

Statement for the Record
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The Basis for an Impeachment Inquiry of President Joseph R. Biden, Jr.
Before the House of Representatives
Full Committee on Oversight and Accountability
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Mr. Chairman, Ranking Member, Members of the Committee: I appear today at the invitation of the Chairman and thank him for the opportunity to share my thoughts with the Committee.

I make my comments on my own behalf as a private citizen and not on behalf of any person with whom or group with which I might be or have been affiliated. I aim to bring to you some of the understanding I have gained during my decades of working with tax administration and enforcement both within and without the government. This experience includes the six years – 2001~2007 – I was privileged to lead the honorable and dedicated men and women of the Tax Division of the United States Department of Justice.

In General

The Internal Revenue Service is charged with administering and enforcing the internal revenue laws. When enforcing the tax laws or collecting the taxes requires the involvement of a court other than the United States Tax Court, the more than 300 trial and appellate attorneys of the civil and criminal sections of the Justice Department's Tax Division represent the United States.

The prosecution of any criminal charge arising under the internal revenue laws must be authorized by the DOJ Tax Division. When IRS criminal investigators have developed a case that merits prosecution, they submit to the Tax Division a report of the evidence collected, the charges that evidence supports, along with the charges they recommend. Tax Division criminal attorneys review the report, evaluate the evidence, and write their own memoranda for the approval of the Tax Division's Deputy Assistant Attorney General for Criminal Matters. (In certain cases, the approval of the Assistant Attorney General or even the Deputy Attorney General or Attorney General will be required.) The prosecution memo will reach one of three conclusions: the charges are declined; they are authorized to be brought at the discretion of the U.S. Attorney for the district in which they would be brought; or they are authorized to be brought, period.

There are times when the U.S. Attorney's Office for the district in which the charges must be brought, if at all, does not have the expertise or manpower to handle the prosecution itself. On those occasions, the Tax Division will often provide the attorneys to prosecute the case.

This Case¹

IRS's criminal investigators, or Special Agents, are frequently invited by other federal law-enforcement agencies to participate in matters far-removed from pure tax evasion. To avoid creating a trail government investigators can follow to their crimes, criminals often decline to report to the Internal Revenue Service and pay taxes on their income from illicit sources. But reported or not, IRS special agents are the best in the world at tracking down the proceeds of crime. They work hand in glove with prosecutors (Assistant United States Attorneys) in United States Attorneys' Offices, who obtain the search warrants and other authorizations they need to explore the leads they have developed, and with experienced criminal tax prosecutors in the Tax Division of the Department of Justice (Main Justice).

Perhaps this is why, in November 2018, as an offshoot of a federal investigation of a foreign-based amateur online pornography platform, the IRS opened an investigation into the activities of Robert Hunter Biden. Evidence in the pornography investigation had led to him.

By early 2022, IRS Criminal Investigation had completed and sent the Special Agent Report to the Tax Division. Including supporting documentation for each element of each alleged crime for each year, it comprised more than 1,000 pages. It described each piece of the evidence supporting each element, and the venue in which the charges could be brought. The Tax Division reportedly produced a 99-page memorandum supporting the recommended charges, six felonies and five misdemeanors. Each of these charges can carry terms of imprisonment ranging from one to five years.

But on May 26, 2023, Supervisory Special Agent Gary A. Shapley, Jr., a criminal investigator with 14 years experience with the Internal Revenue Service, found himself sitting for hours of sworn and transcribed testimony with majority and minority staff of the House Ways and Means Committee. On June 1, a then unnamed IRS Criminal Investigator, later known to be Special Agent Joseph Ziegler, the lead case agent in the Hunter Biden investigation, did the same. Shapley and Ziegler brought their testimony to Congress because they had reason to believe that Attorney General Merrick Garland's repeated assurances to Congress – that he had given David Weiss, the United States Attorney for the District of Delaware, full authority to investigate Hunter Biden's alleged criminal activity and to bring any resulting charges – were false.

Subsequent correspondence from U.S. Attorney Weiss and Attorney General Garland provided conflicting assertions in this regard. Subsequent events, however, have proven the veracity of the whistleblower's allegations: Weiss did not have the authority to bring charges in any appropriate venue.

¹ Statements of fact specific to the IRS investigation of Hunter Biden are derived from the testimonies of the whistleblowers.

What Went Wrong

During the course of the investigation, leads and procedures that would have been followed in any other case were thwarted.

