

GARY SHAPLEY'S GOOSEY GANDER: WHEN INVESTIGATORS WANT TREATMENT THEY DON'T ACCORD OTHERS

Update, July 10: In a letter to Lindsey Graham, David Weiss has even more explicitly debunked Gary Shapley's claims. (Jordain Carney first reported the letter.)

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.

It was over four-fifths of the way through the interview of purported IRS whistleblower Gary Shapley – at least four hours in, if you include lunch – before the discussion turned to the October 6, 2022 leak about the investigation to Devlin Barrett.

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.

The October 7 meeting, at which the leak was agenda item number one, was mentioned during the interview as Shapley’s line in the sand with what he claimed was DOJ misconduct over twenty times before anyone discussed the leak.

The reverse order congressional interview

And so before the actual leak was discussed, Shapley described two different instances where DOJ asked for his emails, as discovery in advance of trial, he described.

The first was in March 2022, the same month as details of the Hunter Biden investigation – including a discussion of the Hunter Biden laptop – appeared in this NYT story.

Hunter Biden Paid Tax Bill, but Broad Federal Investigation Continues

The Justice Department inquiry into the business dealings of the president's son has remained active, with a grand jury seeking information about payments from around the world.

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Hunter Biden's taxes are just one element of the broader investigation stemming from work he did around the world, including when his father was vice president. Calla Kessler for The New York Times



By **Katie Benner, Kenneth P. Vogel and Michael S. Schmidt**

March 16, 2022

But, even though he was one of two people who had attempted to interview Hunter Biden in December 2020, Shapley didn't provide his emails, because – he said – managers' emails aren't discoverable to a defendant.

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. [my emphasis]

Shapley's discussion of the second request that he turn over his emails appears in conjunction with a discussion of an email he sent in December 2022, which I'll get to in a sec.

That request for his emails was in October, like the March request, in the same month as a major leak.

[T]his 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.

Presented *this way*, before any discussion of the October 6 leak (to say nothing of the March 2022 leak, which was never explicitly mentioned), Shapley explained that DOJ was only asking for his email because in March he had shared memos critical of their actions, and they wanted to see all the criticism he had memorialized.

That's important theater behind the way he was able to appear before the House Ways and Means Committee as someone making protected disclosures. DOJ was retaliating against him, he claimed, because he had documented misconduct about the investigation.

Shapley's thin protected disclosures

There's something funny about Shapley's claim to be making protected disclosures, though, and about the documents he shared with the committee that he claimed documented misconduct.

A few things, actually.

You'd think that if his memorialization of misconduct were so damning that DOJ was retaliating against him, he'd have some pretty damning documents to share with Congress.

But none of the documents he shared *about the investigation* were documents from 2021, and no document memorializing misconduct from 2022 predated October 7:

- September 3, 2020 cease and desist meeting
- October 22, 2020 meeting about the Hunter Biden laptop
- January 27, 2022 prosecution memo
- October 11, 2022 memorandum of October 7 meeting

- December 13, 2022 email cced to Michael Batdorf
- April 19, 2023 letter to Congress

Even recreated versions of some WhatsApp messages obtained in August 2020– the big GOP takeaway of the interview – investigatively date to Bill Barr’s tenure at DOJ, as does the transcript excerpt from the December 2020 interview of a Hunter Biden business associate, another complaint about 2020 that Shapley was making.

Crazier still, when Minority Counsel asked Shapley for details of whether he had shared some of the exhibits he presented in the hearing as protected disclosures, he admitted he didn’t share them.

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.

[snip]

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.

I'll return to the document about the laptop, but it doesn't really document misconduct; it documents investigators trying to cover their ass after they discovered that a problematic piece of evidence that they had spent a year reviewing got turned into an election season political hit job. All the more so given that both so-called whistleblowers made clear they replicated the evidence with an August 2020 warrant for Hunter Biden's iCloud account, obtaining the WhatsApp messages mentioned above.

That said, the document about the laptop would be useful proof for journalists for stories like the March 2022 one.

Minority Counsel asked why Shapley didn't share his 2020 complaints – the only documents that he claimed described misconduct shared in the interview that predate his October 7 email – during Bill Barr's tenure.

