Sixteen years. And during that time, how many tax cases have you
15 worked?

16 A I can give you an approximate number.

17 Q Of course.

18 A I would say, during that time, somewhere between 12 and 25.

19 Q Fair enough. So you have a fairly good understanding of the ordinary
20 process for dealing with the Tax Division at headquarters?

21 A To the extent there's an ordinary process, yes --

22 Q Okay.

23 A -- I'm familiar with -- I have dealt with Tax Division in --

24 Q Okay. I mean, the Tax Division has to approve investigative activities, you
25 know, under certain circumstances, correct?

1 A Correct. And Tax Division has to approve grand juries for Title 26 tax cases
2 at the outset of an investigation. And depending on the particulars of a case, also there
3 are additional approval requirements, as well as an approval of charges.

4 Q And if you're going to bring charges, Tax Division has to green-light them,
5 correct?

6 A In the first instance, that's the normal mechanism.

7 Q Okay. And how often have you had cases in your career that have touched
8 on other districts? You know, the Hunter Biden case involved potentially a case in the
9 District of Columbia or the Central District of California.

10 How often have you worked on cases that touched on other districts or raised the
11 prospect of bringing charges in a different district?

12 A So I think there's two separate questions there. So the first question is,
13 how often sort of do you deal with or handle matters that touch on other districts? I
14 would say it's probably more common than not that something that we're doing and that
15 I was working on would touch upon another district.

16 It's the nature and sort of the essence of Federal prosecution is that there's
17 elements of it that are interstate in nature. I think that's sometimes particularly true
18 when you're in a geographically small district that borders a number of other -- you know,
19 three other States.

20 So it's fairly common to have things that touch and concern other districts.
21 Something as simple as needing to execute a search warrant over the State line in
22 New Jersey, that has to go through and you have to work with the district of New Jersey
23 on that. At other times, fugitives are arrested in a district, so I may be handling an
24 arrest in the District of Delaware for a case out of the District of Vermont. And those
25 types of contacts are routine.

1 In investigations, I think it is also not at all unusual that you will run across -- and
2 usually your investigators will figure this out -- either common schemes or common
3 players, and you work with the other districts, depending on whether those people are
4 witnesses, whether those people are subjects, whether those people are targets, to figure
5 out a path forward and to either work together and decide to work together or to
6 deconflict in order to -- to move forward.

7 But it is routine to work with other districts.

8 Q Okay. So we may have some questions about how your office interacted
9 with the District of Columbia's U.S. Attorney's Office and how your office interacted with
10 the Central District of California. So we may ask you to, you know, compare that to your
11 greater experience.

12 A Okay.

13 Q The Hunter Biden case, was this the first time that you worked with Special
14 Agent Ziegler or Supervisory Special Agent Shapley?

15 A I don't want to -- I think the answer to that's yes. I think --

16 Q Okay.

17 A -- I can answer that.

18 Q So you hadn't really met them before --

19 A I had not met either of them before.

20 Q -- before this case?

21 And this is the only case you've worked with them on?

22 A That is true.

23 Q And when did that -- when did you begin working on the Hunter Biden case?

24 Ms. Kramer. I think at this point, you know, if you want to go ahead and discuss
25 the restrictions that --

1 Ms. Wolf. Yeah. So I -- I'm not authorized to discuss particular aspects of an
2 ongoing investigation.

3 Mr. Castor. Okay. Well, I'm just asking to try to understand the timeframe that
4 we're dealing with. So --

5 Ms. Kramer. We understand the question, yes.

6 Ms. Wolf. Yeah.

7 Mr. Castor. Okay. You're not able to tell us when you started working on the
8 Hunter Biden case?

9 Ms. Kramer. You can repeat your answer.

10 Ms. Wolf. Yeah. I'm not authorized to discuss --

11 Mr. Castor. Okay. I'm not trying to be --

12 Ms. Wolf. -- particular matter.

13 Ms. Kramer. Understood.

14 BY MR. CASTOR:

15 Q I'm not trying to be tricky or badgering here.

16 A Yeah.

17 Q I'm just trying to -- when's the first time you met Shapley and Ziegler?

18 A I -- in person or -- I met Mr. Ziegler at some point in 2019. I did not meet
19 Mr. Shapley until some point in 2020.

20 Q Okay. As your office was handling the Hunter Biden matter, did you -- you
21 were the lead AUSA on the case?

22 A I'm not going to discuss particular aspects of an ongoing investigation.

23 Q Okay. How many AUSAs were involved in the case?

24 A Again, I'm not able to talk about the particulars --

25 Q Okay.

1 A -- of an ongoing investigation.

2 Q How does it work in your office generally?

3 A Sure. That I'm happy to talk about it.

4 Q You have an -- do you ordinarily have an AUSA that is the lead on a case?

5 A It depends on the particular case, but within the District of Delaware,
6 throughout my career in the Department, the staffing would differ obviously based on the
7 nature of the matter.

8 I would say that it's pretty typical in any case that something other than a very
9 routine, sometimes reactive case, like a simple -- a simple reactive gun arrest or drug
10 arrest or something as base- -- like a bank robbery, something along those lines.

11 Almost all investigative cases which are proactive investigations are in the District
12 of Delaware, staffed with at least two AUSAs. And depending on the case, it might be
13 someone more senior who is helping someone more junior as a training exercise, or it
14 could be two co-equal partners working on a case without one particularly being lead.
15 And a lot of that will just depend on the sort of vagaries of staffing at any given moment
16 and who has capacity and who has timing and who comes and who goes from the office.

17 Q Okay. And how does the supervisory structure work ordinarily?

18 A So in sort of any case within the Criminal Division is under the supervision of
19 the chief of the Criminal Division in any case. The criminal chief reports up and I believe
20 reports, I think, in the chain of command, directly to the U.S. Attorney. Although the
21 first assistant also at times plays a role and is involved in the supervision of cases.

22 I mentioned that I had served as a section chief, and that was more -- in economic
23 crimes -- that is more of an informal arrangement. There were at various points other
24 section chiefs for things like violent crime and cyber and national security who performed
25 similar functions, although that was not consistent through my tenure. And that is more

1 of an informal supervisory role, so that it is a place if, for example, someone's working a
2 case on their own or more junior people have some questions, and it helps sort of achieve
3 uniformity and just relieve some of the work and the burden on the criminal chief so that
4 by the time he or she was reviewing a cross memo or an indictment, it had sort of already
5 been through various iterations.

6 Q During the year 2022, what position did Shannon Hanson hold?

7 A I think that's a matter of public record that Shannon Hanson was the First
8 Assistant U.S. Attorney.

9 Q Okay. And during that time period, what position did Shawn Weede hold?

10 A I think similarly it's a matter of public record that Shawn Weede was the
11 criminal chief.

12 Q How often in your work do you have interaction with Main Justice?

13 A In -- typically, in the breadth of my experience?

14 Q Yeah.

15 A Again, it depends on the case. You always have -- you know, they're always
16 in the background because you're always required to comply with the policies and
17 procedures in the Justice Manual and the directives of DOJ.

18 Depending on what you're doing and the nature of the investigation, you may be
19 partnering with a litigating component, for example, Tax Division, or National Security
20 Division, or the fraud section, or the Civil Rights Division. And that happens on occasion,
21 either when you need help on a case, either with staffing or substantive expertise, or
22 sometimes they will come to you in your district and be looking to work a case and you
23 would partner with them. And that is a routine part of the practice.

24 There are other areas that touch and concern Main Justice that in any case you
25 may have. So, for example, if you're getting a wiretap in any case, right, that's required

1 to be approved through the Office of Enforcement Operations, Policy and Statutory
2 Enforcement Unit. If you're getting an attorney search warrant, similarly, that needs to
3 go through the Policy and Statutory Enforcement Unit.

4 So in almost every case you're going to run into some aspect of Main Justice at
5 some point in time.

6 Q In the last couple years, have you had interactions with the Deputy Attorney
7 General's Office?

8 A As a general matter, without talking about any particular investigation, I
9 think a line assistant such as myself would have far more limited interaction with the
10 Office of the Deputy Attorney General than people above me in the chain of command.

11 Q Okay. On the Hunter Biden case, what DOJ components did you interact
12 with?

13 A I'm unable to talk about any particular investigation.

14 Q Other than the Tax Division?

15 Who in the Tax Division did you interact with other than Mark Daly and Jeff
16 Morgan.

17 A I'm unable to discuss the particulars of any ongoing criminal investigation.

18 Q Did you have -- sorry.

19 Ms. Kramer. Mr. Castro, right, I would ask you, would you please let Ms. Wolf
20 finish her answers before asking your next question?

21 Mr. Castor. Indeed.

22 Ms. Kramer. Thank you.

23 BY MR. CASTOR:

24 Q Did you have interactions with Stuart Goldberg?

25 A I'm not able to discuss any particular matters related to an ongoing

1 investigation.

2 Q So we discussed earlier, it's fair to say that in Federal criminal tax cases,
3 approval from DOJ Tax is required before a U.S. Attorney's Office may issue subpoenas
4 and undertake other investigative actions. Is that correct?

5 A The Criminal Tax Manual -- all right. There's the Justice Manual, and
6 criminal tax has its own manual, and I believe that is an accurate description of their
7 authorization requirements.

8 Q And if a U.S. Attorney's Office is going to bring criminal tax charges, what
9 types of approval are necessary from the Tax Division?

10 A In my experience in general cases, the Tax Division will, in the first instance,
11 have approved, as I indicated, if it's a grand jury -- it's not always a grand jury
12 investigation. There are other ways tax cases can come through. But if it's been a
13 grand jury investigation, they will have approved it as a grand jury matter. They will
14 have approved it -- if a tax case grows out of another investigation, they will approve the
15 expansion of the grand jury to include Title 26 offenses.

16 And then there will be an authorization that comes through their chain. And
17 most typically there is an assigned Tax Division trial attorney who reviews the submission
18 of a special agent report by an agent that is then -- and makes a recommendation to their
19 assistant chief. And then the assistant chief makes a recommendation, in the District
20 of Delaware situation, to the chief of the Northern section. And I believe that it's signed
21 off on by the chief of the section and not by the AAG for the Tax Division.

22 Q Okay. With respect to the Hunter Biden case, Stuart Goldberg testified that
23 even though David Weiss has said he has ultimate charging authority, that the
24 Tax Division still was required to approve any tax charges. Was that your
25 understanding?

1 A I am not authorized to speak on the particulars of any ongoing matter.

2 Q Okay. So you're not authorized to speak on David Weiss' charging
3 authority? I mean, that's been one of the areas that the justice Department has allowed
4 witnesses to address.

5 A It is my understanding that because you have heard directly from others on
6 this issue who are in a far better position than I am to speak to the actual scope of his
7 authority, that I am not authorized to speak on that.

8 Q So you're not authorized to speak on Weiss' authority?

9 A That's correct.

10 Q Okay.

11 Ms. Kramer. I think -- I think you can respond with what your understanding --

12 Ms. Wolf. Right.

13 Ms. Kramer. -- of his authority was.

14 Ms. Wolf. Okay. Yes.

15 It was always my understanding, without the particulars, was that
16 U.S. Attorney Weiss would have the necessary authority to bring charges that he believed
17 were appropriate, to bring in any jurisdiction that he felt it was appropriate to bring said
18 charges in.

19 So I wasn't -- it's fair to say I was never focused on authority because it was not an
20 issue in my day-to-day experience.

21 Mr. Castor. Ordinarily, if an AUSA or U.S. Attorney wants to bring tax charges
22 and the Tax Division declines, how does that work itself out?

23 Ms. Wolf. So in an ordinary case -- I don't know that I've ever dealt with that. I
24 believe there is a process for an appeal of that, but I don't actually know what that
25 process is.

1 Mr. Castor. Is there a distinction between a Tax Division approval and
2 Tax Division discretion?

3 Ms. Kramer. If you know.

4 Ms. Wolf. Yeah. Again, I think without -- I think there probably is, but I don't
5 know, and without really looking at the tax manual and understanding the particulars of
6 it, that they would be something different. Though I would also, I think, regard them
7 both as authorization to proceed.

8 BY MR. CASTOR:

9 Q Have you ever worked a tax case where the Tax Division provided discretion
10 as opposed to approval?

11 A I'm not going to speak to any particular matters.

12 Q Fair enough.

13 A It's possible. It's possible as -- because as you indicated, there is -- some
14 possibility exists, and, again, I would refer you to the Criminal Tax Manual.

15 Q Yeah, I guess my question was, have you ever worked a case -- I'm not asking
16 you the name of the case -- where the Tax Division afforded a discretion as opposed to
17 approval?

18 A And I'm not going to speak as to any particular matters.

19 Q Have there ever been, during the course of your career, other districts that
20 you brought cases in, maybe as a Special Assistant United States Attorney?

21 A I have brought cases, at least at some point in time, in other districts as a
22 special.

23 Q Okay. How many?

24 A There's certainly one that was in court and, I guess, there may have been
25 others that didn't culminate in charges or proceeded in another matter at various points

1 in time.

2 Q Okay. But you have been deemed a SAUSA, as they call it?

3 A I have been.

4 Q Okay. What's the process for that ordinarily?

5 A As a general matter, it sort of depends on why you're being, what they call
6 being SAUSA'd in to a different district. So it can be, for example, because another
7 district has a recusal, a districtwide recusal, and they can't handle an investigation.

8 In that case, typically that comes from, usually I believe, the general counsel's
9 office of the Executive Office of the United States Attorney, communicates the need to do
10 that. And then you may get some ministerial help from the district into which you're
11 moving, but it involves completing some paperwork, signing off. You may need to
12 present a certificate of good standing, depending on the jurisdiction or what the situation
13 is. But those are -- those are one kind.

14 If it's a case where you're coming in on a sort of a more voluntary basis to
15 participate in a case and help prosecute a case, usually, right, it won't be like suddenly
16 you're going to be a special assistant. You've been working usually alongside of people.
17 It reaches a point where that becomes necessary, and those are discussions, you know,
18 where usually, in the first instance, a criminal chief would agree to that, and they'd talk
19 about the process and what was necessary. I'm not sure if ultimately you need sign-off
20 from a U.S. Attorney to do it. Some paperwork, from my perspective, but --

21 Q In the last instance, 2018, have you served as a SAUSA?

22 A I don't believe I have since 2018.

23 Q Okay. So you were not a Special Assistant United States Attorney in the
24 District of Columbia at any point in time?

25 A I have not been.

1 Q Or the Central District of California?

2 A Since 2018, I have not, but I've been a special assistant in the Eastern District
3 of Pennsylvania.

4 Q Has anyone in your office been a SAUSA in the Central District of California
5 since 2018?

6 A I can't speak to -- I can't speak to that. First of all, I don't know --

7 Q Okay.

8 A -- and I would hesitate to answer in relation to any particular investigation of
9 which I am aware. I'm not authorized to speak to that.

10 Q Okay. U.S. Attorney Martin Estrada testified that there were some SAUSAs
11 from Delaware in the Central District of California. Were you aware of that?

12 A So I'm not authorized to comment on particular things. Sometimes you
13 may start and -- as a general matter, you may start a process and things may change
14 along the way, and you may not follow through or complete the necessary paperwork.
15 But while you're -- while things are hot and heavy or you're trying to make decisions,
16 someone may start to do something, but, again, I can't speak with regard to any
17 particular investigation.

18 Q He testified there was a SAUSA from Delaware that had been onboarded
19 prior to his taking over as the U.S. Attorney. Are you aware of that?

20 A I can't speak to any particular information related to ongoing matters.

21 Q Fair enough. And if you were able to speak, do you know the answer to
22 that question, or is this one of the questions you just don't know the answer to, whether
23 you're allowed to tell us or not?

24 A I'd like -- I just want to talk with my counsel about that, so we can do it
25 now or I can --

1 Q Of course.

2 A -- talk about it on a break.

3 Q You can do it now.

4 A Okay.

5 [Recess.]

6 Ms. Kramer. Before we go any further, Ms. Wolf just wanted to clarify for the
7 record that she doesn't believe and doesn't recall having been SAUSA'd anywhere from
8 2018 forward, just to make sure that's clear. She just doesn't have recollection --

9 Mr. Castor. Yeah.

10 Ms. Kramer. -- of that.

11 Okay. But back to the question that you had asked as to whether or not you
12 specifically knew if someone had been SAUSA'd in Central District of California.

13 Ms. Wolf. Right. And to the extent that that relates to an ongoing
14 investigation, I am not able or not authorized by the Department to speak to that.

15 BY MR. CASTOR:

16 Q Okay. And I ask this follow-up question because if the answer is you don't
17 know the answer to begin with, then it's not worth our time to pursue it. And so the
18 question is, if you were permitted to give us an answer, do you know?

19 A And sitting here, definitively, I would not be able to answer that question.

20 Q Okay. Fair enough.

21 Under what -- this is related to David Weiss' authority. Under what authority
22 could he have brought charges outside the District of Delaware without the approval of
23 the local U.S. Attorney?

24 A So without speaking to any particular investigation or in this particular
25 context?

1 Q In this, the Hunter Biden case.

2 A Then I'm not able or authorized to speak as to the manner in which
3 U.S. Attorney Weiss would have been able to proceed.

4 Q Okay. And were you aware of what he had to do to bring a case in the
5 District of Columbia? Did he communicate that to you?

6 A Again, I'm not authorized to comment on the deliberative process associated
7 with an ongoing investigation.

8 Q Okay. And if you were able to communicate to us on that, would you -- I
9 mean, would you be able to?

10 A I think --

11 Ms. Kramer. Our understanding --

12 Ms. Wolf. Go ahead.

13 Ms. Kramer. Our understanding is that U.S. Attorney Weiss has already
14 appeared before this committee, and I believe he indicated that he intends to file a very
15 comprehensive report that will likely address most, if not all, of your questions.

16 So with that as the backdrop, go ahead.

17 Ms. Wolf. I think it -- it will depend on the particulars of a question, and I think
18 to get to whether or not I'm able to answer it essentially would override the sort of
19 nonauthorization to speak on particular points.

20 Mr. Castor. I guess the question then is, was it handled at his level only or did he
21 involve the whole team in those decisions?

22 Ms. Kramer. I think this kind of line of questioning has been sufficiently asked
23 and answered. Any questions about his authority and Ms. Wolf, you know, as
24 a prior -- again, as a line assistant -- a line assistant -- sitting here today, she has made
25 clear she is not able to opine on his authority.

1 So questions along those lines, you're going to get the same answer. You can
2 feel free to keep asking them, but just so you all know, it's going to be unsatisfying for you
3 moving forward. Sorry about that.

4 BY MR. CASTOR:

5 Q Are you aware that in February of 2022, David Weiss requested special
6 attorney authority from Main Justice?

7 A Again, I'm not authorized to answer questions related to the deliberative
8 process in an ongoing matter.

9 Q Okay. Are you aware of the three letters that David Weiss sent to the Hill,
10 two to Mr. Jordan and one to Senator Lindsey Graham?

11 A Those are --

12 Q They're public. Yeah, we can mark them.

13 A Yeah, I just want to make sure that I know what letters we're --

14 Q Yeah.

15 A -- talking about.

16 Ms. Kramer. The question is if you're generally aware.

17 Ms. Wolf. I'm generally aware that there was communications sent to the Hill,
18 yes.

19 Mr. Castor. And we'll mark them -- there's three letters. We'll mark them
20 exhibits 1, 2, and 3. The first is a June 7th letter, the second's a June 30th letter, and the
21 third is a July 10th letter.

22 [Wolf Exhibit Nos. 1, 2, and 3.

23 were marked for identification.]

24 Ms. Kramer. Would you like us to pass these down to others at the table?

25 Mr. Castor. Do you guys need them or did you bring your own copy? This is a

1 frequently used exhibit, so I'm not sure whether -- you got them?

