

July 3, 2023

VIA ELECTRONIC TRANSMISSION:

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Devlin Barrett
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Washington Post
1301 K Street, NW
Washington, DC 20071

RE: False & Retaliatory Accusations Against Gary A. Shapley, Jr.

Dear Mr. Barrett and Ms. Stein:

We represent IRS Supervisory Special Agent (SSA) Gary Shapley, who has lawfully blown the whistle on improper political favoritism in the Hunter Biden investigation. In retaliation, Biden family attorneys have falsely accused SSA Shapley of illegally leaking to you for your story “Federal agents see chargeable tax, gun-purchase case against Hunter Biden” (*Washington Post*, Oct. 6, 2022).

As you know, SSA Shapley was not a source for you on that story, or any other story for that matter. SSA Shapley has never communicated with either of you, either on or off the record. If he had, and if you had ever given him any pledge of confidentiality, you are hereby released from that pledge, so that you may contradict his denial if it were inaccurate. Thus, you are now free to correct Mr. Biden’s attorneys and clear SSA Shapley’s good name of these false and retaliatory charges.

While Mr. Biden’s lawyers have every right to vigorously defend their client and express their opinions about ours, they are not entitled to make false and defamatory statements about SSA Shapley. Nor is it appropriate for them to release statements full of careful insinuations and speculation that keep them just a hair’s breadth from a defamation lawsuit, relying on the news media to spread a false narrative without correcting the public record.

On April 19, 2023, *NBC News* reported that Christopher J. Clark, attorney for Mr. Biden, released a statement falsely claiming without evidence that our client committed a crime by merely expressing a desire, through counsel, to lawfully blow the whistle to Congress:

“It is a **felony** for an IRS agent to improperly disclose information about an ongoing tax investigation,” Clark said. “The IRS has incredible power, and abusing that power by targeting, embarrassing, or disclosing information about a private citizen’s tax matters undermines Americans’ faith in the federal government.

Unfortunately, ***that is what has happened and is happening here*** in an attempt to harm my client.”¹

Then, on June 23, 2023, *Fox News* reported that Mr. Clark issued a statement falsely claiming without evidence that our client had “released publicly yesterday” a document referenced in his protected whistleblower testimony to Congress as part of an alleged pattern of “illegal” and “politically-motivated, selective leaks.” According to the report:

Christopher Clark, an attorney for Hunter Biden, said in a statement to Fox News Digital that the claims are very misleading.

“Biased and ***politically-motivated, selective leaks*** have plagued this matter for years. They are not only irresponsible, they are ***illegal***. A close examination of the document ***released publicly yesterday*** by a very biased individual raises serious questions over whether it is what he claims it to be. It is dangerously misleading to make any conclusions or inferences based on this document,” Clark said. “The DOJ investigation covered a period which was a time of turmoil and addiction for my client.”²

Our client released no documents to the public, but rather made legally protected whistleblower disclosures to Congress explicitly authorized by statute under 26 U.S.C. § 6103(f)(5) and 5 U.S.C. § 2302(b)(8)(C). The Committee on Ways and Means of the U.S. House of Representatives—not our client—voted pursuant to its authority to release documents containing those disclosures to the public.

On June 30, 2023, another of Mr. Biden’s attorneys, Abbe Lowell, released a 10-page error-riddled screed to House Ways and Means Committee Chair Jason Smith. Lowell falsely claimed that the committee failed to admonish SSA Shapley of his obligations to be truthful under 18 U.S.C. § 1001—an error easily identified by simply reading the publicly-released transcript.³

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.

On the first page of his letter, Mr. Lowell speculates that SSA Shapley is one of two “self-styled ‘whistleblowers’ who ***may be*** claiming that title to evade their own misconduct.” Yet SSA Shapley has a spotless record in his stellar 14-year career with the IRS. His disclosures to his

¹ <https://www.nbcnews.com/politics/politics-news/irs-agent-wants-whistleblower-protections-discuss-hunter-biden-probe-rcna80564> (emphasis added).

² <https://www.foxnews.com/politics/hunter-bidens-attorney-slams-irs-whistleblowers-illegal-release-whatsapp-message-chinese-businessman> (emphasis added).