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.**
[my emphasis]

All that led to this weird exchange with Majority Counsel. Shapley claimed to have made protected disclosures without making protected disclosures.

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. [my emphasis]

This is what led me to look back at the letter Shapley's lawyer sent to Congress in April, which was the subject of a great deal of press attention at the time. It explained that his client – Shapley – had already made protected disclosures.

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.

I remember at the time thinking that the Inspectors General must not have been very impressed with those disclosures, if the anonymous whistleblower – who we now know was Shapley – was going to Congress with them.

And when Minority Counsel invited him to explain why he hadn't brought his concerns to Treasury's Inspector General, his attorney piped in to say that his attorneys have made such disclosures.

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.

But by timeline, none of these occurred before DOJ was already demanding his emails in the wake of a second major leak about the investigation (because he didn't lawyer up until still later).

All of which suggests that Gary Shapley didn't start claiming to be making protected disclosures of any substance until after he

started worrying he was under investigation for leaks, and his lawyers' contact, by that point, would have been with two Inspectors General investigating those leaks.

Gary Shapley's Investigative Priorities

Which is why some of Shapley's purported protected disclosures are so interesting. He complains, over and over, that his team wasn't permitted to take steps that might leak or would be really showy. IRS wasn't permitted to send out subpoenas using Hunter Biden's own name in advance of the election because those might leak. IRS wasn't permitted to interview Hunter Biden's children. IRS wasn't permitted to conduct physical surveillance – 14 days before a Presidential election!! – of Hunter Biden.

Shapley was really angry, in fact, that Delaware US Attorney David Weiss congratulated the team in December 2020, as they prepared to take their first overt steps, that the investigation had remained secret up to that point (though the very next day, a December 9, 2020 story confirming the investigation, which included Barrett's byline, did provide non-public details about the investigation).

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 Shapley's complaint about emphasizing secrecy, which in addition to avoiding political blowback would have protected the investigation, is wholly inconsistent with his claimed reason to be concerned that the Secret Service got tipped off the day before he tried to interview Hunter Biden on December 8, 2020, or that, days later, Hunter Biden's lawyers were asked to comply with a subpoena of a storage facility rather than permitting a search.

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.

Gary Shapley didn't want any of the subjects of the investigation to get advance notice, because they might obstruct the 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.

It's a fair consideration! Most investigators are going to feel the same!

But that's why that December 2022 Shapley email sent to FBI Special Agent Darrell Waldon and cc'ed to Michael Bartoff is so interesting.

Waldon was part of the case team, but also the guy who referred the Barrett leak to IRS' Inspector General. Bartoff is the guy to whom Shapley claimed to have made protected disclosures.

It turns out that Shapley was on vacation as DOJ was reviewing his emails. He sent the email to ask Waldon to let him explain any emails before they got shared with anyone else.

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 not attempting to salvage their own conduct by attacking mind. 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 – therefor Jencks/impeachment is not an issue.*
- 2. I am not the receiver of original evidence nor engaged i any negative exculpatory language against the subject ... My documentation only shows the USAO/DOJ Tax's preferential treatment of this subject. [bold underline original, italics mine]*

This was an email asking – at a minimum – for the kind of advance notice that Shapley believed Hunter Biden should not get. And given that Shapley’s other testimony (in which he said he didn’t turn over *any* of his email) seems to conflict with his claim here that DOJ already had 95% of them, it might be more than that.

Just before the end of the interview, Shapley implored the committee to help him, because, “My life’s on the line here, so do what you can.” He repeated Whistleblower X’s complaint that the IRS and DOJ aren’t considering the human cost of their actions after the October 2022 leak.

But the document which Shapley points to as documentation that he raised such concerns made a request – an opportunity to participate in an investigation – that he himself complains Hunter Biden started getting over two years into the investigation. That’s his complaint: That Hunter Biden got to look at stuff in advance, starting two years into an investigation.

And in response to that, he ran to Congress and, with Whistleblower X, made disclosures that didn’t consider the impact they’d have on the equally human life of Hunter Biden.