2 [REDACTED]: Yeah. We have our own copies. We don't need exhibits -- or we
3 do need exhibits but not these exhibits.

4 Ms. Kramer. Those are all June 30th?

5 Ms. Wolf. Yeah.

6 Ms. Kramer. Okay. So there's July.

7 Ms. Wolf. So there's three, just so I'm tracking, June 7th, June 30th, and July
8 10th?

9 Mr. Castor. Yes.

10 Ms. Wolf. Okay.

11 Mr. Castor. Starting with exhibit 1, the June 7th letter.

12 Ms. Wolf. Yes.

13 Mr. Castor. The procedural history of this is Mr. Jordan wrote to the
14 Attorney General and, in response, we received a letter from David Weiss, which was
15 somewhat unusual to have a U.S. Attorney outside of, you know, Washington to respond
16 to us.

17 Did you have any role in helping David Weiss prepare this letter?

18 Ms. Kramer. Take your time to look through it.

19 Ms. Wolf. As far as I recall, no, I did not.

20 Mr. Castor. I want to refer you in the second paragraph to the sentence that
21 reads, "I have been granted ultimate authority."

22 Ms. Kramer. Is there a question?

23 Mr. Castor. I'm just referring her to that. Then I'm going to read it --

24 Ms. Kramer. Okay.

25 Mr. Castor. -- and then I'm going to ask a question.

1 BY MR. CASTOR:

2 Q "I've been granted ultimate authority over this matter, including
3 responsibility for deciding where, when, and whether to file charges and for making
4 decisions necessary to preserve the integrity of the prosecution."

5 You see that sentence?

6 A I do.

7 Q Okay. Do you take this sentence as a -- you know, being granted ultimate
8 authority, do you take that sentence as meaning that he had unfettered authority to
9 proceed without the Tax Division's approval?

10 A So I think that U.S. Attorney or Special Counsel Weiss is probably the better
11 witness --

12 Q Okay.

13 A -- to answer that question. I didn't write the letter --

14 Q Okay.

15 A -- and as far as I recall did not even participate or review the letter --

16 Q Okay.

17 A -- so I'm probably not your witness for that.

18 Q Okay. Would you agree that the phrase "ultimate authority" indicates that
19 the special counsel -- the now special counsel then -- just the standard U.S. Attorney, the
20 phrase "ultimate authority" meant that he could bring a case over the objection of the
21 Tax Division?

22 Ms. Kramer. Asked and answered.

23 Go ahead.

24 Ms. Wolf. I -- I'm not able to agree or disagree with what Special Counsel Weiss,
25 and at the time U.S. Attorney Weiss, intended to indicate with this.

1 Mr. Castor. I'll turn your attention to exhibit 2, dated June 30th. Are you
2 aware of when this letter was sent at the time? Did you have any role in -- or help
3 preparing it?

4 Ms. Kramer. Compound question.

5 Ms. Wolf. Yeah.

6 Ms. Kramer. Maybe break that down. Are you asking Ms. Wolf if she's aware
7 of the date that appears prominently on the first page when you say "when this letter
8 was sent," or are you asking her a more specific question about her knowledge at the
9 time?

10 Mr. Castor. Fair enough. I'll rephrase.

11 Ms. Kramer. Thank you.

12 BY MR. CASTOR:

13 Q Did you have a role in helping Mr. Weiss prepare this letter?

14 A I do not believe that I did. As far as I recall, I had no role in helping to
15 prepare this letter.

16 Q Did you read the letter when it was sent?

17 A I'm sure I read it at some point in time, but I have no specific recollection of
18 doing so prior to it being included in documents that were forwarded for preparation in
19 today's interview.

20 Q Okay. It states, "I stand by what I wrote" -- and he's referring to his
21 June 7th letter -- "and wish to expand on what this means."

22 Ms. Kramer. I'm sorry. Can you point us --

23 Mr. Castor. Yeah.

24 Ms. Kramer. -- to the -- oh, thank you. I'm there. Thank you.

25 Mr. Castor. Okay.

1 Ms. Kramer. Sorry. Was there a question pending about that?

2 Mr. Castor. I'm going to read it --

3 Ms. Kramer. Okay.

4 Mr. Castor. -- and then ask a question.

5 Ms. Kramer. Great.

6 BY MR. CASTOR:

7 Q "As the U.S. Attorney for the District of Delaware, my charging authority is
8 geographically limited to my home district. If venue for a case lies elsewhere, common
9 departmental practice is to contact the United States Attorney's Office for the district in
10 question, determine whether it wants to partner on the case. If not, I may request
11 special attorney status from the Attorney General, pursuant to 28 United States Code,
12 Section 515. Here, I have been assured that, if necessary after the above process, I
13 would be granted Section 515 authority in the District of Columbia, the Central District of
14 California, or any other district where charges could be brought in this matter."

15 A Okay.

16 Q Do you believe the June 30th letter is consistent with the June 7th letter
17 where he professed to have ultimate authority?

18 A I think that the documents speak for themselves. I think, as I indicated
19 previously, the paragraph that you just read in the June 30th letter was generally
20 consistent with what my understanding was as to the scope of his authority.

21 Q But, again, you didn't have any involvement in the preparation of this letter?

22 A I did not.

23 Q Do you know if anyone outside of Mr. Weiss in your office did have a role?

24 A I do not.

25 Q Lastly, exhibit 3, the July 10th letter to Senator Lindsey Graham. The

1 second -- the third paragraph. "To clarify an apparent misperception and to avoid
2 future confusion." Do you see that part of the letter?

3 A Yes.

4 Q Okay. "I wish to make one point clear: In this case, I have not requested
5 special counsel designation pursuant to the 28 CFR, section 600 et seq. Rather, I had
6 discussions with departmental officials regarding potential appointment under 28 United
7 States Code, Section 515, which would have allowed me to file charges in a district
8 outside my own without the partnership of the local U.S. Attorney. I was assured that I
9 would be granted this authority if it proved necessary."

10 How do you reconcile Mr. Weiss' statement that he would be granted authority to
11 bring charges outside of his district with his previous assertion that he already had that
12 authority?

13 Ms. Kramer. Just for the record, I'm going to again state this whole line of
14 questioning has, in my opinion, been asked and answered.

15 Ms. Wolf has said a number of times that the proper witness is not her. The best
16 witness to discuss the contents of a letter of which she had no dealings or role in
17 preparing would be the author himself.

18 Having said that, go ahead and answer.

19 Ms. Wolf. I think, again, to the extent I'm authorized to speak on the scope of
20 U.S. Attorney Weiss' authority, I indicated it was my understanding that he would have
21 the authority he needed. The particulars of that and what it looked like, I do not have
22 either authorization to speak to or, quite frankly, the knowledge thereof.

23 So I do think, having had the opportunity to speak with U.S. Attorney Weiss about
24 this, that's probably going to be the best witness to be able to answer your question
25 about how to reconcile the various statements.

1 BY MR. CASTOR:

2 Q Are you familiar with the former U.S. Attorney for the Western District of
3 Pennsylvania, Scott Brady?

4 A When you say familiar, I'm aware that Scott Brady was the former
5 U.S. Attorney for the Western District of Pennsylvania, but I don't know Mr. Brady.

6 Q Okay. Did you have any meetings with him?

7 A I'm not going to speak to -- I'm not authorized to speak with regard to
8 particular matters.

9 Q Okay. Were you aware that he had been charged by Main Justice to
10 evaluate certain matters related to the Hunter Biden case and Ukraine, Burisma
11 generally?

12 A It's my understanding as a matter of public record and published news
13 articles that that was, in fact, the case.

14 Q Mr. Brady testified that his role was limited to vetting the information that
15 he was able to review and compile and send it if he deemed it to have some credibility, to
16 send it to the U.S. Attorney's Offices around the country with grand jury investigations
17 going on.

18 Was that your understanding of his role?

19 A I'm not able to speak to what the particulars were more broadly of his role.
20 And to the extent it's related to any particular matter, I'm not authorized to speak on
21 that.

22 Q Mr. Brady testified that it was a regular challenge for his office to obtain
23 information from the U.S. Attorney's Office in Delaware, so much so at one point he had
24 to submit written interrogatories to your office.

25 Can you tell us about that episode?

1 A I'm unable to answer questions about the particulars of an
2 ongoing -- connected to an ongoing matter.

3 Q Mr. Brady testified that he had such trouble connecting with the
4 U.S. Attorney's Office in Delaware, he had to ask the DAG's office to run some
5 interference and facilitate communications. Is that something you can tell us about?

6 A I'm not authorized to speak to that.

7 Q In your experience, have you ever had a situation where the DAG's office had
8 to broker a meeting between two U.S. Attorney's Offices?

9 A More generally?

10 Q Yeah.

11 A I think the DAG's office regularly engages in that kind of contact. I think the
12 DAG's office is the decider essentially where there's any question or conflict between
13 various U.S. Attorney's Offices.

14 Q Have you ever dealt with a situation where the DAG's office had to require
15 your office to meet with a different office?

16 Ms. Kramer. Can you clarify?

17 Ms. Wolf. Yeah.

18 Ms. Kramer. I'm sorry. I don't understand that question.

19 Ms. Wolf. And I want to make sure that --

20 Mr. Castor. Mr. Brady testified that to have meetings with the U.S. Attorney's
21 Office in Delaware, he had to go through the DAG, and the DAG basically had to,
22 according to his testimony, had to make that happen.

23 Ms. Wolf. So --

24 Ms. Kramer. Wait. Is there a question pending? This is a series of statements
25 you're making about someone else's testimony. So what's the question related to the

1 last statement you just made, please?

2 Mr. Castor. The question is, in your experience, has the DAG's office ever had to
3 do that?

4 Ms. Kramer. Asked and answered.

5 Chairman Jordan. Did you ever talk to Mr. Brady yourself?

6 Ms. Wolf. Again, I'm not authorized to speak to any particulars of an ongoing
7 investigation.

8 Chairman Jordan. We're not asking about particulars. We're just asking, did
9 you talk to the guy?

10 Ms. Wolf. I think that that is -- exceeds the scope of my authorization to discuss.

11 BY MR. CASTOR:

12 Q Are you familiar with the 1023 form dated June 30th, summarizing a
13 confidential human sources meeting with Burisma executives that U.S. Attorney Brady
14 was able to uncover?

15 A I am familiar generally with it as it's been reported and discussed.

16 Q And did you become familiar with it in the course of your official duties?

17 A I'm unable to discuss the particulars.

18 Q Did you become familiar with it like reading it in the press, I guess is my
19 question, or was it sent to your office?

20 A I'm not authorized to discuss that.

21 Chairman Jordan. When did you become familiar with it?

22 Ms. Wolf. The form itself?

23 Mr. Castor. The June 30th, 2020, 1023.

24 Ms. Kramer. Would it be helpful to present her with the document so that we
25 know more clearly and specifically what you're addressing?

1 Mr. Castor. Do you have the 1023?

2 Ms. Kramer. Thank you.

3 Mr. Castor. This will be exhibit 4. [[]]

4 Ms. Kramer. It just helps the process to look at the document she's being asked
5 about.

6 Mr. Castor. It will not become exhibit 4 because we need to go get the
7 document.

8 Ms. Kramer. Okay. That's fine. Great.

9 Mr. Castor. We'll come back to it later.

10 Ms. Kramer. We appreciate that. Thank you.

11 BY MR. CASTOR:

12 Q Mr. Brady testified that your office only accepted a briefing from his office
13 after the DAG's office got involved. And, again, I know I've asked this maybe a couple
14 different times, and I'm not trying to badger, but had that ever happened in your
15 experience before?

16 A So I'm not authorized to speak to the particulars of a matter and to either
17 confirm or -- even confirm or deny Mr. Brady's testimony.

18 Q Okay.

19 A So that, I think is -- to the extent it presupposes it happened in that
20 particular instance, I'm just not able to answer the question.

1 [11:01 a.m.]

2 BY MR. CASTOR:

3 Q And during the course of your career, have you ever had a situation where
4 you were reluctant to cooperate with a different U.S. Attorney's Office? And by
5 cooperate, I mean have meetings, take telephone calls.

6 Ms. Kramer. I know this is almost too formal for this process, but I'm going to
7 object to form.

8 What does that mean, unwilling to cooperate? I'm just not clear on what exactly
9 you're trying to ask.

10 Mr. Castor. Unwilling to take meetings?

11 Ms. Kramer. Generally?

12 Mr. Castor. With a different U.S. Attorney's Office.

13 Ms. Wolf. I can answer those questions, generally.

14 BY MR. CASTOR:

15 Q Sure, sure.

16 A I think as a general matter, the idea would be that you are coming from a
17 place of cooperation and the common mission of the Department of Justice and what it is
18 you're trying to accomplish. But there may well be very, very valid means, reasons for a
19 desire and an interest to keep investigations separate and apart. And in those
20 circumstances, you would -- and it wouldn't be unusual to say, you know what, we're not
21 going to need to share information, we're not going to do this. And it would just
22 depend, again, on the particulars of an investigation and what the needs and what the
23 various interests were at play.

24 Q Okay. Are you familiar with Supervisory Special Agent Gary Shapley's
25 testimony where he indicated you were unwilling to interact with Scott Brady?

1 A I'm generally familiar with Special Agent Shapley's testimony, yes.

2 Q Okay. Are you familiar with that particular aspect of it?

3 A I mean, I've read his testimony.

4 Chairman Jordan. Would there be a reason not to interact and meet with Mr.
5 Brady and his team?

6 Ms. Wolf. As that relates to a particular investigation, I'm not authorized to
7 speak to that.

8 Chairman Jordan. You said there were some situations that -- the general way of
9 doing things is to, you know, "cooperate," I think, is the word you used. And you said
10 there are times that we're not going to do that. Why would there be a reason not to do
11 it in this situation?

12 Ms. Kramer. Chairman, respectfully, I think you had left the room when I had
13 asked Mr. Castor earlier, please allow Ms. Wolf to finish her answers to the questions
14 before --

15 Chairman Jordan. Okay, sure. I apologize.

16 Ms. Kramer. -- and me as well, number one. And number two, I believe you
17 mischaracterized her very recent answer.

18 I don't believe you said that there were times that you would refuse to cooperate,
19 unless I misheard.

20 So let's break that down. I think your first question, Chairman Jordan, is what
21 again, if you don't mind repeating it?

22 Chairman Jordan. Would there be a reason not to cooperate with Mr. Brady's
23 office?

24 Ms. Wolf. As to this particular case, I'm not authorized to speak to that. As a
25 general matter, and I think to potentially recast and just reframe, the infusion on the

1 point, there are valid investigative reasons in any given case that would need to be
2 evaluated before joining, overlapping, even taking in information, and that would all be
3 factored in, in any case, to deciding how to move forward in a matter, all in the spirit of
4 advancing and the best interest of the investigation.

5 Chairman Jordan. I understand. That's the general. But this is a little
6 different situation, right?

7 Ms. Wolf. I'm not authorized to speak to the particular situation.

8 Chairman Jordan. Mr. Rosen in the Attorney
9 General's Office tasked Scott Brady with being the key clearinghouse for any information
10 related to Ukraine and Hunter Biden. This is a unique situation.

11 So it would seem to me that your answer was the norm is to cooperate when you
12 have the Attorney General of the United States designating the U.S. Attorney's Office as
13 being that clearinghouse. That would even tend to be more focused on we need to
14 cooperate.

15 Ms. Kramer. I believe this has been asked and answered. And I am not even
16 sure, Chairman Jordan, there is a question pending in that statement that you just made.

17 Mr. Castor. In your experience, have you dealt with U.S. Attorneys that have
18 been the recipient of an assignment from Main Justice to examine a particular matter
19 that then subsequently touches on one of the cases you're working on?

20 Ms. Wolf. As a general matter, in my 16 years in the Department of Justice,
21 might that have happened, possibly.

22 Mr. Castor. Okay. But you can't recall anything specific?

23 Ms. Wolf. I can't -- I'm not authorized to discuss specific investigations.

24 Chairman Jordan. Well, he's asked a general question. Was this unique or did
25 this situation happen before?

1 Ms. Wolf. Again, I can't speak to -- so I want to be very clear. I can't speak to
2 what the scope of Mr. Brady's authority was, either as he understood it or as it was
3 provided by, I believe you said Mr. Rosen. I do know that at times U.S. Attorneys are
4 tasked with particular projects and particular requests on behalf of the Deputy Attorney
5 General or on behalf of the Attorney General. I don't think there's anything particularly
6 extraordinary about that undertaking.

7 You know, to the extent that it then subsequently touches on an investigation or a
8 matter in your district, I would expect that would be something that you would be aware
9 of and usually the kind of thing that would probably take place above the line level. And
10 that's part of, you know, a sort of lack of clarity or understanding on how this sort of what
11 is and isn't typical. I hesitate to answer. And, quite frankly, I think in answering
12 whether this was typical or atypical, it runs afoul of what I am authorized to discuss,
13 because it essentially acknowledges or will be interpreted as acknowledging or denying or
14 endorsing what may or may not have happened.

15 BY MR. CASTOR:

16 Q Do you have a recollection of Mr. Brady's office sending your office written
17 questions?

18 A That exceeds the scope of what I'm authorized to discuss.

19 Q And if you were authorized to discuss that, do you know the answer to the
20 question?

21 A I think that by answering it I would -- even by answering your subsequent
22 question, I would be exceeding the scope of the authority.

23 I would again reiterate that I think Special Counsel Weiss has indicated, and I think
24 it's required or at least as I understand it under special counsel statute, that he's going to
25 issue a fulsome report at the appropriate time. And I would expect that a number of the

1 questions that you're asking here today will be addressed within that document.

2 Mr. Castor. I'll mark exhibit 4.

3 [Wolf Exhibit No. 4.

4 was marked for identification.]

5 BY MR. CASTOR:

6 Q This is an email chain between you and FBI Special Agent Joshua Wilson. In
7 the last sentence of the email that you sent, it states, "There should be nothing about
8 political figure 1 in here."

9 Can you tell us who political figure 1 is?

10 A Looking at page 2 of the document, it would be, well, who's described as
11 former Vice President Joseph Robinette Biden, Jr., now President Biden.

12 Q And can you tell us why you wrote "There should be nothing about political
13 figure 1 in here"?

14 A So I am not able to answer questions about this particular search warrant or
15 this particular draft, but I can speak to the process of search warrants and drafting search
16 warrants and the process associated with that, if that would be helpful.

17 Q Okay.

18 A So in any given case, while you're seeking a search warrant, there are a
19 number of requirements. The first is that you demonstrate probable cause, and not that
20 a crime has been committed, but it's not simply enough to say there has been a crime
21 that a search warrant is probable cause for a particular crime. So just because I have
22 probable cause to look for guns in your house doesn't mean I can go in and take all your
23 bank records, for example. That's as a general matter.

24 And then the second link to it is there not only needs to be probable cause to
25 believe that a crime has been committed but that evidence or fruits of the crime will be

1 discovered at the location to be searched. The way in which -- so that is what's
2 articulated in the affidavit accompanying a search warrant or in support of a search
3 warrant.

4 The warrant itself requires specificity both of the area to be searched, and that's
5 attachment A, and then attachment B, which is a list of the items to be seized. And that
6 is where you describe the evidence that you expect to find and that you are seeking court
7 authorization to be able to take as a result of that and to seize within the scope of the
8 warrant. All of those things need to line up and need to speak to each other.

9 There is sort of a drafting, I think -- it's not uncommon that special agents will
10 spend a lot of time with an affidavit, and that's obviously where it will -- and you may get
11 a draft where no one has yet really looked at attachment B or even attachment A when it
12 comes over to make sure things marry up.

13 So in order, in any given case, you're first making sure that both your probable
14 cause lines up for both the crimes, the evidence, and what you're seeking authorization to
15 take as a result of that. It's not a carte blanche. And I think that's important. I think
16 that's important for people to understand that search warrants don't let you -- they're
17 limited. They're intrusions on people's rights. And the default is an intrusion on
18 someone's rights. So that there are protections built into the process by the
19 Constitution that the magistrates are responsible for enforcing.