- CI agents requested and were denied permission to search two locations - Joe Biden's Delaware guest house and Hunter Biden's Virginia storage facility - where they had probable cause to believe documents relevant to the investigation could be found. Each of those places likely held records of at least some of the numerous passthrough entities which reportedly served as conduits of what has been said to be tens of millions of dollars paid to Hunter and other Bidens and others by CCP affiliates in China, by Burisma in Ukraine, and Gabriel Popoviciu in Romania, and others.
- The FBI had Hunter Biden's laptop in October 2019 and within weeks had confirmed that it did, in fact, belong to Robert Hunter Biden. Notwithstanding how common it is to keep records of financial transactions on personal computers, and that the FBI had legitimate possession of Hunter's laptop and unfettered access to its contents, DOJ prosecutors did not permit the agents access to it. Although they had possessed it for more than a year and confirmed its authenticity, FBI officials in October 2020 told Twitter it was Russian disinformation.
- Attorneys for Hunter Biden were alerted that a search warrant would be executed to obtain documents and other evidence.
- Authorization to interview essential witnesses was denied, rendering off-limits family members and business associates, including those who could shed light on the meaning of "10% held by H for the big guy."
- Having obtained the WhatsApp message from another source (not the laptop), in which Hunter Biden claimed his father was sitting right next to him while he threatened a Chinese businessman with consequences if he did not receive the money he sought, agents were not permitted to take the steps they asked to and could have to determine whether Hunter's father was in fact sitting right next to him at that time.

It is not far-fetched to suppose that the lines of investigation that were thwarted were ones that would have led the investigators to uncover the complicity of Joe Biden in his son's activities.

Venue

The Federal Rules of Criminal Procedure provide that the government must prosecute an offense in the district in which it was committed. Charges brought in an improper venue do not survive a defense motion to dismiss.

By June 2021, the prosecution team had gathered enough evidence to understand that venue for Hunter Biden's tax crimes was not in Delaware. For 2014 and 2015,

venue was in the District of Columbia. For 2016 – 2019, venue was in the Central District of California.

United States Attorneys are the chief federal law enforcement officers for their districts. When the U. S. Attorney for one district discovers crimes that need to be charged in another district, he works with the U.S. Attorney for that District to prosecute the case, generally by transferring the case to the new District, sometimes detailing some of his own AUSAs to the new District to handle it.

But Attorney General Garland had declined to confer on Weiss authority to bring charges outside of Delaware. When Weiss sought the cooperation of the US Attorney for the District of Columbia to bring the tax charges relating to 2014 and 2015 there, he was turned away. When he sought the cooperation of the U.S. Attorney for Central District of California for the 2016 – 2019 charges that could be brought there, he was again denied.

Attorney General Garland has now designated Weiss Special Counsel. Farce.

The Vanishing Criminal Charges

In an October 7, 2022, prosecution team meeting, U.S. Attorney Weiss admitted he was not the decisionmaker with respect to bringing the charges this investigation had proven should be brought. This directly contradicted Attorney General Garland's sworn Congressional testimony six months earlier. This was the final straw. After three years of having his investigation stymied, but having nonetheless proven substantial criminal charges, Supervisory Special Agent Gary Shapley realized he had to come forward. In fact, he had come forward before, internally within the IRS, using the procedures developed for that purpose. He had complained up his chain of command as early as June 2020 about the obstruction he was encountering in the investigation. But there had been no response.

SSA Shapley's choice of words in his testimony reveals his belief that the irregularities in the conduct of this investigation - the denial of the warrants needed to pursue leads that would have been followed in any other case - was due to political pressure. He might be right or wrong about that. It doesn't matter. The reason this investigation was thwarted is not important. What is important is that it was thwarted. And but for the courage of Supervisory Special Agent Shapley and Special Agent Joseph Ziegler, we would be none the wiser.

And but for the courage of Supervisory Special Agent Shapley and Special Agent Joseph Ziegler, it is likely that Hunter Biden would have faced no charges at all, notwithstanding mountains of evidence of which the public has long squeamishly been aware that he committed many crimes over the years, tax and otherwise.

It was only after news that the whistleblowers had testified behind closed doors about the thwarted investigation that Weiss took action to address at least some of Hunter Biden's crimes. News that IRS employees were about to blow the whistle on the investigation was reported April 19, 2023. Shapley and Ziegler testified behind closed

doors May 26 and June 1, respectively. On June 20, Weiss announced a plea agreement under which Biden would plead guilty to two tax misdemeanors, and enter a diversion agreement on the gun charge.