Timeline

2007: Shapley at NSA IG

2010: Whistleblower X starts at IRS

July 2009: Shapley starts at IRS

April 12, 2016: Mesires email (from laptop)

January 16, 2017: Schwerin email to Hunter

July 30, 2017: Date of suspect WhatsApp message

November 2018: Whistleblower X moves to International Tax and Financial Crimes; opens criminal investigation into Hunter Biden (after prior civil action)

March to April 2019: DOJ Tax reviews Whistleblower X’s lead

2019: IRS supervisor documents Sixth Amendment problems with case, collects Trump's tweets

October 16, 2019: First lead on laptop

December 9, 2019: FBI takes property of laptop

December 13, 2019: Search warrant for laptop

January 2020: Shapley becomes supervisor over Sportsman Case

March 6, 2020: Request for physical search warrants in CA, AR, NY, DC

April 2020: Latest date on laptop timeline

June 16, 2020: Call about search warrants

June 16, 2020: Meeting with DFO about foot-dragging

August 2020: iCloud returns with WhatsApp messages

September 3, 2020: Donoghoe imposes halt on pre-election activities (Lesly Wolf denies SW, also warrant for Blue Star Strategies – but it was OEO that denied that)

September 21, 2020: FBI tries to limit number of interviews

October 19, 2020: We need to talk about the computer (mention of Durham)

October 22, 2020: Meeting about laptop

October 2020: Shapley IRS CI Manager interacting with Weiss' office

November 17, 2020: Original plan to go overt delayed

December 3, 2020: Wolf objects to questions about Joe Biden; Weiss congratulates on keeping investigation secret

December 7, 2020: Notice to Secret Service and transition team

December 8, 2020: Day of action, attempted interview of Hunter Biden, interview of Rob

Walker

December 9, 2020: Article confirming investigation includes inside details

December 31, 2020: Don Fort leaves as Chief of CI, replaced by Jim Lee

March 2, 2021: Mention of blowing whistle about DOJ handling of the case

May 3, 2021: Wolf chooses not to examine campaign finance (loan to Hunter), which Shapley documents to chain of command (not shared in interview)

August 18, 2021: Plan to interview Hunter's children

October 21, 2021: Wolf nixes plan to interview Hunter's children

January 27, 2022: Prosecution memo

February 9, 2022: Christy Steinbrunner sends prosecution plan forward with concur

February 11, 2022: CT responds with non-concur

March 2022: DOJ presents prosecution plan to DC USAO, DC rejects prosecution, Hunter Biden extends SOLs first of two times

March 16, 2022: NYT story including inside information

March 2022: DOJ asks for all management-level emails (Shapley doesn't produce)

May 2022: Joe Gordon asks why IRS doesn't ask for Special Counsel

April 26, 2022: Garland response to Bill Hagerty promises independence

June 15, 2022: Bigger meeting at DOJ, explaining why they couldn't charge the case

July 29, 2022: Wolf says Weiss sets September as indictment for 2014, 2015 charges

August 12, 2022: Prosecutors claim Chris Clark said charging Hunter Biden would be career

suicide

August 16, 2022: Prosecutorial meeting,
discussion of CT's nonconcur memo

August 25, 2022: FBI Supervisor Curley complains
about missed communication between meetings

September 2022: IRS presents case in CDCA

September 22, 2022: Wolf says no action until
after midterms

October 6, 2022: Devlin Barrett leak

October 7, 2022: Meeting about leak, and DC
approval

October 12, 2022: Final interview in case

October 17, 2022: Investigators told no grand
jury available

October 24, 2022: DOJ renews request for Shapley
emails

November 2022: DOJ lets statutes of limitation
on 2014, 2015 expire

November 7, 2022: SA Mike Dzielak says DOJ
requests management and senior management
documents pertaining to case

December 8, 2022: Waldon and Weiss cancel
meeting about case

December 12, 2022: Claims concern about emails
about documentation of misconduct

February 2023: Batdorf pauses ongoing
investigation

March 1, 2023: Grassley asks Garland about case

March 16, 2023: DOJ Tax Mark Daley stated they
would give approvals for charge (overheard)

April 13, 2023: Whistleblower X emails Lola
Watson

April 19, 2023: Mark Lytle letter to Congress

May 15, 2023: DOJ requests new IRS team