20 So as a search warrant goes through, you need to be careful. If you're presenting
21 a warrant to a magistrate, you don't want to overstate your case. You don't want to be
22 too broad, so you need to line things up. So in any given case as you're revising both an
23 affidavit and the accompanying attachments to the warrant, you're working through all of
24 that. And you will frequently take things out more often. It's actually usually a process
25 of removing certain things, as often as it is a process of adding in other things. So it's

1 kind of an iterative process to get to the point where everything lines up as best it could
2 for what you have probable cause to believe you can fairly present to the court, both as a
3 matter of getting it approved by the court and also as a matter of what your sort of
4 ethical and, you know, responsibilities are as an attorney.

5 Q So in this instance, you stand by your statement that there should be
6 nothing about political figure 1 in here?

7 A I'm not able to speak to this particular warrant.

8 Q Okay. But in your opening statement, I think you indicated that none of
9 these decisions were made for political reasons. Is that fair to say?

10 A That is reflected in my opening statement, and I agree with that.

11 Q Okay. So to extent you didn't -- you asked the agents to take out political
12 figure 1, there was no political motivation in requesting that?

13 A I refer back to my opening statement where I said at no time there was
14 politics playing a role in those decisions.

15 Mr. Castor. I think my time's up on the first hour.

16 [Discussion off the record.]

17 [REDACTED]. We can go on the record, please.

18 EXAMINATION

19 BY [REDACTED]:

20 Q Good morning again, Ms. Wolf.

21 A Good morning.

22 Q You went through your background with a good deal of detail, but I just want
23 to bring out a little bit more, if you don't mind. You indicated you came into the U.S.
24 Attorney's Office in Delaware for the first time in 2007 under Attorney General Gonzales,
25 correct?

1 A That is correct.

2 Q And who was the President at that time that appointed Attorney General
3 Gonzales?

4 A I believe that it was George W. Bush.

5 Q Okay. You indicated that you worked through several Presidential
6 administrations. Those included both Republican administrations and Democrats. Is
7 that correct?

8 A That is correct.

9 Q And was there any meaningful change in the role that you had as a line
10 assistant during a Republican versus a Democratic administration?

11 A Absolutely not.

12 Q You have also indicated that you were a career, you call, line assistant. Can
13 you explain what a line assistant is in terms of your career?

14 A It is a nonsupervisory role. You're the person on the front line, essentially,
15 prosecuting all the ins and out of cases.

16 Q And that's not a political-appointed position, correct?

17 A No, to the contrary.

18 Q What do you mean by to the contrary?

19 A Well, it can't be essentially that you are, both officially under the Hatch Act,
20 limited in what you can do, but also more importantly the very nature of the work should
21 not be and can't be political.

22 Q You referred to the Hatch Act. Why do you refer to the Hatch Act when
23 you explain that your job is not political?

24 A The Hatch Act, I guess, places certain restriction on political activity by
25 Justice Department -- government employees generally, but applicable to the line on up

1 within DOJ. And as a part of that I think it is to -- I've always understood it to be to
2 create confidence from the public and the people that the individuals such as myself
3 making these decisions are not doing so with political motives or biases in mind.

4 Q And fair to say you've never held a political appointee position within the
5 Department of Justice?

6 A I have not.

7 Q And would you say that in your experience as an AUSA, you have made an
8 effort throughout your career to remain apolitical in your job?

9 A Absolutely. It's require -- I mean, it's not -- I would anyway, but it's
10 required.

11 Q Okay. During your career as an Assistant U.S. Attorney, about how many
12 cases, criminal cases, have you prosecuted?

13 A Prosecuting like that culminated in charges or investigations that may have
14 gone different directions at just --

15 Q Yeah. Just to start with, if you could answer it in whatever way is
16 meaningful to you in terms of investigations.

17 A Right. Because oftentimes information will come in and a very preliminary
18 investigation will be conducted, and it will be determined that, for whatever reason,
19 either no crime has been committed or it's not appropriate for Federal prosecution.
20 Others, some work is done -- well, work is done before a decision like that is or isn't
21 made, and it may be referred either to another district or to another body like the State
22 Attorney General's Office.

23 But in terms of actual charged cases over the 16 years that I served as an AUSA, I
24 should know the number, but I would expect that it would be approximately a hundred.

25 Q Those are all criminal cases?

1 A They are. Though at various points, I did also handle some civil cases early
2 in my career, as well as some asset forfeiture cases as well, which are civil in nature.

3 Q How many cases have you tried before a jury, if you know?

4 A Seven or eight, I believe.

5 Q And if you know, how many cases have you indicted before a grand jury?

6 A I would say most of those hundred were grand jury indictments.

7 Occasionally, as you may be aware, you can charge a matter by an information, which is
8 essentially where a pre-indictment, there is an agreement to enter a plea of guilty. That
9 would be the only circumstance in which you wouldn't indict a case before a grand jury.

10 Q So in addition to those approximately 100, you may have also been involved
11 in cases that were resolved before indictment?

12 A Well, that's included within the hundred matters.

13 Q Okay. You indicated also that you had some unofficial supervisory position
14 within the Department. Were you ever a FOUSA or in the -- I guess they're called front
15 office in the U.S. Attorney's Office?

16 A I was not, but I did sit in on senior staff and I had an SLC designation. And
17 the reason I was invited into senior staff was in part because of my seniority in the office,
18 in part because of my role with economic crime. In some ways, it was, I think, to
19 represent a line. And I think I may have been designated in connection with that as
20 counsel to the U.S. Attorney. But again, those are sort of unofficial roles that largely
21 relate, quite honestly, to an ability to give a pay bump rather than sort of a meaningful
22 supervisory role. It's not technically a supervisory role.

23 Q Okay. Throughout your career as an AUSA, have you received any awards
24 from the Department of Justice for your work?

25 A I have. From the Department itself I received a Director's Award, which I

1 think is the second highest -- you know, sort of regarded as the second highest form of
2 recognition for some work with a team as part of a litigative team for trial work I did in
3 one matter, as well as recognition at various points in time from Federal agencies,
4 including FBI and IRS.

5 Q And just a little bit about that. The Director's Award, do you recall when
6 that was given to you?

7 A So the award I think came in 2020, because there was no ceremony that
8 year.

9 Q And can you explain anything -- is that matter closed?

10 A The matter is closed. It was connected to the Wilmington Trust trial, which
11 I handled with two of my colleagues and an incredible team of agents, as well as great
12 support staff within our office. And it was essentially one of the few prosecutions of
13 individuals and senior bank executives arising in connection with the 2008 financial crisis
14 and the bailout.

15 It breaks my heart to say that it was reversed on appeal. The convictions were
16 reversed on appeal on a technical legal matter relating to a jury instruction. And
17 although the Supreme Court, I think, has since said we had it right, so that's little comfort
18 at present time. But we were recognized for -- it was about a 6-week trial, and we were
19 recognized by the Department for the work we did in that investigation and in the trial.

20 Q And would you say that that case, in the context of the other work that you
21 did at the U.S. Attorney's Office throughout your career, was one of the larger cases that
22 you had worked on?

23 A Yes.

24 Q And would you say it was impactful in your career in a way that was more
25 significant than other cases that were not run of the mill?

1 A Yes. I don't want to -- and sometimes -- you know, I don't want to sort of
2 overstate it, because I think even the little cases, right, matter, and are important, and
3 they certainly are important to the people on the other side who are being prosecuted
4 and their families. And they're important to the victims, and they're important to the
5 law enforcement agents who are investigating them. And sometimes you learn as
6 much, if not more, from the little cases as the big ones.

7 But, yes, you know, there are over a span of years taking a case from the earliest
8 stages of an investigation through trial, through appeal is just as a matter of right with
9 complicated legal issues and multiple defendants and everything else along the way, it's
10 going to be impactful.

11 Q Okay. You indicated that you retired from the Department of Justice in, I
12 think you said November of '23. Is that right?

13 A Yeah. I wish I retired, but I left the Department. I separated from the
14 Department.

15 Q Oh, understood. You didn't yet retire?

16 A No.

17 Q Okay. And those plans to separate or to leave the Department of Justice
18 were in place years ago or months ago?

19 A So it was -- it was a process. It was probably about a year ago where I first
20 started speaking with people about my intent to consider moving on from the
21 Department. And it takes a little while to figure out exactly what that looks like. But
22 those plans were in place, and I had sort of figured it all out by mid-June of this year.

23 Q Fair to say that when you chose to leave the Department, it had nothing at
24 all to do with performance as an AUSA?

25 A No, it didn't. I was -- had received outstanding ratings for I think every year

1 except the first, or maybe a first or second year when -- as an AUSA when I was merely
2 satisfactory.

3 Q Merely. Understood. And just real generally with what you're willing to
4 share with us today, can you tell us, are you proud of the work that you did as a Federal
5 prosecutor for 16 years?

6 A I'm enormously proud of it. I think for anyone who's done it, they can
7 appreciate the fact. And it sounds sort of trite to say, but it's more than a job. And it is
8 an incredibly -- it serves an important function. And you just learn to care about your
9 work. I think I alluded to the impact it has on the community, on the people that you
10 are dealing with on both sides of the occasion. And it feels like the kind of thing that
11 matters. And you work with people who share that belief and share that view in
12 attempting to seek justice.

13 So it is -- you know, you leave the job with a heavy heart because I don't think
14 there are a lot of jobs that offer that, though there are other things out there to do. But
15 I feel very confident the very little I will do moving forward will mean quite as much to me
16 as it did to be an AUSA for 16 years.

17 Q Okay. I'm going to move a little bit away from your personal background.
18 I did want to ask too, was there anything from the first hour that you needed to clarify or
19 say before I get into some more specific questions?

20 A I don't believe so.

21 Q Okay. I'm going to ask you some general questions. Not specifically
22 about the Hunter Biden matter or others, but all of these are just aimed at your
23 experience generally as an AUSA, about what kind of considerations prosecutors have
24 when they're making charging decisions or other decisions about how to lead an
25 investigation.

1 But before I even get into some of that, you indicated clearly that your position
2 was a line career assistant throughout your time at the Department, correct?

3 A Yes.

4 Q And as a line assistant, is it fair to say that you actually personally never had
5 the authority to charge people criminally; that authority instead lies with the United
6 States Attorney at whose direction you're working?

7 A Yes.

8 Q And so your role, is it fair to say, as a line assistant, as Assistant U.S.
9 Attorney, is to make recommendations about charging and other investigative steps that
10 the United States Attorney then has to authorize?

11 A Yes, it is. I have no independent authority to decide to charge a matter.

12 Q Okay. And that applies to every single case that you have ever touched at
13 the District of Delaware and elsewhere in the Department?

14 A That is every single case.

15 Q Okay. No -- sorry. Are you familiar with the Justice Manual and the
16 Principles of Federal Prosecution?

17 A I am.

18 Q And how are you familiar with it?

19 A The Justice Manual and the Principles of Federal Prosecution, which I think
20 are actually included as sections within the Justice Manual, they're your playbook, they're
21 your go-to as an AUSA. And you may hear me call it the USAM, or the U.S. Attorney's
22 Manual, because for a long time that's what it was. But it is the policies and procedures
23 that are applicable to all cases and in some areas are sort of specific and technical
24 requirements that need to be followed. And others like, for example, as they embody
25 the Principles of Federal Prosecution, just a little more aspirational and amorphous to

1 provide some guidance and bumpers, so to speak, to sort of remind people, I think, of
2 what the obligations are and what the relevant considerations are.

3 Q Okay. I'm going to admit as -- I think it's exhibit 5. This is a portion of the
4 Justice Manual that includes the Principles of Federal Prosecution.

5 [Wolf Exhibit No. 5.

6 was marked for identification.]

7 BY [REDACTED]:

8 Q If you can take a minute to look at the portion I've provided to you. Are
9 you familiar with this generally?

10 A Yes.

11 Q Okay. I'm going to direct you to just first the preface, which is section
12 9-27.000 and 01. I guess it starts on the second page, as is printed here.

13 Directing your attention to the last paragraph on that page. The first sentence of
14 the paragraph describes the Principles of Federal Prosecution serve two purposes. Do
15 you see that portion?

16 A Yes.

17 Q Okay. And according to this, it says that the two purposes of the Principles
18 of Federal Prosecution are, one, quote, "Ensuring the fair and effective exercise of
19 prosecutorial discretion," unquote. And then it says the second is, quote, "Promoting
20 confidence on the part of the public and individual defendants that prosecutorial
21 decisions will be made rationally and objectively based on individualized assessment of
22 the facts and circumstances of the case."

23 I've omitted some language, but did I read it correctly as far as you can tell?

24 A Yes.

25 Q Okay. Are you familiar with this language and the purposes that underlie

1 the Principles of Federal Prosecution?

2 A I am.

3 Q Based on your experience and expertise, what do you think it means, this
4 language, quote, "ensuring the fair and effective exercise of prosecutorial discretion," end
5 quote?

6 A I think it's just creating a baseline to, as I said, remind people of the
7 obligation to -- because you do have discretion and you're making decisions all of the
8 time. And that the principles of fairness are vital to that, as well as being effective in
9 enforcing -- not only just enforcing the criminal laws, but also enforcing them in a matter
10 so as to achieve justice.

11 Q And you already referred to prosecutorial discretion, but can you give us a
12 few words about what that means?

13 A Sure. In speaking right, Federal criminal laws are statutory; that there are
14 elements to each offense. And as a baseline matter, you have to determine that there's
15 proof available to support all of those -- all of those things in order to bring a case. It's
16 improper to bring a case if you don't believe that you can prove that case. But, more
17 importantly, is just because you can doesn't mean you should.

18 And this is a constant in -- and I don't think it's unique to being an AUSA, though
19 it's certainly heightened as an AUSA. You are authorized to do a lot of things, right; that
20 there's a relatively low threshold for approaching witnesses or subpoenaing documents.
21 A lot of times you can articulate probable cause to serve something. In other instances,
22 you can definitely meet the legal requirements and probably convict someone before a
23 jury. But that doesn't mean you should.

24 In each circumstance, and really every day, there's like a million decisions, right.
25 I think there's some research out there about how many decisions people make on a daily

1 basis, and it's something like 62,000, or something ridiculous. It's probably twice that
2 for an AUSA. Because you're constantly evaluating, okay, I can do this. Does this sort
3 of big picture, right, satisfy and work towards achieving and moving towards justice?
4 Whereas on the back side of it, also just at an individual level, the question is, is how does
5 this serve the best interest of the investigation?

6 And those are all the things that you're required to think about and do in every
7 single case, sort of every single day.

8 Q Okay. Do you broadly agree that one of the main objectives of the
9 Principles of Federal Prosecution is to ensure that prosecutors treat defendants fairly and
10 equally under the law?

11 A Yes.

12 Q And I don't want to put words in your mouth, but would you agree that
13 prosecutors have somewhat unique role in the criminal justice system because it's not
14 just their job to win a case, but also to simultaneously respect the rights of the defendant
15 that's being charged?

16 A Absolutely. And I think I alluded to the quotes from *Berger v. United*
17 *States*, right, that it is -- you have to strike fair blows. And it is not simply about winning
18 or burying the other side. It is about working hard, vigorously pursuing the truth, and
19 doing so in a way that is still within the limitations and the boundaries of the Constitution.

20 Q And you as a prosecutor actually have legal obligations to the defendant, not
21 just under the law to prosecute a case. For example, Brady obligations?

22 A That is correct.

23 Q And you have ethical obligations as a prosecutor as well to the defendant.
24 Is that correct?

25 A That is correct.

1 Q During your long career as a Federal prosecutor, have you scrupulously
2 adhered to the principle articulated in the Principles of Federal Prosecution in order to
3 ensure that you've treated defendants fairly and equally under the law?

4 A I think as I said sort of out of the gate in my opening comments and opening
5 remarks, yes, I have.

6 Q And just, if you can give any color to that, can you explain in any way, like,
7 how is it that you're able to do that, and how are you confident that you're able to do
8 that in your work?

9 A So I think the most basic way in which I'm confident that I was able to do it is
10 because I believe in it. And it's not just something that I've signed on to in conjunction
11 with taking a job or as a condition of employment, but it is important to the system of
12 justice and to sort of rule of law, which I have enormous respect for, that it's done so.
13 And I think that part of the reason for me that my work, and in particular at the United
14 States Attorney's Office for the District of Delaware, was so meaningful was because that
15 was very much a shared mission. It is a smaller office, and I think it's one of the smallest
16 U.S. Attorney's Offices. And as a part of that, there are periods where -- there's always
17 people that come and go from U.S. Attorney's Offices, but there was, for most of my
18 career, a core group of people who were not just passing through and who fostered that
19 and shared that vision and that role moving forward. And constantly because
20 you're -- and then just lastly, you're always mindful of it because you are trying to do the
21 right thing, and I think you are guided by what internally you believe is the right thing.
22 You have these principles backing you up. And then you have usually terrific colleagues,
23 when you're not sure what to do, you can talk to and bounce ideas off of and encourage
24 you to think about things in new ways and in a new light.

25 Q Okay. The second part of that preface it talked about fairness to the

1 defendant. And it also talks about the need to promote the perception in the public
2 that there is fairness, or not to undermine the perception of fairness in the public. Do
3 you agree that that is also important as the prosecutor exercises her discretion, to make
4 sure that the public is not looking on this system as unfair?

5 A It is. It's very important. It's also very challenging to do. And in part it's
6 because you -- partially, you're trying to do your best, but you -- and you have reasons.
7 And often they are reasons you can't share for a variety of reasons as to why you've made
8 a particular decision. And you have to be willing. You know, I think that sometimes
9 can be undermining to public confidence, but it is sort of a necessary part of the process
10 to protect people's individual rights and really the integrity of the system.

11 But -- and partially you don't control every aspect of that in, right -- the courts are
12 charged with sentencing. And sometimes the end result of a sentence will be different
13 than either what you expected or what it was in a way. And while they're tasked with
14 not imposing unwarranted sentencing disparities, sometimes it feels like those are not,
15 you know, always equal. So you don't always have control over the process, and it is
16 difficult.

17 And then it's a public-facing role as well. So you have a lot of people, and
18 depending on the type of case or investigation that you're doing, more or less of sort of
19 commentary and scrutiny on the decisions you're making and the work you're doing,
20 which can have the effect essentially of undermining confidence in what you're doing
21 along the way.

22 Q I'm going to have you move a little bit past this preface. Turn to page 5, if
23 you would, and we're going to look at the portion of the Justice Manual, section 9-27.220,
24 which is entitled, "Grounds for Commencing or Declining Prosecution." It should be on
25 the bottom of page 5.

1 Do you see that section, Ms. Wolf?

2 A Yes.

3 Q It's kind of small print, I apologize.

4 A I've got my glasses. I can see it.

5 Q Okay. I'm going to read first that portion. That portion reads, "Grounds
6 for Commencing or Declining Prosecution. The attorney for the government should
7 commence or recommend Federal prosecution if he or she believes that the person's
8 conduct constitutes a Federal offense, and that the admissible evidence will probably be
9 sufficient to obtain and sustain a conviction, unless, one, the prosecution would serve no
10 substantial Federal interest; two, the person is subject to effective prosecution in another
11 jurisdiction; or three, there exists an adequate noncriminal alternate to prosecution."

12 First of all, have I read that correctly?

13 A Yes.

14 Q Have your actions as a Federal prosecutor been guided by these principles as
15 we've articulated them here from the Justice Manual?

16 A Yes, they have.

17 Q And let's walk through them one by one. First, the prosecutor is guided to
18 recommend charges when they believe the admissible evidence will probably be
19 sufficient to obtain and sustain a conviction. What does admissible evidence mean?