What About The Statute of Limitations?

Mr. Weiss having permitted the statute of limitations to expire on the felonies that could have been charged for 2014, it was the misdemeanors for just two years to which he negotiated a deal under which Hunter Biden would plead guilty but suffer no penalty.

When the plea agreement was presented to her on July 26, United States District Court Judge Noreika did not fall for what certainly appeared a devious attempt to pull the wool over her eyes. Prosecutors and defense counsel had tucked a near-universal immunity provision – for any crimes encompassed in the exhibit which recited facts relating to the tax charges – into the gun charge diversion agreement. When Judge Noreika questioned this, the prosecutors had to back away from it, causing Biden to withdraw his guilty plea to the two tax misdemeanors.

But have the statutes of limitations really expired on Hunter Biden's tax violations? Not necessarily. Weiss might have botched the prosecution, but the IRS could nonetheless seek to collect any unpaid taxes.

If House Oversight Committee Chairman James Comer is right, Hunter Biden received as much as fifty million dollars from sources in China, Ukraine, Russia, Kazakhstan, and Romania during 2014 through 2019. That is vastly larger than the amounts reportedly shown on the federal income tax returns he filed for those years. And it is alleged that he concealed his ownership of those funds by having them funneled into dozens of entities.

As a civil matter, the IRS must generally assess and begin proceedings to collect taxes within three years of the date the return reporting them is filed. But when no return is filed, or when the return is false, fraudulent or otherwise represents a willful attempt to defeat or evade tax, the statute of limitations never begins to run, and therefore has no expiration.

The Report the Special Agents submitted to the DOJ Tax Division substantiated that Biden's violations of tax law were willful. Can it be credibly argued that tax returns omitting millions of dollars of taxable income are not false or fraudulent?

Were Hunter and others engaged in a conspiracy to conceal their income and its sources? Where are the bank accounts for the twenty or so entities the Oversight Committee believes Hunter and his co-conspirators established to receive and hold his "consulting" fees? Are they in the U.S.? If left to their own devices and not thwarted in their efforts, could the IRS investigators have discovered them?

Further, as to possible criminal charges, it should be noted that the statute of limitations begins to run when the last affirmative act of concealment occurs. So if

income is received in year 1 and not reported, and the last action undertaken to conceal it occurred in year 5, it is in year 5 that the statute of limitations begins to run.

It would be an error to conclude that the statute of limitations on criminal charges has expired without considering whether acts of concealment prevented or delayed its start date.

Tax Enforcement Considerations

While the U.S. Attorney for the District of Delaware was negotiating with his attorneys for Hunter Biden to plead to two misdemeanor tax charges, notwithstanding mountains of evidence suggesting that, for at least six years, he did not report or pay tax on tens of millions of dollars he received from questionable and possibly illegal sources, other things were happening in neighboring New Jersey. Elsewhere, too, but let's just take this one example for comparison.

A mechanic was tried and convicted of failing to file tax returns for five years and failing to report and pay taxes on the \$1.5 million in legal income he earned during that time.² When he is sentenced next month, he faces as much as five years in prison for tax evasion and one year in prison for each count of willful failure to file a tax return. He also faces a period of supervised release, monetary penalties, and restitution of the taxes he failed to pay.

Many famous people have faced prison upon conviction of tax crimes. Reality television stars Todd and Julie Chrisley, for example, have embarked on the 12- and seven-year sentences imposed upon them for their convictions on tax evasion and bank fraud charges.

Movie star Wesley Snipes served time in federal prison for a tax violation. Richard Hatch served time in federal prison for not reporting and paying taxes on his Survivor tv show winnings.

The examples are legion.

What Now?

The law provides penalties, including terms of imprisonment, upon conviction of tax crimes. It is damaging to law enforcement efforts when laws are flagrantly flouted with no consequence.

Congress must, in fulfillment of its oversight obligation, learn what evidence the IRS had gathered, what evidence its agents were not permitted to obtain, and what charges could have been brought had DOJ followed its policy to always charge the most serious provable crime. And it should not assume that it is too late to do something about it.

² <https://www.justice.gov/opa/pr/new-jersey-man-found-guilty-tax-evasion>