³ See Shapley May 26, 2023 Transcript, at 5.

supervisors, inspectors general, and Congress are unquestionably protected whistleblower disclosures under the law. Here, Mr. Lowell shows his ignorance, or perhaps attempts to intentionally spread misinformation, about how the law works. Whistleblower protections do not cleanse employees of misconduct. If SSA Shapley had improperly disclosed anything to you, or anyone else, the fact that he also made protected whistleblower disclosures would not shield him from accountability.

Notice Mr. Lowell's careful use of "may be" to engage in mere speculation rather than making a clearly false and defamatory claim. Like Mr. Clark before him, Mr. Lowell steps so close to the defamation line that he gets chalk on his shoe, knowing that some in the media will do the rest of his dirty work for him by amplifying the false impression with no nuance or scrutiny. On page 3 of that letter, Mr. Lowell points directly to your article to attack SSA Shapley and suggest that he was responsible for this "illegal leak," writing: "One of the most egregious leaks was an October 6, 2022, *Washington Post* article where sources that could only be from law enforcement told reporters that they had 'sufficient evidence to charge' our client with tax and gun crimes."

According to the *New York Times*, Mr. Biden's attorneys have also directly lobbied the Justice Department—led by political appointees who owe their jobs to his father—to target SSA Shapley with a retaliatory criminal inquiry.⁴ This is a chilling threat that ought to receive a lot of scrutiny.

Of course, you know the truth. SSA Shapley was not your source. It would be nice if you would publicly affirm that truth and avoid becoming, through your silence, an accomplice in the media spreading false narratives dreamed-up by Biden family attorneys to intimidate and silence lawful whistleblowers like SSA Shapley. SSA Shapley's authorization for you to do so is attached hereto.

Sincerely,

[/Jason Foster/](#)
Jason Foster
Founder and Chair
Empower Oversight

[/Mark D. Lytle/](#)
Mark D. Lytle
Partner
Nixon Peabody LLP

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Tristan Leavitt
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ATTACHMENT

cc: Christopher J. Clark
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Abbe Lowell
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⁴ <https://www.nytimes.com/2023/06/27/us/politics/irs-official-justice-dept-hunter-biden.html>.

Attachment

IN THE MATTER OF:)
)
Whistleblower Disclosure Pursuant)
To 26 U.S.C. § 6103(f)(5))
_____)

STATEMENT OF GARY SHAPLEY

I, Gary Shapley, hereby provide the following statement:

1. I provide this statement to supplement the testimony I provided to both the majority and minority staff of the United States Committee on Ways & Means on Friday, May 26, 2023.
2. Since January 2020, I have been a Supervisory Special Agent for IRS-Criminal Investigation (“IRS-CI”), U.S. Department of the Treasury. In that role, I supervised line agents in carrying out the investigation of Hunter Biden for IRS-CI as that investigation related to potential criminal violations of Title 26 of the United States Code.
3. I continued in that role until I was removed from the investigation by the U.S. Department of Justice in May 2023, after providing protected disclosures concerning prosecutors’ mishandling of the investigation of Hunter Biden, to include conflicts of interest, preferential treatment, deviations from normal investigative procedures and conflicting information provided by Attorney General Merrick Garland to Congress related to the independence of the U.S. Attorney for the District of Delaware.
4. As I indicated in my testimony of May 26, 2023, over the course of the investigation of Hunter Biden, there appear to have been multiple leaks to the media.
5. The meeting at the Delaware U.S. Attorney’s Office on October 7, 2022 among senior leadership of the Delaware U.S. Attorney’s Office, Baltimore FBI, and IRS-CI was scheduled prior to the October 6, 2022 publicized leak to *Washington Post* reporters

Devlin Barrett and Perry Stein (“Federal agents see chargeable tax, gun-purchase case against Hunter Biden”).

6. I was not the source for the October 6, 2022 *Washington Post* article, nor have I ever had any contact with 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*.
7. I have never leaked confidential taxpayer information. I take 26 U.S.C. § 6103 seriously, which is why I scrupulously followed my lawyers’ advice and followed the statutory process under § 6103(f)(5) to make my disclosure to the Committee.
8. Additionally, to my knowledge I have never improperly released any materials protected by Federal Rule of Criminal Procedure 6(e) (grand jury information). Any suggestion otherwise is another attack in retaliation for me coming forward to make my protected disclosures.

Dated: 7/3/23


Gary A. Shapley, Jr.