20 A It means essentially that it satisfies both constitutional requirements and the
21 Federal Rules of Evidence so that there's a whole structure, for the nonlawyers in the
22 room, as to what can and cannot come in in a courtroom.

23 Q And it's not that uncommon in an investigation for you to have knowledge or
24 hear information that may not be able to be submitted to the jury because it doesn't
25 comply with those rules. Is that fair to say?

1 A It is. And part of the reason also that investigations, for example, we
2 were -- I was describing the process for search warrants, part of the reason it's important
3 to get that and make sure it's correct is to do everything you can to make sure as much
4 evidence as possible that you're gathering will, in fact, be admissible at trial.

5 Q And that refers to what a trial judge might do if you were to, say, obtain
6 evidence from a search warrant illegally. Could the judge limit the introduction of that
7 evidence or in some way --

8 A Yes.

9 Q -- punish you as a prosecutor?

10 A It's not punishment, but yes, it could be deemed inadmissible.

11 Q Okay. So the Principles of Federal Prosecution also refer to the amount of
12 admissible evidence that is, quote, "sufficient to obtain and sustain a conviction,"
13 unquote.

14 In a criminal case, the amount of evidence sufficient to obtain or sustain a
15 conviction is an amount sufficient to prove the defendant's guilt beyond a reasonable
16 doubt, correct?

17 A Yes.

18 Q Sorry that was long.

19 Now, beyond a reasonable doubt is the highest evidentiary standard in the law.
20 Fair to say?

21 A Yes.

22 Q Beyond a reasonable doubt is higher standard than probable cause standard,
23 which is often used -- well, which is used to indict people in the grand jury?

24 A It is. And that's sort of the difference I think we were talking about, the can
25 versus should. That you can charge a case based on probable cause alone, that is the

1 legal standard that goes before a grand jury. But in making the decision whether to
2 present that basis for probable cause to a grand jury and seek to charge a case, you are
3 looking at the threshold as articulated in the 9-27.220.

4 Q Okay. That's beyond a reasonable doubt?

5 A It's a reasonable likelihood or substantial likelihood of prevailing of the
6 merits, which is substantial likelihood that you could prove your case beyond a
7 reasonable doubt.

8 [REDACTED]: I'm sorry, when you're considering whether to charge, can you
9 explain why you specifically take into account beyond a reasonable doubt, even though
10 you could charge just based on a probable cause standard?

11 Ms. Wolf. In part because, ultimately, that's the burden you're held to at trial.
12 And you, as a general matter without -- you like to feel like you've got a good sense of
13 what your evidence is before you make that decision precisely for these reasons and for
14 an understanding.

15 We also are in a world of finite resources, and you can't do every single case.
16 That is a violation of Federal criminal law as a case. It's time-consuming. And as you're
17 trying to figure out how to allocate resources, it's a relevant consideration as to whether
18 or not you can do it. But more broadly, there is a question as to where you have no
19 shortage of matters to pursue, to proceed against those who most warrant, deserve the
20 scrutiny and attention, which is largely based on the seriousness of the conduct. But
21 also it does little to inspire confidence in the system to go after people who are
22 wishy-washy. It doesn't help to lose cases. In some ways, right, there's always a risk of
23 emboldening other people to engage in similar conduct.

24 So these are all really important considerations. And it is -- it goes beyond the
25 technical probable cause requirement as you're thinking through it.

1 BY [REDACTED]:

2 Q And continuing with this part of the Principles of Federal Prosecution, the
3 prosecutor's obligation under the principles to present sufficient evidence to prove a case
4 beyond a reasonable doubt, that's sometimes referred to as burden of proof at trial,
5 correct?

6 A Beyond a reasonable doubt is the burden. That is the burden of proof, yes.

7 Q And it's the government who bears that burden in a criminal case, correct?

8 A At all times.

9 Q A defendant, by contrast, does not have to present any defense or any
10 evidence at trial if they choose not to, right?

11 A That is correct.

12 Q But if the defendant chooses to present their own evidence and to put on a
13 defense, in order for the government to then meet its burden, it must overcome that
14 defense and still present enough evidence beyond a reasonable doubt to prove guilt. Is
15 that true?

16 A Yes, it does -- if a defendant puts on a case, it still doesn't change that the
17 ultimate burden of proof lies with the government to prove the case beyond a reasonable
18 doubt.

19 Q Okay. Because, ultimately, the evidence must be sufficient in light of all
20 defenses presented at trial, if one is presented, for the government to show beyond a
21 reasonable doubt the defendant has been guilty?

22 A Yeah. It's not enough to simply understand what your evidence will be in
23 evaluating whether or not to bring a prosecution. And, typically, right, there's a process
24 of writing what's a prosecution memo where you analyze your position and your
25 argument and what's going on. But part of that is also understanding and articulating

1 and talking through what the likely defenses will be and how that impacts what proof.

2 You can't simply assume that your theory of the case and the evidence you have will be
3 uncontroverted or that it's unequivocally supported by all of the facts in the case.

4 There is often, in particular in fraud cases, where the issue is more commonly
5 mental state than anything else. There's not a lot of dispute about what happened.
6 There's more dispute about what it means; that there will be conflicting evidence or
7 counternarratives that you expect to present at trial, and you need to think through how
8 that impacts your ultimate ability to prove your case.

9 Q You mentioned the prosecution, and I'm going to get to that in just a second.

10 A Okay.

11 Q But just continuing along a little bit, when the prosecutor is under the rules
12 of -- or under the Principles of Federal Prosecution, considering whether they have
13 enough evidence and the beyond the reasonable doubt standard, in your experience as a
14 Federal prosecutor, is it fair to say that it can be difficult to convince a jury beyond a
15 reasonable doubt, even when you have a significant amount of evidence that the
16 defendant has violated the law?

17 A So --

18 Q I guess what I'm emphasizing is the jury itself. Like, one other challenge
19 that a prosecutor has often in a criminal case is that you not only have to present enough
20 evidence to get beyond a reasonable doubt in that standard, but you have to prove that
21 to a jury, which is 12 citizens who unanimously have to agree that you've met your
22 burden. Is that correct?

23 A That is correct.

24 Q And if even one person on that jury decides that they have a reasonable
25 doubt with respect to something that you've proven in your case, they'll be instructed

1 not -- to find the defendant not guilty?

2 A That is correct. And, you know, this is commonly a factor we think about in
3 shop as jury appeal of a case. And it's really both sort of proactively, like, why should a
4 jury care about this, and why should they care enough to say, we're going to convict
5 someone and revoke their liberty for this particular thing?

6 So there's that matter. And then there are sort of the particulars of any
7 individual defendant and whether there's an expectation that there are particular factors
8 or circumstances associated with the defendant that will come out at trial that may
9 impact -- as you said, it only takes one, but more broadly, the potential for unanimity of a
10 jury verdict.

11 Q Okay. So, again, just focusing a little bit more on this challenge that a
12 prosecutor has, when they are looking at charging a case, they're looking down the road
13 at what's going to happen at trial, correct?

14 A You should be.

15 Q Well, according to the Principles of Federal Prosecution, you should be,
16 right?

17 A Yes. Yes.

18 Q And you have to overcome the beyond a reasonable doubt standard,
19 correct?

20 A At the --

21 Q You have to present evidence at trial. And you also have to convince 12
22 citizens who are not legal experts that your evidence is sufficient, correct?

23 A Yes.

24 Q And could one of the problems, in your experience, be overcoming a
25 vigorous defense? For example, if the defendant on the other side has a good argument

1 or a vigorous defense attorney, could that be a problem sometimes at trial to convince
2 the jury that you have something to overcome that?

3 A Certainly. And it doesn't even have to be a good defense. It can be
4 very -- I think as you alluded to, it can be a very good lawyer. And because there's so
5 much, right. We need 12. They only need one. And you see people -- and because I
6 think the safeguards -- and it's not necessarily inappropriate to do so, right. The
7 safeguards are there for the people who you're trying to convict of a crime. It
8 sometimes feels like the system is -- you know, I won't say stacked against you because
9 that's not fair. But you are held to a much, much higher standard and burden along the
10 way.

11 So, obviously, I think it is -- you know, there's litigation risk involved, and you have
12 to think through what a defense is going to look like.

13 Q Okay. In addition to the vigorousness of the defense or the quality of the
14 defense attorney, another difficulty might be explaining a complex series of crimes to a
15 jury of lay citizens. Is that fair to say?

16 A It is. Although, if you do your job right, it shouldn't be. But it's one of the
17 most -- it can be one of the most challenging things, and you have to figure out how to
18 explain it.

19 Q Okay. And the complexity of charges is something that you would have to
20 consider on the front end when you're considering whether you're likely to succeed at
21 trial, correct?

22 A Yes. I think there's also, as you're working through things, right, that there
23 can be very convoluted theories and more straightforward theories. And you working
24 both with your own team and with your supervisors and everything else, you focus on the
25 sort of storytelling and how you're going to accurately and truthfully convey to the jury

1 both what happened, why that matters, and why they should care.

2 Q Okay. And another difficulty or challenge that a prosecutor might face in
3 convincing a jury is the defendant's intent if the crime requires proving willfulness. Is
4 that fair to say?

5 A Intent is almost always the hot button issue in most fraud or white-collar
6 economic crime prosecutions, yes.

7 Q Can it sometimes be difficult to convince a jury of the defendant's guilt
8 where there's evidence that the defendant is in a very troubled state of mind at the time
9 that the crimes were alleged to have occurred?

10 A I mean, that would be one factor.

11 Q In order to obtain a criminal conviction, you not only need to establish the
12 defendant's guilt beyond a reasonable doubt; we indicated that you also have to have a
13 unanimous verdict, correct?

14 A Yes.

15 Q Okay. Have there been times when you, guided by the Principles of Federal
16 Prosecution, have recommended declining to bring charges against the defendant?

17 A In my 16 years?

18 Q Yes, in your entire career.

19 A Yes.

20 Q Okay. Have there been times when your investigation may have yielded a
21 significant amount of evidence that this defendant was guilty but where the evidence was
22 still not sufficient, in your judgment, to convince a jury of the defendant's guilt beyond a
23 reasonable doubt?

24 A Yes.

25 Q Why might you recommend declining to bring charges, hypothetically, in

1 cases like that?

2 A I mean, there's any number of reasons why you would do that.

3 Certainly -- a lot of times, right, it would -- I think -- and this goes back to the original -- is
4 there sort of an adequate noncriminal recourse here. So if the way things have shaped
5 all over, like several years, right, does it feel -- even though you could prove it, right, does
6 it feel maybe like it's more of a civil case. Or just in terms of feeling like there's a sense
7 of feeling of like justice as to what has happened and how this has all gone out, maybe
8 that's a factor.

9 You may have a defendant against who you have a great case against but they're
10 in, you know, terminal kidney failure. And you may have, you know, a husband and wife
11 who have committed crimes together, where one is substantially more culpable than the
12 other and you could probably prove the case against both, but there might be, you know,
13 young children left at home without, you know, either par- -- these are not specific to any
14 case, but these are the kinds of things that you're thinking about.

15 It may be a case where an agent who knows all the information and ran
16 everything through retires. And that's just a huge knowledge gap that's going to make
17 the case, like, so much -- you have to basically do it all over. And depending on what it
18 is -- it's a constant balancing of factors and decisions. And there's no sort of right, wrong
19 way to do it.

20 Q Okay. And you said that, you know, you have had circumstances where
21 you've seen a significant amount of evidence against a defendant, where you have
22 recommended declining charges, for whatever reason, as some of them you've described,
23 right?

24 A Yes.

25 Q And when you've done that, you're not just acting on your own without

1 consulting people in your office. Fair to say?

2 A That is correct. I don't believe that I have ever, in my recollection, sort of
3 issued that type of declination without having a conversation with at least one supervisor.

4 Q And also, you're not making those decisions in a vacuum. You are doing it
5 because you're bound by many factors, including prosecutorial ethics, the Federal
6 prosecution guidelines that we've just discussed, and other considerations that bind
7 prosecutors in these decisions. Is that fair to say?

8 A That's correct. It's never in a vacuum. And it's never just what I think.
9 It's what I think in relation to all of these things.

10 Q Okay. I'm going to move beyond the Principles of Federal Prosecution. I
11 think you've given us a good understanding of how they operate and how they worked in
12 your career.

13 You mentioned before that there's a -- I think you called it a prosecution memo.
14 Is that the term you used?

15 A Yes.

16 Q Okay. Can you tell us a little bit -- I'm going to focus on the stages of a
17 prosecution, sort of distinguishing between the investigative stage, and as you get closer
18 to potential charges in a trial, what the process looks like.

19 Now, with respect to the prosecution memo, can you just tell us, what is that, in
20 your experience?

21 A In my experience, it's a requirement -- I don't know if it's a requirement in
22 the Justice Manual or just in that District of Delaware Criminal Manual, but for every case
23 before indictment, you're required to, in written form, present -- essentially, you talk
24 generally about the case, you talk about the law, you talk about the punishment, you talk
25 about the elements of the offense, you talk about the proof, and you talk about the

1 defendant. And you sort of wrap that up and present that in the first -- and make a
2 recommendation.

3 And it's usually -- usually you don't write a full declination memo. But for any
4 case you're prosecuting, you request essentially to present the indictment to a grand jury.
5 That goes to the criminal chief. And you've drafted a proposed charging document
6 along with -- that goes to the criminal chief in the first instance, who then sends it up for
7 U.S. Attorney approval.

1 [12:02 p.m.]

2 BY [REDACTED]:

3 Q And in cases that -- you referred to earlier that you have reactive cases and
4 then you also have proactive cases. Can you just briefly explain what the difference is in
5 terms of the U.S. Attorney's Office generally?

6 A Sure. So, you know, the easiest example of a reactive case is they pull
7 somebody over for a traffic stop and they discover a whole bunch of, you know, drugs in a
8 vehicle.

9 Or that, you know, they show up, they are called to the scene of an argument or
10 crime and somebody has a gun, and when they run that person, they have a felony
11 conviction precluding them from lawfully presenting the firearm.

12 Those are more reactive cases.

13 Proactive cases are things where -- they can be both sort of moving forward.
14 They can be like wiretap cases. So not all like drug and gun cases are reactive where
15 you're doing affirmative steps to investigate. There is still work to be done, essentially,
16 to be able to prove or make the case along the way.

17 And they can be -- but they can be retrospective, right. It's a proactive
18 investigation if doing things, marshaling materials. They don't lend themselves to sort of
19 a simple like three-sentence narrative. You have to talk to witnesses. You have to get
20 documents. You have to kind of piece together what happened.

21 Q So focusing a little bit on the proactive cases, these usually are cases that
22 you start as an AUSA working with an investigator, some kind of Federal investigator. Is
23 that fair to say?

24 A Yes.

25 Q What kind of agencies would you work with throughout your career?

1 A Probably most frequently FBI. They just have the broadest jurisdiction and
2 sort of largest local presence. I worked with FBI. I worked with IRS CI, DEA, ATF, postal
3 inspectors. Secret Service has criminal jurisdiction as well.

4 And then there are all of these sort of little OIGs, like Social Security OIG, USDA
5 OIG, all who have responsibility for fraud within their programs. So we worked a lot
6 with them as well.

7 And sometimes those agencies will partner also with like State and local
8 authorities. So we worked not infrequently with the Delaware State Police or New
9 Castle County Police Department or Wilmington Police Department on our matters in
10 Delaware.

11 Q A lot of those investigations, is it usually the case that the investigators will
12 come to you with information that they have begun to gather or is it the other way
13 around or both?

14 A It's both, but more typically it is driven or initiated by the investigative
15 agency.

16 Q Okay. And can you talk a little bit about what the difference is, if there is
17 one, between the role of the investigator at that stage and the role of the prosecutor as
18 you come together to work an investigation?

19 A I'm sorry, at which stage?

20 Q At the beginning, when the investigator comes to you with some
21 information.

22 A So typically -- or the most -- there is no real typical because it's one of those
23 things that varies greatly, and there are a lot of ways that an investigation can come in or
24 be opened.

25 But a, for example -- and I'll use the FBI here because they are here -- someone, a

1 citizen, they have an internet complaint system where people can file and just let people
2 know something has happened online, and that gets routed to sort of the most
3 appropriate jurisdiction.

4 So they may say -- somebody reported that their bookkeeper embezzled
5 \$43 million from their company. Usually that would be a phone call, but nonetheless
6 they've come in.

7 Usually, sort of baseline, they do some very basic work before they even reached
8 out to the U.S. Attorney's Office. Most notably, they'd sort of run in the system to see
9 like, "Oh, does somebody else already have this open? Is there something already going
10 on in that?"

11 They might look for news articles or just do some very basic things to make sure
12 it's not a frivolous complaint or that it's something that they're worth looking into. And
13 they can either open an assessment or a full case.

14 The stage at which they will definitely come to the U.S. Attorney's Office is the
15 point at which they want to issue process or take some sort of affirmative step in
16 connection with the matter.

17 So I'll get -- and I got a lot of these, both directly and then as the supervisor for
18 economic crimes -- you get a phone call. "Hey, we got this information. We'd like to
19 open a case. What's your position on it?" And I will often, more often than not say,
20 "Yeah, let's open it up."

21 The threshold for opening an investigation is relatively low. And then sometimes
22 you do some very preliminary work, kick some subpoenas. You get information back
23 and suddenly it makes sense. So you close that case down.

24 Other times that's just the start of the process.

25 Q Is it fair to say that the investigators, as they come to you, have a different

1 role than you have when you're examining, for example, whether to open a matter at the
2 U.S. Attorney's Office or to issue a subpoena or give them some other kind of approval for
3 a legal process?

4 A Yes, there's different roles. There's a team approach and people talk
5 through and work through. But ultimately the decision to determine the legal
6 sufficiency or present a document to the court or anything else is the prosecutor's
7 decision, not the investigator's.

8 Q And why is that decision made by the prosecutor and not the investigator, in
9 your opinion?

10 A In my opinion? I think it's -- I mean, some of it is it's various legal
11 processes. It's sort of a requirement. I don't think it's because we're magically smarter
12 or better than anyone. It's just we're trained to do it, so to speak.

13 You know, I often -- like, you know, I don't tell ATF how to go out and execute a
14 search warrant once we've gotten the search warrant, but I do help them get to a point
15 where the search warrant we're presenting to the court states probable cause for
16 whatever they want to do.

17 There's just different lanes. Maybe that's the best way to say it.

18 Q Okay. Fair to say that a lot of the investigators are not lawyers?

19 A Mostly that's true.

20 Q And they're not trained as prosecutors are to consider what we've gone
21 through, like with the Federal Prosecution Principles, for example, how to decline or
22 approve charges? They're not trained in that respect?

23 A That's correct.

24 Q Okay.

25 So have you in your career had differences of opinion with agents generally in

1 cases when it comes to either investigative steps they would like to take or charges that
2 they would like to bring? Have you ever had a difference of opinion with an
3 investigative team with respect to that generally?

4 A I mean, at the smallest level. I can't remember a case when at some point
5 there wasn't if not ultimately a disagreement at least a discussion or a consideration of
6 two different approaches to something. It is the norm.

7 Q Okay. And generally, is it fair to say that investigators tend to overvalue
8 the evidence and prosecutors tend to be a little more cautious? Is that a fair
9 characterization in some cases?

10 A I wouldn't necessarily say that. But I think sort of in line with what you
11 were saying about the differing role and lane, there is often, at least in an initial
12 approach, and it varies from person to person, there is a huge variation in this.

13 The investigators tend to be a little more aggressive in their first pitch as to what
14 they'd like to do. That is a generalization. I have worked with some very, very
15 measured and careful investigators who do not take that.

16 But if you were going to stereotype it, yes, in varying degrees, investigators tend
17 to be advocating more aggressive positions.

18 Q In those cases, when you've had a disagreement, how do you handle those,
19 in general?

20 A So it depends. You know, sometimes it's not uncommon that an
21 investigator can convince me of the merits of what they want to do and that not
22 only -- you know, that it is, what they're proposing, first and foremost, is compliant with
23 legal and ethical obligations, but then also is in the best interest of the investigation; or
24 not sort of appreciably different or meaningfully different than the approach that I would
25 prefer.

1 So sometimes we resolve it that way and do that. Usually everybody, you know,
2 talks it through, communicates about it, and it's done, and everybody continues working
3 in the best interests of the investigation in a collaborative manner.

4 There are times where people take, you know, decisions to their supervisors and
5 then their supervisors call my supervisors.

6 But almost always it gets resolved. And I think at the end of the day, almost
7 always people genuinely believe, even if you agree to disagree, that you're all trying to
8 work towards the same goal.

9 Q Okay. I'm going to shift gears now a little bit away from the process. And
10 you've testified repeatedly in your opening statement and in response to questions that
11 you were not influenced by any personal or political bias in your role on the Hunter Biden
12 prosecution team or in any prosecution that you've handled. Is that fair to say?

13 A Yes.

14 Q Okay. And all of your actions in that case and in all others, your
15 recommendations to your superiors were guided by your statutory and ethical obligations
16 as a Federal prosecutor. Is that fair?

17 A Yes.

18 Q Do you agree that it would be inappropriate for a Federal prosecutor to
19 make or recommend charging decisions in order to influence the results of an election or
20 to favor one political official or candidate over another?

21 A Yes, I do agree.

22 Q In your career as a Federal prosecutor, have you ever been asked to act in
23 such an inappropriate manner?

24 A No, I have not.

25 Q How would you have responded if you had been asked to take an action or

1 make a recommendation for political purposes?

2 A I mean, I would not have, right, in the first instance. And I, in all likelihood,
3 would have gone to a supervisor to discuss and report because there are
4 sometimes -- there are reporting obligations for professional responsibility, obligations
5 both within the Department and more generally within the bar. So if it was a lawyer or
6 depending on what it was.

7 But I certainly would not try to navigate that point on my own. I would want to
8 make sure that others were aware and that everyone understood what I understood had
9 happened and to be a part of the decision.

10 It wouldn't be something I would like sweep under the rug and be like, "Oh, we're
11 just going to forget they said that." That wouldn't be the way to go here.

12 Q What is your response to those who have accused you of acting based on
13 political considerations or bias?

14 A I think I alluded to this in my opening statement. It's hurtful. It's difficult
15 to listen to even knowing that it's not true. It's frustrating not to be able to respond
16 meaningfully to it, although I think there are very good reasons for that.

17 And, you know, the response is, I think to the extent that I said in my opening
18 statement, it's just not true.

19 Q Would you agree that your work on the Hunter Biden matter has gotten
20 more public attention than work on other matters that you've handled?

21 A Yes.

22 Q And do you think that that has resulted in negative repercussions for you
23 personally?

24 A It's been really not pleasant. So there is the just sort of emotional aspects
25 of it. There is having people you know sort of asking about things. There's people you

1 don't know who track down -- you know, my work email is easy to find. But, you know,
2 there were people who tracked down my personal phone number, both home and cell,
3 who would, you know, feel free to share their view.

4 And, again, as much as you know the hateful things people are saying are not true,
5 it's still unpleasant to hear, especially when they strike against sort of the core of
6 something you've been so proud to not be along the way.

7 You know, at times it has made me feel and worry about the safety of my family.
8 We've changed the way we do some things at home because of that.

9 And then I think I alluded -- you know, just professionally, I delayed my departure
10 from the office as a part of that. You know, I think that's probably a minimal
11 repercussion, but nonetheless it's had an influence of my professional life and the start of
12 a sort of new chapter of my career.

13 Q Do you have any concerns for others who have been in a similar position in
14 terms of what that harassment and threats and outside interest in cases like this could
15 mean for prosecutors who are trying to do their jobs?

16 A I think it's -- you know, obviously I do, as someone who cares about the
17 mission of the Department. People should feel safe and secure in doing their work.

18 And certainly, as it relates to this case, right, the people with whom I worked on
19 this case, some of whom are in similar circumstances, who I care about deeply personally,
20 you know, I think that.

21 But there's no question that attempts to hash things out publicly and in the public
22 discourse, there may be a time and a place for that in connection with any matter. But
23 while something is still ongoing or pending and before people have an opportunity to
24 really understand, it's very, very disheartening.

25 [REDACTED]. My colleague has a question.

1 [REDACTED]: Thank you.

2 BY [REDACTED]:

3 Q Ms. Wolf, how long have you known David Weiss?

4 A David Weiss was on the -- he was at the time the civil chief and first assistant
5 and was on the panel of people who interviewed me in June of 2007 to join the U.S.
6 Attorney's Office.

7 Q To the best of your knowledge, has David Weiss made decisions as U.S.
8 Attorney and now as special counsel without reference to political considerations?

9 A Yes.

10 Q And has he made decisions -- all decisions -- consistent with his statutory and
11 ethical obligations as a Federal prosecutor?

12 A To my knowledge, absolutely.

13 Q And then I just want to restate some of the things that you said earlier to
14 make sure I have it right.

15 You were asked about Mr. Weiss' authority generally?

16 A Yes.

17 Q And you said that it was your understanding that U.S. Attorney Weiss had
18 the necessary authority to bring charges he deemed appropriate in any jurisdiction. Is
19 that correct?

20 A Yes.

21 Q And you stand by that?

22 A Yes, that was my general understanding.

23 Q Okay. And I think you actually said, from your perspective as the line
24 prosecutor, you never thought about authority because it was just your understanding
25 that the authority was there, correct?

1 A Yes. I assumed that whatever was going to get worked out was going to
2 get worked out above my pay grade, in essence, and I was proceeding in a manner that I
3 would in an investigation, working towards determining whether it was appropriate to
4 bring charges.

5 Q Okay. So you were not concerned about whether you, as Mr. Weiss'
6 subordinate, might be able to take the steps you needed to take?

7 A Consistent with my understanding of his authority, yes.

8 Q Okay, thank you.

9 [REDACTED]. Mr. Ivey, do you have any questions.

10 Mr. Ivey. Not at this time.

11 [REDACTED]: We can go off the record.

12 [Recess.]

13 Mr. Castor. We're back on the record. It's 12:38.

14 I'm going to mark as exhibit 6 the authorization letter from the Department, just
15 as a matter of completeness.

16 [Wolf Exhibit No. 6.

17 was marked for identification.]

18 Ms. Kramer. Six, you said?

19 Mr. Castor. No. 6, yeah.

20 Ms. Kramer. Okay.

21 Mr. Castor. And Mr. Jordan is going to -- he has a question. He's going to refer
22 you back to exhibit 4.

23 Chairman Jordan. Yes, exhibit 4, Ms. Wolf.

24 So who is Josh Wilson and Carly Hudson that you sent the email to, you returned
25 the email to?

1 Ms. Wolf. I am not authorized to identify line personnel who were involved in
2 the case.

3 Chairman Jordan. But you worked with them on the case. Is that right? I
4 mean, Mr. Wilson sent you the email 5:30 p.m., Wednesday, August 5th, 2020, and you
5 responded back a couple hours later.

6 Ms. Wolf. Yeah. The document I think speaks to itself. It's an email originally
7 sent from Special Agent Wilson to me and Ms. Hudson and copying several others. And
8 I responded to Special Agent Wilson, as well as Ms. Hudson with the cc's.

9 Chairman Jordan. And so had you worked with Mr. Wilson and Ms. Hudson? I
10 mean, you worked with them for -- on numerous cases? Is that common that you
11 worked -- I mean, he's a Baltimore office field agent and she's U.S. Attorney Delaware.
12 You worked with them a lot?

13 Ms. Wolf. Generally, without speaking to any particular case, we had a relatively
14 small office in Delaware. We frequently -- and you may not have been here when we
15 discussed -- our cases are frequently staffed -- any of our cases -- are mostly staffed with
16 more than one AUSA.

17 And in terms of investigating cases, the Wilmington Resident Office is part of the
18 Baltimore field division of the FBI.

19 Chairman Jordan. Right. Right.

20 Ms. Wolf. So that is where our FBI agents assigned to investigations almost
21 always came from, although sometimes they'd come from other places.

22 Chairman Jordan. And your first sentence, you said, in your response email, you
23 said, "Someone needs to redraft attachment B," which implies there was an attachment A
24 and maybe multiple other attachments.

25 How many attachments typically accompany a search warrant?

1 Ms. Wolf. Typically, a search warrant has, in every search warrant, an
2 attachment A and an attachment B. They're required parts of the search warrant.

3 Chairman Jordan. Okay. And are there more? Is there C, D, E? Is there
4 multiple?

5 Ms. Wolf. Those are the only two that are required.

6 Chairman Jordan. But I'm asking are there others or just these two?

7 Ms. Wolf. With regard to this particular warrant or --

8 Chairman Jordan. Yes.

9 Ms. Wolf. -- in general?

10 Chairman Jordan. Both.

11 Ms. Wolf. With regard to this particular warrant, I'm not going to speak to it.

12 In general, there may be other things that get attached, usually the affidavit, as
13 exhibits. But attachment A is always a description of the location or premises to be
14 searched, and attachment B is the list of items to be seized.

15 Chairman Jordan. Okay. And is it common to have those -- is it common
16 practice to have those redrafted? When your staff puts together or other attorneys or
17 agents put it together, is it common to have this redrafted?

18 Ms. Wolf. Yes. I think I -- again, you may not have been present when I spoke
19 about the process associated with search warrants, but they're vitally important pieces of
20 the document.

21 Chairman Jordan. We understand that.

22 Ms. Wolf. And they need to be in line, the affidavit and the attachments need to
23 line up and really speak to each other --

24 Chairman Jordan. Sure.

25 Ms. Wolf. -- and be consistent across the board.

1 And I think sometimes, just in the rush to get an affidavit out, not as much in the
2 initial drafting, not as much attention is paid to attachment B.

3 So it's not at all uncommon to get an attachment B sometimes that's completely
4 like cut and pasted from something else and it's just a placeholder, but that isn't
5 communicated. And sometimes it's just a quick job.

6 So it's not at all uncommon that I would go to an attachment B or any prosecutor
7 would go to an attachment B and say, "Wait, this doesn't look right. Like, while I'm
8 working on the affidavit, then looking at the affidavit, can you go back and send me a new
9 draft of that?"

10 Chairman Jordan. And is this the kind of language you would typically use where
11 you said, "None of it is appropriate and within the scope of this warrant"? I'm not sure
12 who cut and pasted this. That sounds like pretty strong language, like, "Hey, this stinks.
13 You've got to change it."

14 Ms. Kramer. I think this has been asked and answered a number of times.
15 Ms. Wolf is not going to discuss anything around the document itself or the specifics of
16 the case --

17 Chairman Jordan. I'm just asking if that's customary, how you would --

18 Ms. Kramer. May I please finish, Chairman Jordan.

19 Chairman Jordan. Sure.

20 Ms. Kramer. Thank you.

21 Or the specifics of the case.

22 Despite this being asked and answered so many times, feel free to tell the
23 chairman what your answer is.

24 Chairman Jordan. Well, let me go back. In the initial email from Mr. Wilson, he
25 says, "Hello all. See attached draft BS SW. Thanks to Sue and Michelle who

1 contributed fully to this, we talked enough for one week during a single day."

2 So it sounds like they spent a lot of time on it. And then you respond back, "I'm
3 not sure who put this together" -- I'm paraphrasing -- "I'm not sure" -- well, I'll just read it.

4 "I am not sure what this is cut and pasted from but other than the attribution,
5 location, and identity stuff at the end, none of it is appropriate and within the scope of
6 the warrant."

7 I'm just asking is that normal, how you would say to people who spent all day
8 working on something, "Hey, this stinks. You've got to change it."

9 Ms. Wolf. So that's your interpretation of what a document says. I'm neither
10 agreeing or disagreeing with that in the context of a particular warrant.

11 I should also just say that typically spending a single day on an affidavit in support
12 of a search warrant in any substantial sort of white collar or complex case is not a long
13 time to have spent on something.

14 Chairman Jordan. Yeah. Well, I'm sure they spent more time. They said we
15 talked enough for one day about it.

16 Okay. On the subject line, it says, "BS SW Draft." I assume it's SW, search
17 warrant, stands for search warrant.

18 Just for the record, can you tell us what BS represents?

19 Ms. Wolf. No, I can't.

20 Chairman Jordan. Is it Blue Star --

21 Ms. Wolf. I'm not authorized to do -- I should say I'm not authorized to do so.

22 Chairman Jordan. Is it Blue Star Strategies? Is that what it refers to?

23 Ms. Wolf. I'm not authorized --

24 Ms. Kramer. Objection. Asked and answered.

25 Chairman Jordan. Okay.

1 Was the search warrant executed?

2 Ms. Wolf. Again, I'm not authorized to speak as to the particulars of an ongoing
3 investigation.

4 Chairman Jordan. Okay.

5 Mr. Castor. I'll mark as exhibit 7 the 1023 that we were discussing.

6 [Wolf Exhibit No. 7.

7 was marked for identification.]

8 BY MR. CASTOR:

9 Q Is this the first time you've seen the 1023?

10 A I am not able to -- I'm not authorized to answer whether I have or have not
11 previously seen the 1023.

12 Q I'll refer you to the third paragraph that begins, "During the meeting,
13 Pojarskii asked CHS whether CHS was aware of Burisma's Board of Directors. CHS
14 replied 'no', and Pojarskii advised the board members included" -- number one deals with
15 the Prime Minister of Poland, number two, Joe Biden's son, Hunter Biden -- "for
16 prospective oil and gas deals, and they hired Hunter Biden to 'protect us, through his dad,
17 from all kinds of problems.'"

18 Is that type of fact, would that be probative to the matter you were pursuing?

19 A I'm not authorized to discuss the particulars.

20 Q Flip the page. The first paragraph, the penultimate sentence, beginning
21 "CHS told Zlochevsky --" Do you see where I am there?

22 A Yes.

23 Q Okay. "CHS told Zlochevsky that due to Shokin's investigation into Burisma,
24 which was made public at the time" -- or "this time" -- "it would have a substantial
25 negative impact on Burisma's prospective IPO in the United States. Zlochevsky replied

1 something to the effect of, 'Don't worry, Hunter will take care of it' -- sorry -- "Hunter
2 will take care of all these issues through his dad.' CHS did not ask any further questions
3 about what that specifically meant."

4 Is this something that would be probative to the investigation?

5 Ms. Kramer. Objection. Asked and answered.

6 Ms. Wolf has repeatedly said she cannot discuss the particulars or details about
7 anything relating to an ongoing investigation or matter, in particular this document.

8 BY MR. CASTOR:

9 Q The last sentence of the next paragraph.

10 "Zlochevsky also laughed at CHS's number of \$50,000 (not because of the small
11 amount, but because the number contained a '5') and said 'It cost 5 (million) to pay one
12 Biden and 5 (million) to pay another Biden.' CHS noted that at this time, it was unclear
13 to CHS whether these alleged payments were already made."

14 Do you remember reading this part of the 1023 prior to today?

15 Ms. Kramer. Same objection.

16 Ms. Wolf. Again, I'm not authorized to either confirm or deny that I have or I
17 haven't read or have any memory associated with the 1023.

18 Mr. Castor. Can you tell us whether this is something that U.S. Attorney Brady
19 forwarded to your office?

20 Ms. Wolf. I am not authorized to answer that question.

21 Mr. Castor. I'm going to mark as exhibit 8 a statement, an affidavit, that Gary
22 Shapley provided. It's been made public.

23 [Wolf Exhibit No. 8.

24 was marked for identification.]

25 BY MR. CASTOR:

1 Q Have you ever seen this document before?

2 A I have.

3 Q Okay. When did you see it before today?

4 A I certainly reviewed it in preparation for today. I don't actually know if I
5 reviewed it at any prior time.

6 Q Okay.

7 I understand it turns out most of my questions you are telling us that you're not
8 able to answer based on the instruction from the Department.

9 So with that in mind, we have taken testimony from two whistleblowers,
10 Mr. Shapley and Mr. Ziegler. So we do have an obligation to pursue the facts that they
11 provided to us. I mean, that's part of what a congressional investigation does.

12 So I just say that as background. Certainly I'm not trying to badger you with
13 these questions.

14 On page 2 of the document, Mr. Shapley writes, "I am providing additional
15 facts" -- this is the second sentence on page 2 -- "I am providing additional facts to help
16 place this issue in context. The prosecution team discussed the Hunter Biden-related
17 work of the Pittsburgh U.S. Attorney" -- USAO -- "on several occasions, and it was a line
18 item on the recurring prosecution team call agenda for a long period of time.

19 "Assistant United States Attorney Lesley Wolf told us the Pittsburgh U.S. Attorney
20 and the U.S. Attorney Scott Brady requested to brief the Delaware U.S. Attorney's Office
21 Hunter Biden's investigative team on multiple occasions, but they were turned down by
22 AUSA Wolf and the Delaware U.S. Attorney."

23 Is that a statement that you consider to be true?

24 A I'm not able to comment on the statements that relate to the pending
25 investigation.

1 Q "AUSA Wolf's comments made clear that she did not want to cooperate with
2 the Pittsburgh USAO and that she had already concluded no information from that office
3 could be credible, stating her belief that it all came from Rudy Giuliani."

4 Do you have a reaction to that?

5 A I have a reaction, but I'm not allowed to comment, so I won't.

6 Q Okay.

7 Are you aware that Mr. Brady, when he testified, indicated that the evidence he
8 obtained he was able to verify independently of any relation to Rudy Giuliani? Are you
9 aware that he testified to that?

10 A I am not aware of Mr. Brady's testimony.

11 Q And I take it you're not able to talk about whether that matter was worked
12 on?

13 Ms. Kramer. I'm sorry. What matter was worked on?

14 Mr. Castor. The Rudy Giuliani issue.

15 Ms. Wolf. There are I think and have been, potentially. That could refer to any
16 number of things.

17 BY MR. CASTOR:

18 Q In the document, Mr. Shapley states that "AUSA Wolf's comments made
19 clear that she did not want to cooperate with the Pittsburgh U.S. Attorney's Office and
20 that she had already concluded no information from that office could be credible," stating
21 her belief that it all came from Rudy Giuliani.

22 And so I guess the question is -- and it wasn't clear, so I'll rephrase -- was it your
23 belief that everything Scott Brady was providing was generated from Rudy Giuliani?

24 A I'm not able to comment on that.

25 Q Okay. And if you were able to comment, do you know the answer to that

1 question?

2 A I lost the thread of the question. If you could repeat it. If I were able to --

3 Q If you were able to testify to that, do you know the answer to the question?

4 A Which is the question as to whether or not I said that --

5 Q Whether everything from --

6 A -- or that everything from Mr. Brady -- that Mr. Giuliani was the only --

7 Q Yes.

8 A -- source of information from --

9 Q Correct.

10 A -- that provided information to Mr. Brady?

11 I'm just not authorized to comment on that, and I think answering that question

12 would necessarily be the exception that followed the rule.

13 Q Okay.

14 I'm going to mark exhibit 9, a document that was made public by the Ways and
15 Means Committee through whistleblower testimony.

16 [Wolf Exhibit No. 9.

17 was marked for identification.]

18 BY MR. CASTOR:

19 Q It's a memorandum of conversation dated September 3rd, 2020.

20 Is this the type of document that was shared with the U.S. Attorney's Office or is
21 this an IRS-only document, to your knowledge?

22 A Again, in the ordinary course -- as it relates to this specific case, I'm not able
23 to comment on whether or not this was shared with the U.S. Attorney's Office.

24 Typically certain memos and information would be provided at some point to the
25 U.S. Attorney's Office so that we could prepare to produce what was required to be

1 produced in discovery or pursuant to Jencks or to our Brady obligations.

2 But it wouldn't be a type of -- interview reports of internal conversations and
3 discussions are typically not sort of provided and immediately generated and sent over,
4 but there may be situations where there are if they're particularly pertinent to
5 something.

6 Q And you're not able to comment on the --

7 A This particular one, no, I'm not.

8 Q Number two. There's a statement attributed to you that said the
9 decision -- "She stated that there is more than enough probable cause. She stated that
10 the decision was whether the 'juice was worth the squeeze.'"

11 What does that term or the phrase "juice worth" -- you know, "whether the juice
12 was worth the squeeze" mean?

13 A And, again, without talking particularly about these circumstances, I think
14 this harkens back to what I was discussing with minority counsel and the difference
15 between, right -- just because you can do something doesn't mean you should.

16 And there are a lot of things that go into that. And sometimes the reason you
17 shouldn't do something is because of justice or fairness or there is some detriment. And
18 sometimes the reason you don't do something is because it's going to be an incredibly
19 heavy lift, and there are 87 other things that you want to tackle before you do that on any
20 given day.

21 Q Okay.

22 Number three. "AUSA Wolf stated that it's likely that a lot of the evidence
23 sought in the T26 investigation" -- maybe for the record you could just identify what's a
24 T26?

25 A Again, I can't. This is not a document that I wrote or authored, so I would

1 be guessing as to what a -- I don't even know who wrote it.

2 Q It's written by Shapley.

3 A Okay.

4 Q Page 2.

5 A Then Mr. Shapley would be --

6 Q Okay.

7 "AUSA Wolf stated that it's likely that a lot of the evidence sought in the T26
8 investigation would be found in the guest house of Joe Biden's residence and she stated,
9 'There is no way we will get that approved.'"

10 Why didn't you think it would get approved?

11 Ms. Kramer. Again, I'm going to object yet again to all of these lines of
12 questioning.

13 And I also want to remind those here today we do understand that U.S. Attorney
14 Weiss has indicated his intention, and he's required to do so, to provide a report that will,
15 I would imagine, comprehensively address each and every one of these questions when
16 the time is proper and appropriate, which is not now, as Ms. Wolf has said repeatedly
17 throughout the course of today.

18 So again, Mr. Castor, if you want to continue to ask questions about a document
19 that she has already told you several times she cannot opine about, feel free to do so, but
20 her answer is not going to change.

21 BY MR. CASTOR:

22 Q Number four. There was a discussion about removing the subject's name
23 from a search warrant. Generally speaking, when would that be appropriate?

24 A So, again, without -- I'm not authorized to speak as to any particulars of this
25 investigation. As a general matter, and I think as I've indicated multiple times and

1 during my opening, all of the decisions surrounding all of these things are being made
2 against the background of applicable Department policies and procedures.

3 So if, for example, there was a policy or a memo -- and it's not hypothetical -- in
4 May of 2020, Attorney General William Barr issued a memorandum discussing election
5 year sensitivity and reminding prosecutors of the sort of longstanding rule and obligation
6 that we are not to take actions that are intended to influence the outcome of an election
7 and significantly -- or that create the appearance that you are attempting to influence,
8 right.

9 There is a memo saying nobody is really looking -- nobody thinks, right -- taking
10 the Rosa view -- nobody thinks you're going to do these things because you're actually
11 trying to influence. But if the public or others may think that there is an appearance
12 that you are trying to do so, that also falls within the scope of policy and that -- and to be
13 mindful of that.

14 And as those issues arise, that there are consultation requirements and
15 discussions with what is originally vested in the Public Integrity Section of the Department
16 of Justice.

17 Q So if a search warrant was appropriate for a candidate for office and it was
18 inside the 90-day window, would that search warrant be delayed pending the outcome of
19 an election?

20 A Again, it would vary on the particular circumstances of the case. There
21 might be other policies that were at play. For example, the February Barr memo which
22 talked about the requirements for opening any investigation into a candidate for public
23 office.

24 So there's a lot of different things. Would things be delayed? Maybe. Maybe
25 not. It would just be a question of particular circumstances in any given case. But

1 there would be a requirement to consult and essentially discuss and let somebody well
2 above my pay grade make that call ultimately.

3 Q In a tax investigation that involves potential improper deductions, would it
4 be appropriate to interview beneficiaries of a particular deduction?

5 So, for example, if an individual deducted college tuition and claimed it was an
6 ordinary and necessary business expense, would it be ordinary to go interview the
7 beneficiary of the college tuition?

8 A It might be. So it might be ordinary in the sense that if you needed to
9 establish that it wasn't a legitimate expense and the only mechanism to do that was by
10 interviewing someone and you needed to do that, sure.

11 Now, there are boundaries and professional responsibility rules that govern when
12 you can and can't interview and approach certain individuals. So if an individual is
13 represented by counsel, and you're aware that they're represented by counsel, you, as a
14 prosecutor and attorney, or your agents who are underneath your authority in that,
15 cannot go out and simply approach and interview witnesses who are represented.

16 Q Can you think of something that if an individual deducts college tuition for a
17 son or daughter as an ordinary and necessary business expense, can you think of a
18 situation where that would be appropriate?

19 A I think that's just hard to answer in a vacuum without knowing the
20 particulars of any case.

21 I think it's fair to say it would be something that would be looked at in the course
22 of an investigation in an attempt to discern whether or not it was or wasn't a proper
23 deduction.

24 Q But you'd concede on its face it raises questions, correct?

25 A I think, without speaking about any specific deduction or anything along

1 those lines, it would raise -- I think it would probably raise questions.

2 Q And from a general matter, if it raises questions to the prosecutor, that
3 would be the type of thing that the investigative agents would follow up on, correct?

4 A I think there are many ways to follow up and pursue, and there is also, I
5 think, you know, just, again, prioritization and anything else.

6 So if you're asking was it an unreasonable request or would it be an unreasonable
7 request for someone to say, "Hey, I'd like to go do this interview," no, it wouldn't be an
8 unreasonable ask, nor would it be an unreasonable response from the prosecutor to say,
9 "Hey, I like my law license, and I know this person has a lawyer, so we're going to have to
10 work through counsel to get that interview you want."

11 Ms. Kramer. Generally speaking.

12 Ms. Wolf. Generally speaking.

13 Mr. Castor. I'll mark exhibit 10, email thread, Mr. Ziegler and you, involving also
14 Carly Hudson, Mark Daly, and Jack Morgan of the Tax Division.

15 [Wolf Exhibit No. 10.

16 was marked for identification.]

17 Mr. Castor. Carly Hudson, what was her title in the U.S. Attorney's Office?

18 Ms. Wolf. She's on pleadings. I think you could look her up. She's an AUSA in
19 the District of Delaware.

20 Mr. Castor. Okay. But she's not a supervisor?

21 Ms. Wolf. No.

22 Ms. Kramer. This is 10?

23 Mr. Castor. No. 10.

24 Ms. Kramer. Thank you.

25 Mr. Castor. This is a document provided by whistleblowers that deals with an

1 episode they testified about regarding the search of a storage unit. Have you seen this
2 document before?

3 Ms. Wolf. I have -- I'm on the document. I think I was shown this document.
4 You sent it over in anticipation of today.

5 Mr. Castor. Okay. But prior to me sending it over, you hadn't seen it lately? I
6 know you're on the email.

7 Ms. Kramer. I mean, to the extent -- I just have to interrupt -- you're asking
8 about prep sessions with her lawyers in advance of today, I'm going to instruct Ms. Wolf
9 to not answer how the prep was conducted, what she reviewed.

10 Mr. Castor. I didn't ask that. I didn't ask that.

11 Ms. Kramer. Well, you did.

12 Mr. Castor. No, I didn't. I asked her if she's seen it before.

13 Ms. Kramer. Why don't you reframe the question for my comfort, please?

14 BY MR. CASTOR:

15 Q Have you seen this document before? I'm not asking about any
16 preparation you had with your lawyer. I'm talking about when it was released publicly
17 by the Ways and Means Committee or prior to that.

18 A I probably looked through what was released to Ways and Means, but I don't
19 have any specific recollection of like, "Oh, this document or" --

20 Q Okay.

21 A Nothing --

22 Q You're aware that the whistleblowers raised the issue of the storage unit
23 search, correct?

24 A I am.

25 Q Okay. Was there anything in their testimony that you found to be false?

1 A I'm not able to address -- I'm not authorized to address the particular
2 allegations.

3 I would go back to my opening where I indicated that all departmental policies
4 and procedures would have been followed.

5 So if some of those -- if some policies and procedures associated with attorney
6 search warrants and filter requirements were implicated in any particular case, those
7 policies and procedures would have been followed.

8 Q In working with Mr. Shapley and Ziegler, it seems like, obviously, there was a
9 disconnect. Is that something you can acknowledge on many of these investigative
10 questions?

11 Ms. Kramer. Objection to the characterization of your interpretation of the
12 email.

13 Go ahead and answer that.

14 Ms. Wolf. I'm not authorized to comment on the nature of the relationship with
15 investigators in an ongoing investigation.

16 Mr. Castor. Okay. So I take it there is nothing about the storage unit incident
17 that Shapley and Ziegler testified about that you can help us with here today?

18 Ms. Wolf. I think that's a fair characterization.

19 Mr. Castor. I'll mark as exhibit 11 a document made public as part of the
20 whistleblowers' testimony. It's a monthly significant case report into the Hunter Biden
21 matter dated May of 2021.

22 [Wolf Exhibit No. 11.

23 was marked for identification.]

24 BY MR. CASTOR:

25 Q In the "Results & Challenges" portion of this document there's a sentence

1 about the middle of that paragraph beginning with, "FBI is actively investigating potential
2 [redacted] violations." Do you see that sentence?

3 A I do.

4 Q "Through interviews and review of evidence obtained via [redacted] and
5 search warrant, it appears there may be campaign finance criminal violations. AUSA
6 Wolf stated on the last prosecution team meeting that she did not want any of the agents
7 to look into the allegation."

8 Is there any testimony you can provide about this document?

9 A So I'm not authorized to provide any testimony about this document.

10 I can speak generally to some of the policies that were applicable during this time
11 frame that existed within the Department of Justice and to say at all times I acted in
12 compliance with those policies.

13 And those include -- I previously mentioned the February 5th, 2020, Barr memo
14 discussing the requirements and mechanisms for opening even a preliminary criminal
15 investigation into a candidate or a public official, as well as the longstanding
16 departmental requirements that all campaign finance investigations be routed in
17 consultation with the Public Integrity Section, which then is also -- your obligations
18 require sort of regular and consistent consultation with that section.

19 Q Okay. I'll mark the next exhibit, exhibit No. 12. It's an email between you,
20 Mr. Ziegler, cc'd Mark Daly and Jack Morgan from the Tax Division, and Ms. Hudson.

21 [Wolf Exhibit No. 12.

22 was marked for identification.]

23 BY MR. CASTOR:

24 Q Drawing your attention to the email you sent to Mr. Ziegler at 5:26 on
25 September 9th. It begins with, "I do not think you are going to be able to do these

1 interviews as planned. The document requests require approvals from the Tax
2 Division."

3 Were you indicating to Mr. Ziegler that the Tax Division needed to approve this
4 type of investigative activity?

5 A The document speaks for itself. I'm not able to comment or elaborate on
6 that.

7 Q Okay. Can you tell us whether the delays here related to the 90-day
8 window before an election?

9 A I'm unable to comment on that.

10 Q Okay. Is there anything about this document that you're able to testify
11 about?

12 A I'm not authorized to do so, no.

13 Q Okay. We've received testimony that in October of 2021 there was a
14 meeting of the investigative team that involved Mark Daly, Jack Morgan, Ms. Hudson,
15 Mr. Ziegler, and yourself to talk about the charges in the Hunter Biden case.

16 Do you remember the date of this meeting?

17 A Again, I'm not authorized to discuss --

18 Q I know you're not going to --

19 A -- whether a meeting took place or didn't take place on any particular date.

20 Q Okay. Can you tell us whether -- it's been provided to the committee that
21 felony tax charges were recommended unanimously by the team. Can you tell us
22 anything about that decision?

23 A I'm not authorized to do so, no.

24 Q And it's our understanding, based on Mr. Ziegler's testimony, that following
25 that meeting, he began the process of drafting a special agent report. Is that something

1 you can testify about?

2 A I'm not authorized to testify with regard to that.

3 Q From a process perspective, when would an IRS criminal investigator draft a
4 special agent report?

5 A As a general matter --

6 Q Yes.

7 A -- and not connected to any particular investigation, it would depend a little
8 bit on the case. But as a general matter, it would take place at a point where they were
9 nearing the completion of the investigation.

10 It can take some time for the special agent report to move through the various
11 layers of approval in the first instance through IRS criminal investigations and through
12 criminal tax counsel even before it reaches the Tax Division.

13 So sometimes they will just build in time for that, and the investigation will not be
14 fully complete, but you want to have it be substantially complete or you would hope that
15 it would be substantially complete and that there wouldn't be any sort of lingering
16 dispositive questions, just sort of things you might want to clean up along the way.

17 But it's a substantial step in the investigation.

18 Q Okay. Mr. Ziegler's special agent report that he subsequently prepared, it
19 was a long document. It was about 85 pages. Is that ordinary in tax cases, that a
20 special agent report be that comprehensive?

21 A To the extent you're characterizing this particular report as comprehensive
22 or otherwise, I can't comment on that. The length of them will depend and vary case to
23 case. They can be quite lengthy, and in the regular, quite honestly, it's the nature of tax
24 cases.

25 Q Okay. And what's the role of the U.S. Attorney's Office in the preparation

1 and review of the special agent report?

2 A Typically?

3 Q As a general matter.

4 A Again, there's some variation. So in some instances, if the case has been
5 worked administratively by an agent, there is no involvement whatsoever, and we won't
6 have seen it or done it.

7 Sometimes we will request that they start the process in order to be able to move
8 the matter forward. Sometimes you'll see a draft. Sometimes you won't see a draft.

9 And, you know, it's a useful document ultimately in terms of drafting a pros memo
10 because it's got a lot of good information, if done correctly, right there at your
11 fingerprints and indexes like exhibits and witnesses so you know who said what.

12 So there's no like sort of one-size, you know, fits-all for it.

13 Q After the special agent report is prepared by IRS, what happens next in an
14 ordinary tax case? Does it go to the Tax Division, or does it go to the U.S. Attorney's
15 Office?

16 Ms. Kramer. If you know.

17 Ms. Wolf. If I know.

18 So my understanding -- and there may be witnesses who can give you a better
19 answer than I on this -- but the -- it goes -- in the first instance, the special agent writes a
20 report. I believe a supervisor signs it. It then goes to what's called CT counsel, which is
21 criminal tax counsel, which is I believe internal to IRS CI. They review the report and
22 make a recommendation.

23 You know, a line attorney sort of reviews the report and makes a
24 recommendation. And then somebody at a slightly higher level either signs off or
25 doesn't. And they can recommend to concur, nonconcur. There's different

1 designations they can.

2 That sort of legal determination isn't dispositive in a case. It goes with that
3 determination then in the next instance to Tax Division where it's assigned if it's not
4 somebody -- if Tax hasn't been actively participating on the case or otherwise or hasn't
5 previously been assigned, it goes to the line attorney within the Tax Division who reviews
6 it and writes sort of a comprehensive internal to tax pros memo, which then goes to an
7 assistant chief who writes a review note.

8 And it then goes up to the chief for sign-off and authorization before it comes
9 back to the U.S. Attorney's Office in official form.

10 BY MR. CASTOR:

11 Q What were Mark Daly and Jack Morgan's titles in the Tax Division or their
12 role?

13 A Mark Daly was a senior litigation counsel, which is, again, I think more of a
14 designation of pay than supervisor. He wasn't a supervisor.

15 Q Okay.

16 A And Jack Morgan was a trial attorney.

17 Q Okay. Was Daly more senior than Morgan?

18 A I'm not going to discuss the particulars of that. I think Mr. Goldberg
19 probably would have been a good witness to answer that.

20 Q Were they colleagues or were they-- was one supervising the other? I'm
21 sorry to ask the question again.

22 A Yeah, no, and I just am not able, within the scope of the authorization, I'm
23 not comfortable. As much as it seems noncontroversial, I'm not comfortable within the
24 scope of the authorization to answer that.

25 Chairman Jordan. When did the Justice Department tell you what you were

1 authorized to answer, what type of questions you were authorized to answer in the scope
2 of this? When did they give you instructions?

3 Ms. Kramer. I can answer that on your behalf.

4 We were provided with the authorization letter -- what's today, Thursday? -- just
5 the other day, and we provided it to Mr. Castor upon receipt.

6 Chairman Jordan. And was there any communication from the Justice
7 Department after yesterday's vote by the House of Representatives on the majority of the
8 House on record supporting an official impeachment inquiry?

9 Ms. Kramer. Is that a question directed to me about my dealings with the
10 Department?

11 Chairman Jordan. Was the -- did the Department do any supplemental
12 communication with you regarding the scope of what Ms. Wolf could talk about after the
13 vote yesterday on the House floor?

14 Ms. Kramer. The letter that we received from the Department has remained
15 unchanged, and the committee has exactly what we received.

16 Chairman Jordan. Okay. Thank you.

17 Ms. Kramer. Yep.

18 Mr. Castor. Do you remember when the decision was made to bring charges in
19 the District of Columbia on the Hunter Biden case?

20 Ms. Wolf. I am not authorized to discuss or comment or -- again, there's a
21 premise baked in that I'm not authorized to either -- to answer any questions, nor should
22 it be interpreted as signifying that the assertion is or is not accurate.

23 Mr. Castor. I think it's a matter of public record that Mr. Weiss brought the case
24 to Mr. Graves and asked him to partner.

25 Ms. Kramer. If it's a matter of public record and you know the answer to the

1 question, I think you have the answer to your question.

2 BY MR. CASTOR:

3 Q Okay. And what was your involvement with that?

4 A Again, I'm not authorized to speak to that.

5 Q Can you tell us about the tolling agreement for the statute of limitations on
6 2014 and 2015?

7 A I'm not authorized to speak to that.

8 Q Can you tell us how many times the tolling agreement was extended?

9 A I'm not authorized to speak to that.

10 Q Was that something handled by your office, or was that handled by a
11 different entity?

1 [1:23 p.m.]

2 Ms. Wolf. I'm not -- I'm not authorized to speak to that.

3 BY MR. CASTOR:

4 Q Okay. Are you aware that prior to asking the U.S. Attorney's Office in D.C.
5 to partner, that U.S. Attorney Weiss requested special attorney authority under 28
6 United States Code 515?

7 A I'm not authorized to speak to that.

8 Q Okay. Referring you to exhibit 3, the letter that Mr. Weiss sent to Senator
9 Graham.

10 A On what date?

11 Q July 10th.

12 A July 10th.

13 Q Are you aware of the -- I'm looking at the third paragraph, the last paragraph
14 on the first page.

15 A Okay.

16 Q Are you aware of what the distinction is between special counsel designation
17 and special attorney designation?

18 A As a general matter, not in any particular case, I'm actually not.

19 Q Okay. And do you know the difference between any of those two and the
20 authority Mr. Weiss has currently?

21 A Again, I'm not authorized to speak to, you know -- I know that they are
22 different than being special counsel, but -- and so I -- there's a distinction, but I have not
23 paid any particular attention or studied or have any understanding of the distinction
24 between those three designations.

25 Q The decision to seek special counsel authority, were you involved as a staffer

1 with Mr. Weiss in deciding how to approach the Justice Department on that issue?

2 A I'm not authorized to speak to that.

3 Q Does the Justice Department have any procedures in place to avoid
4 accidental statute of limitations -- if you're working on a case and the statute of
5 limitations is coming up, are there any procedures DOJ has to help everyone avoid that?

6 A Generally speaking?

7 Q Yeah.

8 A Not that I'm aware of. As a general matter, as a prosecutor, you have some
9 sense of what the statute is, and if you're coming up on a statute of limitations, you're
10 aware of it.

11 Q Okay. Whose responsibility, as a general matter, is it to manage that
12 question, that is, the statute's expiring?

13 A Sorry, just so I understand the question, are you asking who's supposed to
14 know that the statute is expiring, who's tasked with that?

15 Q Right.

16 A It would be the line prosecutors handling the case to be aware of the statute
17 of limitations.

18 Q And are there any policies or procedures that require a line prosecutor to
19 confer with the U.S. Attorney or with supervisory personnel as the statute is coming up
20 on its deadline?

21 A So I actually am not sure. I don't believe -- I'm not aware of any certainly in
22 the Justice Manual. I do not know whether or not there are formal policies that are
23 included in the District of Delaware Criminal matter -- Criminal Manual. But as a general
24 matter, it would be unusual for someone to just unilaterally make that decision.

25 Q So if the statute of limitations is about to expire and it does expire, it's not by

1 mistake. Is that a fair thing to say?

2 Ms. Kramer. I think she's answered the question.

3 Ms. Wolf. I think -- yeah. As a general matter, I would say that is accurate. I
4 am quite sure that on occasion it happens. But as a general matter, you're aware of the
5 statute and when it's due to run.

6 Chairman Jordan. Were you part of the -- when David Weiss was named special
7 counsel back in August, and prior to leaving a few weeks ago, were you part of the special
8 counsel investigative team?

9 Ms. Wolf. I'm just not authorized to discuss that.

10 Chairman Jordan. Well, you're obviously a key player in the investigation for the
11 first 4 and a half years. We just want to know -- and then it went from U.S. Attorney
12 David Weiss investigating, you had to keep clearing that investigation, took on a different
13 status. And I'm just asking if you knew that new special counsel status and were part of
14 that investigative team?

15 Ms. Wolf. I think as a matter of public record, I remained an Assistant
16 United States Attorney at all times prior to --

17 Chairman Jordan. I'm not disputing that. I know that.

18 Ms. Kramer. Please let her finish the answer.

19 Chairman Jordan. I'm sorry.

20 Ms. Kramer. Thank you.

21 Ms. Wolf. So to the extent I'm able to answer the question, I did not give up an
22 AUSA role in order to join the special counsel team.

23 Chairman Jordan. Wait. Say that again, please.

24 Ms. Wolf. I did not -- I remained an AUSA. I did not give up an AUSA role to
25 join the special counsel team. That's just a matter of public record, as I continued to

1 appear as an AUSA on pleadings in a variety of cases and matters.

2 Beyond that, I'm not authorized to comment on the scope of the staffing of special
3 counsel's office.

4 BY MR. CASTOR:

5 Q Are the AUSAs that do work for the special counsel's office, do they have
6 different titles or -- are they not AUSAs, I guess, is the question?

7 A I believe -- and, again, this isn't entirely accurate, but if you looked at a
8 pleading, there would be, depending on what it was, it would be reflective of what their
9 actual titles are.

10 Q Were there -- to the extent you are aware, were there people who were on
11 the special counsel team but also performing duties in the U.S. Attorney's Office for
12 Delaware on other matters?

13 A I'm not authorized to speak on the staffing of special counsel's office.

14 Q Are there any Department policies or procedures that were implicated
15 because the subject of the investigation was the son of the former Vice President 2018,
16 2019, 2020, and then a candidate for office, and then the President of the United States?

17 A Sorry. Can you just repeat the question?

18 Q Were there any DOJ policies or procedures because the subject of the
19 investigation was the son of the President?

20 A Just merely by virtue of that? I'm not going to speak to any particular DOJ
21 policies or procedures. All -- but except to say, all of the relevant and applicable policies
22 and procedures were followed by me at all times in my work as an AUSA.

23 Q Was there ever any discussion that maybe this investigation should've been
24 handled by a different U.S. Attorney's Office that wasn't so geographically connected to
25 the President?

1 A I'm not authorized to speak to that.

2 Q Okay. Have you ever met Joe Biden, the President?

3 A No.

4 Q Have you ever met Beau Biden, or did you ever work with Beau Biden?

5 A No.

6 Q And have you ever met Hunter Biden, other than through the course of this
7 investigation?

8 A No.

9 Q How about somebody named Alexander Mackler?

10 A Do I -- have I met Alexander Mackler?

11 Q Yeah.

12 A Yes.

13 Q He's a former colleague of yours?

14 A Yes, he is.

15 Q And Mr. Mackler was a staffer for Senator Biden, I believe?

16 A I don't know his full work history. I -- I know that he at some point worked
17 for, I guess, then Senator Biden, but I don't know in what capacity and whether it was as a
18 staffer or in connection with campaigns or what his particular role was.

19 Q Okay. What was Mr. Mackler's role in the U.S. Attorney's Office?

20 A He was an Assistant U.S. Attorney.

21 Q Do you know for how long?

22 A I don't know exactly. Somewhere between 3 and 5 years is just a ballpark.

23 Q Do you know when he left the U.S. Attorney's Office?

24 A So there -- that's -- he left at some point in I think the spring of 2019. But
25 he actually finished his tenure and was gone from the office like at the very beginning of

1 2019, because I believe he was doing military duty. So he was an AUSA sort of on the
2 payroll and anything else but was absent from the office for months before that time.

3 Q Okay. And do you know if he worked on the Hunter Biden investigation at
4 all?

5 Ms. Wolf. Can I answer?

6 Ms. Kramer. I --

7 Ms. Wolf. I'm not authorized to answer that question.

8 BY MR. CASTOR:

9 Q And are you aware that Mr. Mackler then went to work for the transition
10 team -- Presidential transition team for --

11 A I believe that was publicly reported that he was part of the transition team.

12 Q And while he was on the transition team, did you have any communications
13 with him?

14 A With regard to the transition or did I see him perhaps at a going-away party
15 for another colleague or anything else?

16 Q Official work duties, not social.

17 A No, I had no communications with him in that capacity.

18 Q Martin Estrada testified that -- I mentioned this earlier this morning -- there
19 were some SAUSAs from Delaware in the Central District of California, and I believe you
20 weren't able to comment on that. And I just have one follow-up question --

21 A Sure.

22 Q -- on that, and that's whether the name Stephanie Christensen is a name
23 that rings a bell for you?

24 A So --

25 Q She was the Acting U.S. Attorney before Mr. Estrada was sworn in.

1 A The name rings a bell.

2 Q Okay. Did you have any communications with her?

3 A I'm not able to comment on a particular -- I'm not able to comment as it
4 relates to a particular investigation.

5 Q Ordinarily when your office is seeking to partner with a different
6 U.S. Attorney's Office, who's involved in the presentation of the evidence or the making
7 the case that your office should partner with a different office?

8 A I think it would vary. You know, it -- depending on the jurisdiction.
9 Sometimes there's personal relationships already between AUSAs and districts, so there
10 might be a direct reach-out.

11 I think on sort of a cold call, the most typical way in which I would expect it to
12 happen would be criminal chief to criminal chief, who then might say, you know, okay,
13 let's have our line folks connect and talk and discuss with -- yeah.

14 Q Were there any special considerations for this case, since it was the son of
15 the President, in terms of liaising with the different offices?

16 A I'm not authorized to discuss that.

17 Q And by different offices, I mean the U.S. Attorney's Office for D.C. and the
18 U.S. Attorney's Office for the Central District of California.

19 A Again, I'm not authorized to answer that.

20 Q Seems like in testimony from both Mr. Graves and Mr. Estrada, neither one
21 wanted a piece of this case. Was that your sense too?

22 A Again, I'm not authorized to answer that.

23 Ms. Kramer. Can we get a time check, please?

24 Mr. Castor. Fifty-eight minutes.

25 Ms. Kramer. 120 seconds left.

1 Mr. Castor. Okay. Would you like to stop here?

2 Ms. Kramer. It's up to you. Just asking for the time check. Carry on.

3 Mr. Castor. We can stop here. I'm ready to head into a different topic, so --

4 Ms. Kramer. Okay. All right.

5 Mr. Castor. Off the record.

6 [Recess.]

7 Mr. Castor. We're back on the record. It's 1:57.

8 Ms. Kramer. Mr. Castro, before you begin with your questions again, can I make
9 one very small clarification? It's kind of like a reclarification if you will.

10 Mr. Castor. Sure.

11 Ms. Kramer. Thank you very much for the opportunity to do that.

12 So earlier today when we went back on the record, I think we previously clarified
13 when Ms. Wolf was being asked questions about whether or not she served as a SAUSA in
14 other districts. I just want to make clear that all of her testimony here today is, she's
15 providing it, you know, truthfully obviously but to the best of her recollection. And just
16 wanted to be clear that the prior testimony, I believe, was that Ms. Wolf said that she had
17 not, again to the best of her recollection, served as a SAUSA in any other district
18 post-2018.

19 Just want to clear up that it is to the best of her recollection. Oftentimes, I think
20 she had testified the process of becoming a SAUSA can be something that involves
21 paperwork. I think there's usually a swearing-in.

22 But to the extent she testified about, you know, in an absolute way that she was
23 never a SAUSA post-2018, to the extent there's information out there that shows
24 otherwise, she is testifying to the best of her recollection.

25 Is that clear? I just want to --

1 Mr. Castor. Of course.

2 Ms. Kramer. -- make sure --

3 Mr. Castor. Yes.

4 Ms. Kramer. -- it's very important to her to be very clear in the testimony so that
5 nothing is twisted or turned and, you know, distorted at a later time. Is that --

6 Ms. Nabity. That's fair.

7 Ms. Kramer. Okay.

8 Mr. Castor. I appreciate that.

9 Ms. Kramer. Of course. Thank you for allowing us the opportunity to do that.

10 Mr. Castor. And if after your testimony is complete and you depart and review
11 the transcript, there's things that you want to advise us of, that's fine as well.

12 Ms. Kramer. Great. Thank you.

13 Mr. Castor. Nobody's trying to catch a witness in a ticky-tacky slip-up here.

14 Ms. Kramer. Sure.

15 Mr. Castor. We have a job to do to try to get as much information about the
16 core facts here, and so to the extent you need to supplement, we are happy to have you
17 do that.

18 Ms. Kramer. Thank you. We appreciate it.

19 BY MR. CASTOR:

20 Q I'm going to turn your attention to interactions that you had with Chris Clark,
21 lawyer for Hunter Biden. Was he the only defense lawyer that you dealt with or were
22 there other lawyers on the Hunter Biden team?

23 A I'm not authorized to discuss interactions with defense counsel.

24 Q At one point there was an allegation, I think made by Chris Clark, that there
25 were leaks to the news media. Is that something you can confirm?

1 He expressed concern about leaks. So he was, in essence, complaining about
2 leaks. Is that something you can confirm?

3 A Sorry. Just to be clear, you're not asking me to confirm that there was or
4 was not a leak but that Mr. Clark complained about a leak --

5 Q Yes.

6 A -- to us. Yeah, I'm not authorized to discuss communications with defense
7 counsel.

8 Q Okay. Subsequently, after the plea deal went south in July, somebody from
9 the Hunter Biden defense counsel camp, like, dumped all their documents to The New
10 York Times and Politico. Are you familiar with that?

11 A I am aware that there were documents that were provided to The New York
12 Times and Politico because I saw the articles.

13 Q Right.

14 A But I'm not -- I'm not aware of who dumped them.

15 Q Do you find that to be a little ironic that the gentleman who was complaining
16 about leaks and, you know, wanted them investigated and so forth was then supplying
17 The New York Times and Politico with like hundreds of -- I think it's like 300 pages of
18 material?

19 A So, again, I'm not authorized to -- whether or not, in fact, Mr. Clark had ever
20 made such a complaint, so I'm not going to be able to answer that question.

21 Q Okay. But you would agree, if that was the case, that would be certainly
22 ironic or rich?

23 A I'm not going to comment on that.

24 Q Okay. On the plea deal -- and we can make it a exhibit if we need to, but
25 on the plea deal and diversion agreement from July --

1 Ms. Kramer. Can you make -- if Ms. Wolf is going to be asked questions about a
2 document, we would ask that you mark it.

3 Mr. Castor. We absolutely can.

4 Ms. Kramer. Thank you. I appreciate it.

5 Mr. Castor. We'll make the next exhibit No. 13, the plea agreement, and we'll
6 make exhibit 14, the diversion agreement.

7 Ms. Wolf. Thank you.

8 [Wolf Exhibit Nos. 13 and 14.
9 were marked for identification.]

10 BY MR. CASTOR:

11 Q There was some email traffic that was made public that the U.S. Attorney's
12 Office in Delaware suggested to the defense attorney that they put together a draft of the
13 plea agreement. Is that customary?

14 A I'm not -- so -- sorry. You're asking -- you're asking about a specific related
15 to a particular investigation that I'm not authorized to comment on --

16 Q Okay.

17 A -- so --

18 Q In your experience, is it customary to have defense counsel take the first
19 crack at a potential plea agreement, in terms of drafting?

20 A I don't -- in sort of a mine-run, you know, basic case, more typically a plea
21 agreement would go out as a proposed plea agreement from the government.

22 Q Okay.

23 A When it's a longer investigation, when there are particular things that matter
24 to both parties or otherwise, I don't think that it's -- it's extraordinary that in any
25 particular case an agreement, whether it be a plea agreement or an NPA or a DPA, or

1 whatever it ends up being, would be drafted in the first instance by another party.

2 Q As a general matter, do you think it gives an advantage to a defense attorney
3 if they get to take the first crack at a draft of a plea agreement?

4 A As a general matter, I don't think it's an advantage or disadvantage one way.
5 If both parties are doing their job and doing what they're supposed to do, they're paying
6 attention to the things that matter to them and attempting to make sure they're included
7 in any agreement.

8 Q Okay. The plea agreement from the government side was signed by Leo
9 Wise, Derek Hines, and Benjamin Wallace. Those are three names that, you know, do
10 not come up in the materials that -- that's on page 6 of the plea agreement. They're
11 three lawyers that don't come up in the voluminous, you know, information and
12 testimony, both documentary and testimonial evidence that the whistleblowers provided.

13 Can you help us understand why the prosecution team was swapped out?

14 A I think I already indicated I'm not authorized to discuss staffing matters
15 associated with the investigation.

16 Q If you look at the exhibit 1 attached to the plea agreement --

17 A Yes.

18 Q -- do you know who drafted this?

19 A I'm not authorized to discuss who drafted documents in connection with the
20 matter.

21 Q And I guess you can't help us understand the decisionmaking behind all the
22 information that's included in exhibit 1?

23 A That's correct. I think that would be core deliberative process, and I'm
24 not authorized --

25 Q Okay.

1 A -- to speak to --

2 Q But you can state that this is a document that the government -- the
3 government should be drafting, correct --

4 A I'm not going to answer --

5 Q -- from an ordinary standpoint?

6 A -- as to any particular case, nor -- nor is there sort of a should or shouldn't as
7 a general matter or rule associated with this.

8 Q The diversion agreement, which is the next exhibit, it's the diversion
9 agreement for the gun charge. Is that correct?

10 A That's what the agreement says.

11 Q Is it customary to have -- you know, if there's a diversion agreement for a
12 gun charge, is it customary to bring in a statement of facts that encompasses a long list of
13 other factual matters that have no involvement to the gun charge?

14 Ms. Kramer. Objection to form. I --

15 Ms. Wolf. Yeah, I'm not -- I -- I -- sorry.

16 Ms. Kramer. No. That's -- it's compound. It's vague. Can you break that
17 down into clearer questions, please?

18 BY MR. CASTOR:

19 Q The diversion agreement relates to the gun charge, but it involves, you
20 know, a statement of facts that exceeds simply the gun charge. Is that customary?

21 A So, again, without discussing the particulars of any particular matter or
22 document, I think when it comes to diversion agreements, it's difficult to talk about what
23 is or isn't customary, so I'm hesitant to do so. But there is an element in a diversion
24 agreement that is always tailored to the specifics of any case. So the decisions made in
25 connection with any particular case are going to relate to what's going on and what's

1 attempting to be accomplished, and the reasons for the diversion agreement, et cetera,
2 et cetera, et cetera, which can't really be talked about or thought about in a vacuum.

3 Q Are diversion agreements usually seen or presented to a judge?

4 A It varies.

5 Q Okay.

6 A And they can proceed in either way.

7 Q Are they usually involved in the enforcement of the alleged breach of the
8 diversion agreement?

9 Ms. Kramer. Who's they?

10 Mr. Castor. The judge.

11 Ms. Kramer. If you know.

12 Ms. Wolf. I think that that's sort of a -- so to the extent there is a breach of a
13 diversion agreement and charges are filed, yes, then a judge is typically involved in -- well,
14 definitely involved in a case. With regard to the role in -- that I think is what you're
15 getting to that relates to this particular diversion agreement, it says I am not authorized
16 to discuss that.

17 BY MR. CASTOR:

18 Q Okay. I'd like to refer you to paragraph 14 of the diversion agreement. It
19 begins, "If the United States believes that a knowing material breach of this agreement
20 has occurred, it may seek a determination by the United States district judge for the
21 District of Delaware with responsibility for the supervision of the agreement."

22 Have you ever had a case before that had a similar provision in it?

23 A Again, I'm not going to comment on this particular document. As a general
24 matter, there are, for example, supervised release violations in the Federal system. So if
25 you -- or once you come out of jail, you're often sentenced to a term of supervised

1 release. The probation office will at times bring a petition to determine if someone is in
2 violation of supervised release.

3 Sometimes those violations are admitted before the court, and other times a
4 court, in fact, makes a factual finding in the first instance as to whether or not. So
5 it -- that, as a general matter, is a type of provision that's sort of seen, but without
6 commenting on the specifics of this agreement, I'm not able to get into that here.

7 Q It seems like the plea agreement came together pretty quickly after the
8 whistleblowers came forward. Is there anything you can help us with that?

9 A I'm not authorized to discuss that, but I would go back to my opening
10 statement and harken back to the idea that at no time did politics play a role in the
11 decisions that were made in any matter I handled at the Department of Justice.

12 Q Okay. And were you handling the matter at this time?

13 A I'm not authorized to discuss staffing.

14 Q Okay. I'm going to mark the next exhibit. Number 15 is the December
15 7th indictment in the Central District of California.

16 [Wolf Exhibit No. 15.

17 was marked for identification.]

18 BY MR. CASTOR:

19 Q It's a public document. Have you had an occasion to read this document or
20 seen it before?

21 A So I looked sort of very generally at the document and -- but did not read it.
22 I think I sort of flipped through to see what counts were included and otherwise, but I did
23 not read the document.

24 Q Okay. Is there anything new in the document since you had left the case?

25 A I'm not authorized to discuss an indictment in a pending matter.

1 Q And if I understand correctly, you can't tell us when you stopped working on
2 the case? We understand you left the Department at the end of November.

3 A I'm not authorized to discuss that.

4 Q Did you have an awareness that the investigative team from the IRS side of
5 things, Mr. Shapley and Mr. Ziegler, were removed from the case?

6 A I'm not authorized to discuss that.

7 Q Did you know that there was a period of time between when they were
8 removed from the case and when they found out they were removed from the case?
9 And that period of time was -- was a long period. You know, it was several months.

10 A Again, I'm not authorized to discuss that.

11 Q Okay. There was a meeting that Mr. Shapley characterized as his red-line
12 meeting with the prosecution team on October 7th, 2022. And I understand you
13 were -- you were not a part of that meeting. Do you know which meeting I'm referring
14 to?

15 A Through Mr. Shapley's testimony I'm aware of what meeting you're
16 discussing.

17 Q Okay. And I'm just curious why you weren't at that meeting. The
18 attendees seemed like all the -- all the key players except you.

19 A I'm not authorized to discuss that.

20 Q Okay. Did you get any readouts from that meeting in real time?

21 A I'm not authorized to discuss that.

22 Q Okay. The October 7th meeting is one of the topics DOJ has authorized
23 witnesses to testify to, so --

24 A It was not included. Again, I don't believe it was within the scope of my
25 authorization.

1 Q Okay. So --

2 A Yeah. Okay. So I am not included in that authorization. If you look at
3 page 4 of the authorization letter, it notes that others have been authorized to provide
4 515, but as an -- I am -- Tax Division's been provided by appropriate supervisory officials
5 with knowledge, and then it says, your client, me, is not an appropriate witness, as a
6 longstanding matter of Department policy.

7 Ms. Kramer. So for clarification of the record, Ms. Wolf's answer was indeed
8 correct, she is not authorized pursuant to the letter provided by the Department which
9 we also provided to you.

10 Ms. Wolf. Sorry. It's hard to be a witness and not a lawyer.

11 BY MR. CASTOR:

12 Q On a politically sensitive investigation, what policies does DOJ have that
13 prevent political motivations from seeping into them on the part of their employees?

14 A As a general matter?

15 Q Yeah.

16 A So I think very basically on the most fundamental level, there are the
17 Principles of Federal Prosecution, which explicitly in one section -- and it wasn't one of
18 the ones we discussed today -- says, you know, there's no place for politics and that can't
19 be the basis for pursuing any investigation. In other matters, it is things along the lines
20 of requiring high-level approvals, as I indicated, for example, in the February 5th Barr
21 memo, for opening of certain investigations. I believe more recently there was guidance
22 that was pushed out related to opening investigations into Members of Congress and
23 staffers.

24 There is other guidance, again, that relates to election-year sensitivities, which
25 vests and relates not only to actual influence and bias, but, again, the appearance

1 thereof, that that's articulated in the February -- or not the February, but in the May Barr
2 memo and then sort of reiterated over the course of the summer. There was
3 subsequent guidance in the summer of 2020 from the head of the public integrity section,
4 again, just reminding everybody of those obligations.

5 Q Okay.

6 A There may be other provisions, but those are of which I'm chiefly and
7 principally aware.

8 Q Was the Hunter Biden investigation deemed a politically sensitive
9 investigation?

10 A I'm not at liberty to discuss any particular investigation and any designations
11 that might apply to one.

12 Q Were there any special precautions taken with the Biden investigation given
13 that his father was the President and he's from Delaware?

14 Ms. Kramer. Asked and answered many, many times.

15 Go ahead.

16 Ms. Wolf. I would just say, again, without commenting on the particulars of any
17 investigation, all appropriate policies and procedures and professional responsibility
18 obligations were followed in the case.

19 Mr. Castor. Somebody like Alexander Mackler who worked for Joe Biden, would
20 he be permitted under the Department's guidelines to work on a case against Joe Biden's
21 son? Just as a theoretical standpoint.

22 Ms. Wolf. I'm sort of uncomfortable with the hypothetical -- the specific
23 hypothetical because I think it does relate to a particular investigation.

24 As a more general matter, though, I think all attorneys have separate -- whether
25 they're with the Department or otherwise, have ethical obligations associated with

1 conflicts of interest, and some of those run to apparent conflicts of interest versus actual
2 conflicts of interest. And without -- I don't know the sort of ins and outs of them, but
3 those certainly, people's ethical obligations and ethical rules, and professional
4 responsibility obligations associated with the State that they're in, all of which would be
5 in play.

6 You don't sort of lose or suspend those requirements simply because you work for
7 the Department of Justice, and there are various organizations within the Department,
8 both the general counsel for Executive Office of AUSA, deals with ethics information, and
9 then there's a professional responsibility advisory office who is available in certain
10 instances to provide guidance along those lines.

11 Mr. Castor. As a practical matter, though, wouldn't need too much guidance to
12 figure out that Mr. Mackler couldn't work on a case relating to his former boss, right?

13 Ms. Kramer. Objection to form. Also --

14 Ms. Wolf. Again, I'm unable to answer or agree or disagree with your statement
15 as it relates to a particular person or investigation.

16 Mr. Castor. Okay. If a special agent assigned to an investigation, whether it be
17 an IRS supervisory special agent, or criminal investigator, or FBI agent, had concerns with
18 the objectivity of the Justice Department, what is the appropriate path for that agent to
19 communicate his concerns -- his or her concerns?

20 Ms. Kramer. If you know.

21 Ms. Wolf. Yeah. So as a formal matter, I presume -- and again, I don't know
22 the ins and outs, but I assume, as in most jobs and places, there are sort of official kind of
23 whistleblower-type challenges -- or not challenges but pathways available to people and
24 that they would be able to avail themselves of those.

25 There is also the sort of old school, you know, as a general matter, like,

1 conversations between people or at lower level without formalizing complaints or
2 allegations that there are opportunities for, but whatever path people choose, there are
3 mechanisms in place.

4 I am -- while I'm not sure exactly what they are, I'm a hundred percent there are
5 mechanisms in place for people to raise them.

6 BY MR. CASTOR:

7 Q Were you aware of Shapley and Ziegler's concerns before they came to
8 Congress?

9 A I'm not authorized to discuss the particulars of that matter.

10 Q Okay. Were you surprised that they felt the need to come to Congress?

11 A Again, I'm not authorized to discuss that.

12 Q There was reportedly a meeting in August of 2022 with Chris Clark where he
13 suggested to the prosecutors that moving forward on the Hunter Biden case would be
14 career suicide. Is that something you remember?

15 A I'm not authorized to discuss what I remember in connection to this
16 particular investigation.

17 As a general matter in cases, defense counsel comes in all the time
18 and -- attempting to convince you not to bring charges, and makes comments similar
19 about how challenging the case will be and throws every possible reason why you
20 shouldn't do something. They don't work, at least with this prosecutor, so --

21 Q Did you participate in a January meeting, this January, with Stuart Goldberg,
22 U.S. Attorney Weiss, and Chris Clark?

23 A I'm not authorized to discuss participation in any particular meeting.

24 Q During this meeting, it's reported that Clark advised Weiss that his legacy
25 would be defined how he handled the Hunter Biden case.

1 A I'm not authorized to comment on that.

2 Q Have you been contacted by any inspectors' general office about
3 participating in any sort of matter related to this?

4 A I'm not authorized to speak to underlying matters.

5 Q If you were contacted by an inspector general, would you be able to
6 cooperate, or how would that work now that you've left the Department?

7 A I'm -- I'm not sure.

8 Q Okay.

9 A I would seek guidance as appropriate.

10 Mr. Castor. We can go off the record here.

11 [Discussion off the record.]

12 Mr. Castor. We'll go back on the record.

13 BY MR. CASTOR:

14 Q Did you attend a meeting on or about June 15th, 2022, at Main Justice to
15 discuss this case?

16 A I'm not authorized to discuss that.

17 Q We've been told there were participants from the IRS, Mr. Shapley,
18 Mr. Waldon, the Tax Division, Mr. Daly, Mr. Goldberg, Mr. Morgan, and the FBI. Do you
19 know who from the U.S. Attorney's Office in Delaware were there?

20 A I'm not authorized to discuss that.

21 Q I give you those list of people in case it helps jog your memory, but it sounds
22 like you're not willing to discuss that meeting. Is that correct?

23 A I'm not authorized to discuss it.

24 Q Okay.

25 Mr. Castor. We'll go off the record.

1 [Whereupon, at 2:27 p.m., the interview was adjourned.]

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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

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE OF
REPRESENTATIVES,

2138 Rayburn House Office Building
Washington, D.C. 20515,

Plaintiff,

v.

Case No. 1:24-cv-815

MARK DALY, in his official capacity,
U.S. Department of Justice, and

JACK MORGAN, in his official capacity,
U.S. Department of Justice,

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendants.

Exhibit ZZ

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SELECTED

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<https://www.wsj.com/articles/the-ongoing-investigation-dodge-hunter-biden-david-weiss-bribe-question-informant-67c31868>

OPINION MAIN STREET

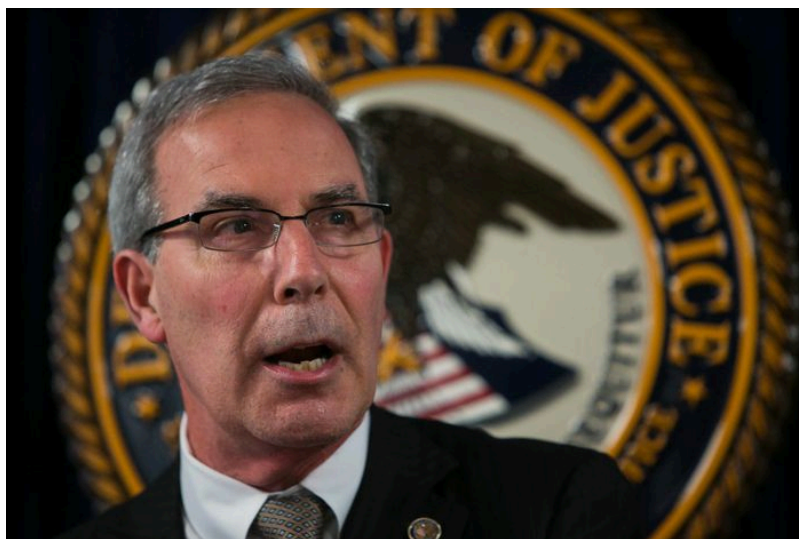
The ‘Ongoing Investigation’ Dodge on Hunter Biden

In the Justice Department’s handling of the case involving the president’s son, all we know for sure is that someone is lying.



By William McGurn [Follow](#)

July 10, 2023 6:36 pm ET



U.S. Attorney David Weiss at his district office in Wilmington, Del., May 3, 2018. PHOTO: SUCHAT PEDERSON/THE NEWS JOURNAL/ASSOCIATED PRESS

Delaware U.S. Attorney David Weiss says he’s willing to answer Congress’s questions about the Hunter Biden case—but not yet. On Monday he again invoked an “ongoing investigation” as a reason for why he won’t do so now. The problem for Mr. Weiss going forward is that there is no “ongoing investigation” exemption for refusing Congress.

His latest comments come in a reply to Sen. Lindsey Graham, ranking member of the Judiciary Committee, who had asked what actions Mr. Weiss had taken in regard to an informant's accusation that Joe Biden had accepted a \$5 million bribe from a Ukrainian energy company while he was vice president. Mr. Graham also wanted to know whether Mr. Weiss had sought special counsel status. Mr. Weiss answered that he had neither "requested" nor been "denied the authority to bring charges in any jurisdiction." This contradicts what IRS investigator Gary Shapley testified that Mr. Weiss told six witnesses at an Oct. 7, 2022, meeting.

Remember what this is all about. It began with Republican questions about what exactly Biden family members did in exchange for millions apparently paid to them by overseas companies. Then we learned about the alleged bribe. Each bit of new information only raised more serious questions.

Notwithstanding the partisan sniping and media catcalls, Congress has done a decent job of unearthing specific information that the Justice Department and FBI didn't want public. Their stonewalling now presents the ultimate oversight issue: Did the FBI and Justice properly investigate? Or did the Biden name prevent that?

Attorney General Merrick Garland insists Mr. Weiss was free to bring whatever charges he wanted anywhere he wanted to bring them. Mr. Weiss's public statements back that up.

But Mr. Shapley testified that Mr. Weiss stated, in the presence of six witnesses, "I'm not the deciding official on whether charges are filed." He further said Mr. Weiss "shocked us" with the news that "the Biden-appointed D.C. U.S. Attorney Matthew Graves would not allow him to charge in his district." Finally, Mr. Shapley testified that Mr. Weiss had admitted he'd "subsequently asked for special counsel authority from Main DOJ at that time and was denied that authority."

Mr. Garland insists there was no interference and Mr. Weiss was free to bring charges in any district he saw fit.

All we know is that someone is lying. The Republican House committees rightly want Mr. Weiss to come in and clear it all up.

Alas, Mr. Weiss isn't cooperating. And too many are letting him off with his "ongoing investigation" excuse.

"The executive branch response of 'ongoing investigation' is really a political objection, rather than a legal one," says Andrew McCarthy, a former assistant U.S. attorney. "There is no 'ongoing investigation' privilege."

The "ongoing investigation" dodge is particularly troublesome here, because the issue now is the integrity of Justice and the FBI. The suspicion isn't that Mr. Weiss is protecting his case. It's that he's trying to shield the investigators and prosecutors from accountability for what they did and did not do.

It's true there are prudential reasons why prosecutors and investigators don't discuss ongoing cases—mostly for fear of jeopardizing them. But legitimate concerns can be accommodated, such as by holding a closed-door hearing.

Much of the information Congress has already unearthed, moreover, should be relatively easy to confirm or refute. On Sunday, Iowa Sen. Chuck Grassley released his own letter with six questions for Mr. Weiss to answer. They range from whether he's still investigating the bribery allegations against President Biden to why IRS agents were shut out of a key Justice and FBI briefing in 2020.

That's oversight. It's maddeningly slow. Right now the House committees are trying to squeeze information from federal authorities. They are also beginning to depose the people involved under oath, such as those named by Mr. Shapley. Then come subpoenas, maybe even for Mr. Weiss and Hunter Biden.

That won't be until they've got enough of those involved on the record to have a fair idea of what's left to ask. In the past, Congress might have deferred to concerns about an ongoing investigation. But the FBI and Justice have lost the credibility that made that possible. They themselves are the issue now, and Congress has a duty to get answers.

The process isn't perfect, but it beats dumping everything on another special counsel. Former Attorney General William Barr told Fox News last month that the Justice Department's indictment of Donald Trump (which he says was justified) "really demands that the department assure everybody that the investigations into the Bidens was thorough and that the final decisions reached

were reasonable.” They should accordingly view Mr. Comer’s committee as “a good opportunity to do that.” It’s in Mr. Garland’s and Mr. Wray’s interest to cooperate with Congress fully.

But only if they have nothing to hide.

Write to mcgurn@wsj.com

Appeared in the July 11, 2023, print edition as ‘The ‘Ongoing Investigation’ Dodge’.

About this article

Main Street

“Main Street” aims to bring home the radical strengths and beauty of the American experiment, most keenly for those without wealth or connections. The column appears each Monday night online, and in Tuesday’s paper.



William McGurn

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CIVIL COVER SHEET

JS-44 (Rev. 11/2020 DC)

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(c) ATTORNEYS (FIRMNAME, ADDRESS, AND TELEPHONE NUMBER)	ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY) <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <input type="radio"/> 1 U.S. Government Plaintiff </div> <div style="width: 48%;"> <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <input type="radio"/> 2 U.S. Government Defendant </div> <div style="width: 48%;"> <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III) </div> </div>	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <u>FOR DIVERSITY CASES ONLY!</u> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 35%;"></th> <th style="width: 10%; text-align: center;">PTF</th> <th style="width: 10%; text-align: center;">DFT</th> <th style="width: 35%;"></th> <th style="width: 10%; text-align: center;">PTF</th> <th style="width: 10%; text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Medical Malpractice 365 Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review 151 Medicare Act <u>Social Security</u> 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) <u>Other Statutes</u> 891 Agricultural Acts 893 Environmental Matters 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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<input type="radio"/> E. General Civil (Other)	OR	<input type="radio"/> F. Pro Se General Civil
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<u>Real Property</u> 210 Land Condemnation 220 Foreclosure 230 Rent, Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property <u>Personal Property</u> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	<u>Bankruptcy</u> 422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Conditions 560 Civil Detainee – Conditions of Confinement <u>Property Rights</u> 820 Copyrights 830 Patent 835 Patent – Abbreviated New Drug Application 840 Trademark 880 Defend Trade Secrets Act of 2016 (DTSA)	<u>Federal Tax Suits</u> 870 Taxes (US plaintiff or defendant) 871 IRS-Third Party 26 USC 7609 <u>Forfeiture/Penalty</u> 625 Drug Related Seizure of Property 21 USC 881 690 Other <u>Other Statutes</u> 375 False Claims Act 376 Qui Tam (31 USC 3729(a)) 400 State Reapportionment 430 Banks & Banking 450 Commerce/ICC Rates/etc 460 Deportation 462 Naturalization Application	465 Other Immigration Actions 470 Racketeer Influenced & Corrupt Organization 480 Consumer Credit 485 Telephone Consumer Protection Act (TCPA) 490 Cable/Satellite TV 850 Securities/Commodities/Exchange 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes 890 Other Statutory Actions (if not administrative agency review or Privacy Act)
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<input type="radio"/> G. Habeas Corpus/ 2255 530 Habeas Corpus – General 510 Motion/Vacate Sentence 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act 895 Freedom of Information Act 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 740 Labor Railway Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) 441 Voting (if not Voting Rights Act) 443 Housing/Accommodations 440 Other Civil Rights 445 Americans w/Disabilities – Employment 446 Americans w/Disabilities – Other 448 Education	<input type="radio"/> M. Contract 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholder's Suits 190 Other Contracts 195 Contract Product Liability 196 Franchise	<input type="radio"/> N. Three-Judge Court 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
☐ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multi-district Litigation
☐ 7 Appeal to District Judge from Mag. Judge
☐ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$	JURY DEMAND:
			Check YES only if demanded in complaint YES NO

VIII. RELATED CASE(S) IF ANY	(See instruction)	YES	NO
			If yes, please complete related case form

DATE: _____

SIGNATURE OF ATTORNEY OF RECORD _____

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Committee on the Judiciary, United States House of
Representatives

Plaintiff(s)

v.

Mark Daly, in his official capacity,
U.S. Department of Justice, Jack Morgan,
in his official capacity,
U.S. Department of Justice

Defendant(s)

Civil Action No. 1:24-cv-815

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Mark Daly
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Matthew B. Berry
General Counsel
U.S. House of Representatives
5140 O'Neill House Office Building
Washington, D.C. 20515

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 03/21/2024

Signature of Clerk or Deputy Clerk

Civil Action No. 1:24-cv-815

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Committee on the Judiciary, United States House of
Representatives

Plaintiff(s)

v.

Mark Daly, in his official capacity,
U.S. Department of Justice, Jack Morgan,
in his official capacity,
U.S. Department of Justice

Defendant(s)

Civil Action No. 1:24-cv-815

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Jack Morgan
U.S. Department of Justice
2100 Jamieson Ave
Alexandria, VA 22314

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Matthew B. Berry
General Counsel
U.S. House of Representatives
5140 O'Neill House Office Building
Washington, D.C. 20515

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 03/21/2024

Signature of Clerk or Deputy Clerk

Civil Action No. 1:24-cv-815

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Committee on the Judiciary, United States House of
Representatives

Plaintiff(s)

v.

Mark Daly, in his official capacity,
U.S. Department of Justice, Jack Morgan,
in his official capacity,
U.S. Department of Justice

Defendant(s)

Civil Action No. 1:24-cv-815

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Matthew Graves
U.S. Attorney for the District of Columbia
c/o Civil Process Clerk
U.S. Attorney's Office for the District of Columbia
601 D Street, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Matthew B. Berry
General Counsel
U.S. House of Representatives
5140 O'Neill House Office Building
Washington, D.C. 20515

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 03/21/2024

Signature of Clerk or Deputy Clerk

Civil Action No. 1:24-cv-815

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
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☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Columbia

Committee on the Judiciary, United States House of
Representatives

Plaintiff(s)

v.

Mark Daly, in his official capacity,
U.S. Department of Justice, Jack Morgan,
in his official capacity,
U.S. Department of Justice

Defendant(s)

Civil Action No. 1:24-cv-815

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Matthew B. Berry
General Counsel
U.S. House of Representatives
5140 O'Neill House Office Building
Washington, D.C. 20515

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 03/21/2024

Signature of Clerk or Deputy Clerk

Civil Action No. 1:24-cv-815

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☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: