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AN UPDATE ON THE IRS RESPONSE TO IT'S TARGETING SCANDAL

HEARING

BEFORE THE

SUBCOMMITTEE ON ECONOMIC GROWTH,
JOB CREATION AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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AN UPDATE ON THE IRS RESPONSE TO IT'S TARGETING SCANDAL

Wednesday, July 23, 2014,

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION & REGULATORY AFFAIRS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2154, Rayburn House Office Building, Hon. Jim Jordan [chairman of the subcommittee] presiding.

Present: Representatives Jordan, DeSantis, Meehan, Lummis, Collins, Meadows, Bentivolio, Issa, Cartwright, Connolly, Horsford, Kelly, and Cummings.

Also Present: Representative Gowdy.

Staff Present: Melissa Beaumont, Majority Assistant Clerk; Molly Boyl, Majority Deputy General Counsel and Parliamentarian; David Brewer, Majority Senior Counsel; Drew Colliatie, Majority Professional Staff Member; Linda Good, Majority Chief Clerk; Christopher Hixon, Majority Chief Counsel for Oversight; Mark D. Marin, Majority Deputy Staff Director for Oversight; Jessica Seale, Majority Digital Director; Andrew Shult, Majority Deputy Digital Director; Sarah Vance, Majority Assistant Clerk; Rebecca Watkins, Majority Communications Director; Tamara Alexander, Minority Counsel; Portia Brown, Minority Counsel; Aryele Bradford, Minority Press Secretary; Susanne Sachsman Grooms, Minority Deputy Staff Director/Chief Counsel; Elisa LaNier, Minority Director of Operations; Donald Sherman, Minority Chief Oversight Counsel; and Katie Teleky, Minority Staff Assistant.

Mr. JORDAN. The committee will come to order.

I want to thank our witness for being here again.

We will start with some opening statements. I will start first by recognizing the chairman of the full committee, the gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman, that is very kind.

Commissioner, I know that this is unprecedented, to have a commissioner of the IRS in front of this committee so often, and I appreciate the fact that you have been willing to be briefed and participate even beyond our requests at times.

As we continue to explore a number of questions, the time line of the crash, the inconsistency of the probability of lost emails by multiple people within Government, we appreciate that you were not in Government; you were not doing this at the time. But as you can imagine, not just the Internet, not just Fox, but America is be-

ginning to question how convenient so many emails of so many people at the heart of targeting conservative groups for their views, for their politics, and for the fact that Citizens United was objected to by the President, how many of them had loss of data and how much is not available to the American people.

A cover-up is normally described as something that happens during an investigation around here. In other words, things go missing during the investigation. But when it comes to the loss of data, it is clear that data began disappearing and not being able to be yet found at a time when Congress was just beginning to look at wrongdoing that is now confirmed that began with the President objecting to Citizens United, that began with Democratic members of the House and Senate writing letters asking for investigation of people that were politically the opposite of their party, not asking for investigations about all people who may be involved in political activities in addition to their nonprofit work.

It is clear they were driven within the IRS, and perhaps other areas, by political bias and a belief that the President wanted a fix and that the fix had to occur.

Again, commissioner, you weren't in Government at that time, but Government is today; it is their time, it is their watch. It is their responsibility. Whether it is the FEC, the IRS, the Department of Justice, or any and all of Government's activities that led to the unfair treatment on the eve of campaign elections of conservative groups, it is clear that there was a convenient loss of far more data by far more people than is explained by the normal arithmetic probabilities.

Today we will explore not only the time line, but when this committee received that time line. It was your watch to give us accurately and keep us up to date on developments related to Lois Lerner and other parts of our investigation. It is my view that you could have done better. You will and have paid a price in public opinion for not being as forward-leaning and proactive as you could have been.

But that was yesterday. Today what we are asking you to do is to continue working with your IG, and, if we are fortunate enough to get a special prosecutor, work with him or her and, of course, work with the groups that now have Federal judges ordering the IRS to show particular information and bringing it all together back to this committee, because this committee has an intent to make to the greatest extent possible public what we can find is being done on behalf of the American people to bring back the confidence in the IRS.

So, again, I appreciate your willingness to be here. These are not easy hearings, and each time you come you leave with more questions from us than you come with answers to us, and that is the nature of an investigation that continues to evolve.

So, Mr. Chairman, I want to thank you for recognizing me early.

Commissioner, again, you need to be part of the solution. I believe you have to a certain extent and I believe you are committed to do more, and for that I thank you, and I yield back.

Mr. JORDAN. I recognize the member from Maryland, the ranking member of the committee, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Commissioner Koskinen, I want to thank you for testifying before this committee yet again. This is the third time in the past month you have appeared before us, and that does not count a fourth appearance you made before the Ways and Means Committee last month on the same topic.

Unfortunately, it appears that you and other IRS employees are now becoming collateral damage in a fight for the spotlight among two Republican committee chairmen, Representative Issa and Representative Camp. This is unseemly, it is embarrassing, and is not a proper way to run an investigation or to spend millions of dollars in taxpayer funds.

As the commissioner knows very well, when Chairman Camp was informed about the crash of Lois Lerner's hard drive, he quickly announced that he would be holding the first public hearing before the Ways and Means Committee. Ten minutes later Chairman Issa issued a unilateral subpoena compelling the commissioner to testify first before our committee. You did not contact the commissioner before issuing the subpoena and you did not hold any debate on the vote or vote. In response, Chairman Camp chose to move his hearing up several days so he was the first one in front of the cameras.

It did not seem to matter to either chairman that the IRS provided numerous contemporaneous documents showing that Ms. Lerner's computer crash was a technological problem that she and multiple IT officials attempted to remedy. Those facts apparently were irrelevant. The goal was to stoke the fire and to be the first to do so publicly. Chairman Camp has now asked the inspector general to conduct an investigation into Ms. Lerner's hard drive crash, which he has agreed to do. Commissioner Koskinen testified last time he was here that the inspector general asked him to make his investigation the top priority, which meant not subjecting IRS employees to any other interviews while the inspector general's interviews were going on. That was the IG's request.

Rather than waiting a few weeks, Chairman Issa disregarded the IG's request and demanded that the IRS make its employees available to him now. Commissioner Koskinen explained that the inspector general did not want IRS employees subjected to multiple interviews, but Chairman Issa just began issuing more unilateral subpoenas. He forced the IRS employees to appear before the Oversight Committee and he excluded Chairman Camp's staff from participating. When the commissioner testified here before, Republicans accused him of obstruction, claiming that he was hiding witnesses from the committee. When he again explained that the inspector general asked him not to subject IRS employees to multiple interviews, Chairman Issa said he was going to follow up with the inspector general directly.

Well, that apparently didn't happen. Yesterday I asked my staff to contact the inspector general's office to find out exactly what was going on. They spoke with the Deputy Inspector General for Investigations, and I can report what he told us. The Deputy IG for Investigations confirmed that his office is now conducting the investigation that Chairman Camp requested. He confirmed exactly what Commissioner Koskinen told us, which is that the inspector

general prefers that IRS employees not be subjected to multiple interviews in order to avoid "tainting their testimony."

Without directly criticizing the chairman's actions, the Deputy IG for Investigations stated that, as investigators working for the inspector general, they want everyone to allow them to complete their interviews first "without distraction." As he stated then, there is no confusion of witness testimony and the integrity of the investigation is not impaired.

Contrary to these requests, Chairman Issa has been forcing IRS employees to come before our committee for transcribed interviews, and since he is excluding Chairman Camp's staff, IRS employees are also being forced to appear before Ways and Means. Invariably, after each of these interviews, Chairman Issa and Chairman Camp issue dueling press releases with tidbits of information or cherry-picked transcript excerpts in their effort to compete for more headlines, no matter how unsubstantiated their claims are.

The Deputy IG for Investigations also told us something else. Over the past year and a half, they have obtained no new evidence that would change the conclusions in the audit from 2013.

As I close, there is simply no evidence whatsoever of any White House involvement in the screening of tax-exempt applications. The IRS has already spent $18 million responding to the duplicative congressional investigations, and Commissioner Koskinen is now testifying before Congress for the fourth time in just over a month. Yet, Chairman Issa informed committee members yesterday that he will be holding yet another hearing on the topic next Wednesday. We have the notice here.

With that, I will yield back.

Mr. JORDAN. I thank the gentleman.

Mr. ISSA. Mr. Chairman?

Mr. JORDAN. The chairman of the full committee is recognized.

Mr. ISSA. Point of privilege. There were a number of words in the gentleman's statements that disparage me, and I object to his words and debate, and ask that he withdraw or modify them, and ask unanimous consent that among the terms that be withdrawn would be not only the unseemly statement, but in fact when the ranking member disparaged me for a number of areas, including my intent and essentially said that the items I said were not true.

Additionally, the ranking member, while objecting to multiple claims of cherry-picking releases or interfering with the IG, fails to mention that in June of 2013 he released the entire John Schafer transcript, which has compromised this investigation by statements made in future transcribed interviews, saying that they had reviewed these in preparation for those.

So I certainly would say that while questioning the intent in some argument about Republicans not getting along, the ranking member managed to go beyond the ordinary opening statement and claiming the intent. In fact, the ranking member, in June of 2013, went on national television claiming the investigation was over. This investigation is not over. I would ask that such items, including unseemly, be taken down.

Mr. JORDAN. Without objection?

Mr. CARTWRIGHT. I object.

Mr. JORDAN. Okay.

Mr. ISSA. The gentleman objects. I understand, but I would reiterate that the decorum of this committee should not lead to personal attacks as to the intent of individuals on either side. The fact is this committee is conducting vigorous oversight. We do so as a matter of our obligation as a committee.

And I would make one last request. I ask unanimous consent that the staff be able to place the time line into the record so that the ranking member's clearly erroneous claim that our request for the first hearing came after the events, when in fact the time line will show that the subpoena had been served prior to the announcement from Ways and Means. And as the ranking member would know if he had ever chaired this committee, the fact is it takes a long period of time to prepare a subpoena, to write a subpoena, to go to the clerk and get it approved, and then to serve it. So I would hope that the ranking member, once he sees that in the record, would recognize that in fact he has been clearly erroneous in his claims.

And I yield back.

Mr. JORDAN. I thank the gentleman for yielding.

If we can, without objection, let's allow the time line in and let's move to the next opening statement. Would that be satisfactory with——

Mr. CONNOLLY. Mr. Chairman?

Mr. JORDAN. Would that be satisfactory?

Mr. CONNOLLY. It certainly is satisfactory.

Mr. JORDAN. I thank the gentleman.

Mr. CONNOLLY. I just wonder, though, would just a brief response to the distinguished chairman?

Mr. JORDAN. Do you really have to?

Mr. CONNOLLY. No, I don't really have to, other than to say to you, Mr. Chairman, I certainly associate myself, and I know my colleagues do on this side of the aisle as well, with the sentiments expressed by the distinguished chairman that we should always speak with respect about each other.

Mr. JORDAN. Well said.

Mr. CONNOLLY. We should never question each other's intentions. That has not been the practice as often as I would like on this committee. So I certainly hope that this would reflect a new day dawning here in the committee and that we can proceed civilly.

I thank the chair.

Mr. JORDAN. Thank the gentleman for his comments.

Our subcommittee meets today to continue its oversight of the IRS and the targeting of conservative tax-exempt applicants. We welcome back our witness, IRS Commissioner John Koskinen. All kinds of questions need to be answered, and that is why, for the third time in a month, we have Mr. Koskinen here to answer and address many of those unanswered questions.

First, we were promised that the IRS would produce all of Lois Lerner's emails. Then we learned that some of Ms. Lerner's emails had been destroyed and there was absolutely no way he could produce all of Ms. Lerner's emails to Congress.

Second, we were told the IRS had confirmed that all backup tapes with Lois Lerner's emails had been destroyed. Then we

learned last week from IRS attorney Thomas Cain that a backup tape may in fact exist.

Third, we were told that there was one hard drive crash, Lois Lerner's. Then the Ways and Means Committee disclosed that there were seven or eight total crashes. And now we learn from Mr. Cain that there may be as many as 20.

Now, think about this. The IRS has identified 83 custodians of documents and information. The IRS has identified these people associated with this targeting of conservative groups and now almost a fourth of them may have had hard drive crashes. Unbelievable.

Fourth, we were told that the IRS found out in April 2014 that Ms. Lerner's emails were lost. But then we learned from Mr. Cain that the IRS knew on February 4th, 2014 about Ms. Lerner's hard drive crash and that it found out just days later that the hard drive had been recycled and its contents were unrecoverable.

That is why we continue to have hearings. That is why we have Mr. Koskinen back for the third time in a month. We would like to get some straight answers.

We have convened this hearing because today, over a month after the IRS first told Congress that it lost Ms. Lerner's emails, there are still many unanswered questions. There are still unanswered questions about why the IRS delayed for several months in notifying Congress, the Justice Department and the American people about the problems with Ms. Lerner's emails.

Deputy Attorney General Cole told us last week that the Justice Department learned of the missing Lois Lerner emails from press accounts in the media. Imagine that. One of the highest profile investigations in years, and the Justice Department has to learn about critical evidence by the central player in this investigation. They learn about that in news accounts, not directly from the Internal Revenue Service. And that is why last week, sitting at this very table where Mr. Koskinen sits today, Deputy Attorney General Cole said he would have liked to have known about the emails earlier and he announced that the Justice Department was investigating why Commissioner Koskinen failed to disclose the missing emails in a timely manner.

Let me just reiterate that. James Cole, Deputy Attorney General of the United States Department of Justice, said last week, in that same chair, to this same committee, that they are investigating why the Internal Revenue Service delayed months in telling the Congress, the American people, and, most importantly, the FBI and the Justice Department about the loss of Lois Lerner's emails. Rather than the IRS coming to Congress and informing us what it knew when it knew it, the IRS waited four months. The IRS only came forward to finally acknowledge the missing emails when it had no choice, and it disclosed the news the only way it knows how, by burying the information on page 7 of enclosure 3 in a Friday afternoon letter to the Senate. Information obtained by the committee in the last few days provides more questions than answers about the missing emails.

But remember this isn't information the IRS is offering up willingly. It has taken almost a month for the IRS to finally start coming clean and it has taken subpoenas to get people to talk. Mr. Cain, we tried for weeks to get Mr. Cain to come talk. We finally

had to subpoena him. The IRS wouldn't provide him. We had to subpoena him to get him to come for the deposition last Thursday.

The American people have this information only because the committee has been asking questions, and that is why Commissioner Koskinen is here today. He is the individual handpicked by the President to clean up this agency, and that is why he is here today, to answer our questions. Until we know all the facts, until we clear up all the confusion and all the misstatements about Lois Lerner's missing emails, the committee will continue to press for the truth. That is the mission of the oversight committee and, again, that is why we meet today.

With that, I yield to the ranking member of the subcommittee, Mr. Cartwright. The gentleman from Pennsylvania is recognized.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

First off, thank you, Mr. Koskinen, for coming today. You know, we schedule these things on these little doohickeys, and it asks you do you want to make this a recurring entry. And when I see Koskinen, I want to say yes at this point.

At this point, I am concerned that committee Republicans are no longer using these hearings for the purpose of investigating what happened to the groups that were the subject of the inspector general's May 14, 2013 report. This seems to be something different. And I want to say we all ought to agree that the point of this committee, the Oversight and Government Reform Committee, is not publicly to harass Federal agency heads, Mr. Koskinen; it is to conduct responsible oversight of the legitimate critical issues within our jurisdiction. I believe that these repeated hearings that we are seeing today are both an abuse of authority and a dereliction of this committee's duty. I think it is abundantly clear that Chairman Issa and Chairman Camp are in some kind of taxpayer-funded footrace over who can make the first headlines about Lois Lerner's lost emails.

And we heard about requests for a time line, and we ought to look at that time line because it was on June 16, shortly after Chairman Camp, of Ways and Means, announced that he would be holding a hearing with you, Commissioner Koskinen, on June 24th, that Chairman Issa of this committee issued a unilateral subpoena compelling the commissioner to testify before this committee on June 23rd. In response, Chairman Camp moved his hearing up to June 20th. So it is something like a children's fairy tale that we are looking at here.

In addition, Chairman Issa is no longer allowing staff from the Ways and Means Committee to participate in the Oversight Committee interviews. Chairman Issa's refusal to hold joint interviews is resulting in wasted taxpayer money, as IRS employees like you, Mr. Koskinen, are now being subjected to multiple, duplicative interviews.

I also want to address Republican claims that the alleged targeting of conservative groups is this Government-wide conspiracy initiated after the Citizens United decision involving the President, the IRS, a conspiracy including the Department of Justice and other Federal agencies. This committee has obtained no evidence linking these accusations to what we all know now were inappropriate criteria used by IRS employees in Cincinnati. Some of my

colleagues on the other side of the dais have chosen to overlook the funneling of dark money into the political system of the United States. Republicans have demanded accountability from the IRS, but have not demanded the same from corporations who influence our national elections.

In January 2010, the U.S. Supreme Court, in a five to four decision on Citizens United, allowed for-profit corporations, unions, and nonprofit groups to raise unlimited funds and register for tax exempt status under the 501(c)(4) designation, and the IRS then became flooded with applications for this kind of status. The 501(c)(4) designation is exclusively meant for organizations whose primary activity is social welfare, defined in the tax code as making charitable, educational, and recreational contributions to a community.

Now, while 501(c)(4)s are not barred from participating in political campaigns, it is stated plainly and clearly that political participation must be an insubstantial amount of the group's overall activity, accounting for less than 50 percent of expenditures. The IRS's job was to make sure these groups were following the rules so they weren't taking tax breaks meant only for groups contributing to the community, not hiding the influence that a select few individuals have on our nation's electoral politics.

As I said before in previous hearings, this is about groups doing everything they can do to hide where they get their money, obscure their true intentions, and have undue influence on the political system tax-free. Anonymous money in politics is something we don't need in this Country, something that disrupts the democratic process, and something that has to be changed.

I commend Chairman Leahy and Senator Udall of the Senate Judiciary Committee for advancing S. J. Res. 19, a joint resolution proposing an amendment to the U.S. Constitution which would negate these damaging effects of Citizens United.

I have cosponsored the House companion to that bill, introduced by my friend, Representative Ted Deutch of Florida.

With that, I will conclude my comments and yield back to you, Mr. Chairman.

Mr. JORDAN. I thank the gentleman.

Members will have seven days to submit written statements to the committee.

We are pleased to have with us today the Honorable John Koskinen, Commissioner of the Internal Revenue Service.

Mr. Koskinen, you know how this works; you have done it a few times before. Please stand and raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you, God?

[Witness responds in the affirmative.]

Mr. Koskinen, you are now recognized for your opening statement, and then we will get right to questions.

STATEMENT OF THE HONORABLE JOHN KOSKINEN, COMMISSIONER, INTERNAL REVENUE SERVICE

Mr. KOSKINEN. Thank you. Chairman Jordan, Ranking Member Cartwright, members of the subcommittee, thank you for the opportunity to appear before you today. With your permission, I will

provide a brief introductory statement and submit a copy of my complete testimony for the record.

Before beginning my statement, I want to thank the subcommittee for its willingness to work around my travel schedule. In attempting to set the original hearing date, my understanding was you were interested in an overview of IRS interactions with the Department of Justice. I would like to touch briefly on that subject, which is covered in more detail in my prepared statement.

In general terms, the IRS regularly and routinely interacts with the Department in the investigation and prosecution of criminal and civil tax matters, and also other financial fraud. Our Criminal Investigation Division investigates and develops cases and recommends them to the Department's Tax Division for prosecution. These cases represent a variety of tax issues, including refund fraud, abusive tax shelters, return preparer fraud, and international tax non-compliance.

The international area offers a good illustration of what our coordinated efforts can accomplish. Recent examples include the guilty pleas by Credit Suisse and BNP, two major financial institutions that were found to be in violation of U.S. laws.

Routine interactions between the IRS and DOJ also involve the IRS Office of Chief Counsel, which reviews all criminal tax cases developed by our Criminal Investigation Division before those cases are recommended for prosecution. In addition, when the Department of Justice's Tax Division litigates a civil matter, IRS Chief Counsel attorneys are actively involved, collaborating on the arguments and positions taken.

Let me now turn to an update of the efforts that the IRS has made to cooperate with the investigations into the use of inappropriate criteria to evaluate applications for tax-exempt status under section 501(c)(4) of the Revenue Code. These include four investigations by Congress, one by the Department of Justice, and one by the inspector general. Added to that has been the recent new investigation by the inspector general of circumstances surrounding the crash of Lois Lerner's hard drive three years ago.

To date, we have now produced more than 960,000 pages of unredacted documents to the tax writing committees and more than 700,000 pages of redacted documents to the House Oversight and Government Reform Committee. In addition, at the request of the Oversight Committee and other committees, the IRS has been working on the identification and production of Lois Lerner emails. As part of this document production, the tax writing committees have received 67,000 emails that we found involving Ms. Lerner. We are continuing to provide redacted versions to the Oversight Committee, which to date has received more than 54,000 emails from Lois Lerner. We are working to provide these documents as quickly as we can.

In the course of collecting and producing Ms. Lerner's emails, the IRS determined that her hard drive crashed in 2011. At that time, Ms. Lerner had asked IT professionals at the IRS to restore her hard drive, but they were unable to do so. Nonetheless, the IRS has or will produce 24,000 Lois Lerner emails from the period between 2009 and 2011, largely from the files of other individuals.

The IRS provided information about the hard drive crash to all six investigating entities in a public report we released in June. I would note that our June report, to the extent that it focused on Ms. Lerner's hard drive crash, was based in part on emails we had already provided to the congressional committees, the inspector general, and the Department of Justice. Some of those emails were produced as long ago as last fall. Those emails were provided in the normal course of production related to the search terms agreed upon previously. So all six investigators have had initial information about the hard drive crash since last fall. Also, additional emails about Ms. Lerner's hard drive crash were produced this spring to investigators, prior to the release of our June report.

I also want to point out that, consistent with a bipartisan congressional request, the inspector general has noted he is proceeding with its own investigation regarding the crash of Ms. Lerner's hard drive. The IG, as was noted earlier, has asked the IRS not to do anything that would interfere with its investigation, and we are honoring that request to the extent possible.

In addition, on July 18 we responded to a recent court inquiry with detailed information regarding the crash of Ms. Lerner's hard drive. This information is consistent with what was previously provided in the six investigations, but we have provided the Oversight Committee and other investigating entities with a copy of that information.

I understand that during last week's hearing with DOJ there was a question as to what information the IRS gave to the Department about the hard drive crash. We provided all investigating entities with the same information in our June report which we released to the public. DOJ did not receive any additional information.

Since releasing our June report, we have continued to cooperate with the investigations. Since mid-June we have produced to the Oversight Committee more than 100,000 pages of documents and made witnesses available for interviews with congressional staff. Five of those interviews have already occurred. Our deputy chief information officer has given three briefings for congressional staff, including one for the Oversight Committee, and, as noted, I have testified at four hearings, including the one today.

This concludes my statement, and I would be happy to take your questions.

[Prepared statement of Mr. Koskinen follows:]

WRITTEN TESTIMONY OF
JOHN A. KOSKINEN
COMMISSIONER
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION AND REGULATORY AFFAIRS
JULY 23, 2014

Chairman Jordan, Ranking Member Cartwright and Members of the Subcommittee, thank you for the opportunity to appear before you today to give you an update on the work we have been doing to cooperate with the six investigations into the findings by the Treasury Inspector General for Tax Administration (TIGTA) regarding the improper criteria used in processing applications for tax-exempt status under section 501(c)(4) of the Internal Revenue Code.

Before beginning my testimony, I want to thank the Subcommittee for its willingness to work around my travel schedule, which caused me to be unable to testify in the same week as the Department of Justice (DOJ). In attempting to set the original hearing date, I had planned to focus my testimony on an overview of IRS interactions with DOJ, the ways in which our agencies cooperate to protect the integrity of our tax system, and our efforts to cooperate with DOJ's investigation into the situation involving the applications for 501(c)(4) status. I would like to begin my testimony today by providing that information to the Subcommittee.

In general terms, the IRS regularly and routinely interacts with the DOJ Tax Division in the investigation and prosecution of criminal and civil tax matters, and with the United States Attorneys' offices in other financial fraud, including money laundering and violations of the Bank Secrecy Act.

Let me begin by outlining for you the work of our Criminal Investigation (CI) division. CI investigates and detects tax and other financial fraud and, after developing cases, recommends these cases to DOJ's Tax Division for prosecution. These cases represent a variety of tax issues, including refund fraud, abusive tax shelters, return preparer fraud and international tax noncompliance. CI also works closely with DOJ's Criminal Division and the 93 U.S. Attorneys around the country on tax and non-tax cases.

Through these cooperative efforts, we have made significant progress in combatting tax-related crimes in recent years. Prosecutions recommended by CI increased to 4,364 in FY 2013 from 3,701 the previous year. This is the highest

level of prosecution recommendations in more than a decade. The conviction rate for cases tried in court that year reached 93.1 percent, also the highest in a decade.

In addition to cooperating on individual cases, CI coordinates with the DOJ Tax Division in defining goals and strategies with respect to criminal tax case selection criteria and other emerging issues. Such issues include offshore tax evasion and fraud involving identity theft. An excellent example involves the collaborative efforts that recently led to the issuance of a new directive to the field on identity theft, Tax Division Directive No. 144. This directive streamlined the process for U.S. Attorneys in moving ahead with grand jury investigations and criminal complaints in cases involving tax-related identity theft. This allows them to more quickly and easily address this crime in their jurisdictions, with the result being that more of these criminals are being brought to justice.

Routine interactions between the IRS and the Tax Division also involve the IRS Office of Chief Counsel, which reviews all criminal tax cases developed by CI before those cases are recommended to the Tax Division for prosecution.

The cooperative efforts by Chief Counsel extend to civil tax matters as well. The DOJ Tax Division represents the U.S. in most civil tax litigation in the federal and state courts (with the exception of the U.S. Tax Court, where Chief Counsel has jurisdiction). When the Tax Division litigates a civil matter, Chief Counsel attorneys are actively involved, collaborating with DOJ attorneys on the arguments and positions taken in pleadings, motions, briefs and other papers. Chief Counsel attorneys also refer cases to the Tax Division in various situations, such as when there is a need to seek injunctions against unscrupulous tax return preparers and abusive tax shelter promoters to prevent them from continuing to engage in those activities.

It is important to note that communications between the IRS and DOJ, both the Tax Division and other DOJ components, are governed by Internal Revenue Code Section 6103, which generally prohibits disclosure of returns and return information, although disclosure is allowed in certain situations. For example, under section 6103(h)(3)(A), the IRS may make disclosures to the Tax Division on its own motion where a tax case has been referred to DOJ, or where a taxpayer or third party initiates a suit against the United States that is a matter of tax administration. Under section 6103(h)(3)(B), the IRS may make disclosures to DOJ in matters involving tax administration in response to a request from the Attorney General, Deputy Attorney General, or an Assistant Attorney General. Generally, in non-tax matters, DOJ must obtain court approval to obtain a return or return information submitted by the taxpayer or his or her representative.

Let me highlight for you two specific areas where our collaborative efforts with the Tax Division and United States Attorneys' offices have recently led to important accomplishments in reducing tax noncompliance:

International compliance/offshore tax evasion. Working together, the IRS and DOJ have made critical progress in the international tax area. Recently, our work on offshore tax evasion has included the prosecution of several foreign banks for conspiracy to commit tax evasion resulting in restitution of $808.4 million and forfeitures of $51.8 million; indictments of almost two dozen foreign bank employees and investment advisors; and more than 100 indictments of U.S. citizens with hidden offshore accounts.

Additionally, in May of this year, the Swiss bank Credit Suisse AG pleaded guilty to charges involving its efforts to assist U.S. citizens in hiding assets in undisclosed Swiss accounts. As part of the agreement, Credit Suisse agreed to pay a total of $2.6 billion to the U.S. The guilty plea is an important milestone in ongoing law enforcement efforts undertaken jointly by the IRS and DOJ to go after the use of offshore accounts to evade taxes.

I would note that the Credit Suisse case highlights the financial expertise of CI special agents, who are uniquely adept at unraveling complex financial transactions. The IRS was pleased to be able to provide prosecutors with CI's technical and investigative expertise in support of this action as well as other actions designed to increase our ability to enforce the tax code here and around the world.

Another recent example of our accomplishments in the international area involves a non-tax case. DOJ announced last month that BNP Paribas S.A. (BNPP), a global financial institution headquartered in Paris, agreed to plead guilty to criminal charges and pay penalties of almost $9 billion in connection with its efforts to assist several foreign entities that were attempting to circumvent U.S. economic sanctions. BNPP processed billions of dollars of transactions through the U.S. financial system on behalf of Sudanese, Iranian, and Cuban entities subject to sanctions, in direct violation of U.S. laws. This plea agreement is the first of its kind, and came about as the result of ongoing coordinated efforts of several law enforcement agencies, including CI, which was the lead investigative agency.

Refund fraud involving identity theft. The investigative work done by CI and its collaboration with the DOJ Tax Division are major components of our efforts to combat tax-related identity theft. As with other types of tax fraud, CI investigates and detects identity theft-related refund fraud and recommends prosecution of these cases to the Tax Division.

These efforts recently have yielded significant progress against identity theft schemes. Along with more than 821 new investigations opened so far in Calendar Year 2014, there have been 731 recommendations for prosecution and 555 sentences so far this year, with an average time to be served of more than 43 months.

To highlight one example of our collaborative efforts in this area, in January 2013 CI, the Tax Division and local U.S. Attorneys together conducted a highly successful identity theft enforcement sweep. This nationwide effort against 389 identity theft suspects led to 734 enforcement actions, including 189 indictments, informations and complaints, and 109 arrests. Around the time of the sweep, IRS auditors and investigators made compliance visits to 197 money service businesses in a variety of locations across the country to help ensure that these businesses were not facilitating refund fraud and identity theft.

Let me turn now to the efforts we have made over the past year to cooperate with the investigation being conducted by DOJ, as well as five others, into the processing and review of applications for tax-exempt status as described in the May 2013 audit report by TIGTA.

We have cooperated with this investigation through the production of relevant documents and by making IRS employees available for interviews. I have no information regarding the status or the nature of the DOJ investigation, nor do I have a record of who among our employees has been interviewed by DOJ.

To put this in perspective, the DOJ investigation is one of six ongoing probes into the matter. Four others are being conducted by Congress and one is being done by TIGTA. The IRS has been making and continues to make every effort to be as transparent as possible and cooperate with all six investigations.

To date we have produced more than 960,000 pages of unredacted documents to the tax-writing committees (which have section 6103 authority) and more than 700,000 pages of redacted documents to the House Oversight and Government Reform Committee and the Senate Permanent Subcommittee on Investigations. I understand that the Oversight Committee's staff has interviewed more than 30 current and former IRS employees, who have given more than 60 interviews to congressional staff. It is important to note that in our efforts to cooperate, we have worked to accommodate the information needs of each of the six investigating entities

As we have reported previously, over the past year the IRS has devoted significant resources to complying with the requests for information from the six investigating entities – transmitting documents and facilitating interviews in an effort to provide complete facts about the determinations process for tax-exempt status under section 501(c)(4). More than 250 IRS employees have spent more than 125,000 hours working directly on complying with the investigations, at a cost of approximately $10.75 million. In order to properly protect taxpayer information while efficiently processing voluminous materials for production, we had to add capacity to our information technology systems and, therefore, spent an additional $6 million to $8 million to optimize existing systems and ensure a stable infrastructure.

Before concluding my testimony, I also want to address an issue that arose recently in relation to a DOJ Public Integrity Section information request in 2010 regarding a separate matter involving 501(c)(4) organizations.

It is our understanding that in 2010, the DOJ Public Integrity Section contacted the IRS to discuss 501(c)(4) issues and was directed to Ms. Lerner. Thereafter, a meeting was scheduled and in conjunction with that meeting, the IRS agreed to provide publicly available information regarding existing 501(c)(4) organizations. In the fall of 2010, after the meeting, we understand that the IRS provided 21 disks of material to the FBI. The disks contained Forms 990, *Return of Organization Exempt from Income Tax,* that were filed by section 501(c)(4) organizations from January 1, 2007 through October 1, 2010.

The disks were provided by the unit that processes requests for the Form 990 information that is publicly available under section 6104 (which is an exception to the statutory confidentiality provisions of section 6103). This information is available to the public on various websites.

This 990 data, when it is released, can sometimes inadvertently include material that is nonpublic and should have been redacted or withheld. That was the case with 32 of the more than 12,000 Forms 990 stored on the 21 disks provided to the FBI in 2010. Although I cannot reveal the identities of the 32 affected organizations because that is confidential taxpayer information legally protected from disclosure under section 6103, these organizations represent a wide spectrum of groups, and the majority of them do not appear to have any connection to political activity.

On June 11, 2014, we provided the House Oversight and Government Reform Committee with an additional production of materials we identified as relating to DOJ's communications with us regarding the disks that we sent to DOJ in 2010. Several of these documents are from IRS employees' accounts beyond those of the 83 custodians involved in our productions relating to the processing and review of applications for tax-exempt status.

Chairman Jordan, Ranking Member Cartwright and members of the Subcommittee, thank you again for the opportunity to provide you with an overview of the ways the IRS interacts with DOJ in order to improve tax administration and serve the American taxpayer, and to update you on our continuing efforts to cooperate with the six ongoing investigations into the situation involving the applications for 501(c)(4) status. This concludes my statement, and I would be happy to take your questions.

Mr. JORDAN. I thank the gentleman.

Now turn to the vice chair of the committee, the gentleman from Florida, Mr. DeSantis.

Mr. DESANTIS. Thank you, Mr. Chairman.

Good morning, Commissioner. Mr. Koskinen, are you aware that you currently are under investigation by the Justice Department regarding your role in determining when to produce Lois Lerner's emails?

Mr. KOSKINEN. I am not aware of an investigation. I did see the deputy attorney general's statement last week before this committee that he would be interested in why we had not provided him information in April, as opposed to June, but I have not received any notice of an investigation.

Mr. DESANTIS. Well, he told us that it was something that the Justice Department would look into, and he said that it was information that they did wish they had at the time that you discovered it.

Let me ask you this. The committee interviewed IRS Deputy Associate Chief Counsel Thomas Cain, and he testified that senior IRS officials, including Catherine Duvall, the counselor to the commissioner, realized that Lois Lerner's emails were missing, that there was a hard drive crash on February 4th, 2014, and that by mid-February they realized that the emails would not be recoverable off that hard drive. Yet, you testified in front of this committee on March 26th, 2014, and after being asked numerous times whether you would produce all of Lois Lerner's emails consistent with the subpoena, you said you would.

So if the senior IRS officials knew in mid-February that the emails could not be recovered off the hard drive, why did you tell this committee that you would produce them?

Mr. KOSKINEN. As I have testified before, when I testified at previous hearings, when I testified in March, I said we would provide all Lois Lerner emails, as I have also testified since then. I did not mean to imply that if they didn't exist, we would somehow magically provide them. We have provided you all Lois Lerner emails we have.

With regard to when officials at the IRS knew the impact of the hard drive crash, as I have testified several times in the 11 hours of hearing since June 13th, what I was advised and knew in February was that when you took the emails that had already been provided to this committee and other investigators, and, instead of looking at them by search terms, looked at them by date, it was clear that there were fewer emails in the period up through 2011 and subsequently. And there was also, I was told, there had been a problem with Ms. Lerner's computer. It was not described to me in any greater detail than that.

I was advised near the end of February that we were now reviewing all of our production capacity to make sure nothing had been done in the production capacity that would have explained or would have caused the loss of any emails. That process went forward, but at the same time I would remind everybody we were focused primarily on the request from this committee and the Finance Committee and the Ways and Means Committee to complete the production of all documents we had related to the determina-

tion process, and we did that and, in mid-March, provided to the tax writing committees a letter saying we had now produced all the documents we had regarding the determination process.

Mr. DESANTIS. Okay, I appreciate that. We even asked Mr. Cole if someone responds to discovery requests and they say they will produce all of them, they can't just do that, represent that, and then know, well, gee, we are not going to be able to produce all of them; and then once they figure that out, they have to come immediately and tell the opposing party. In this case it is a congressional investigation, so it is not the same. And yet you guys sat on the information for several months, and that caused this investigation, from our end, to be obstructed.

Let me ask you this about these backup tapes. The IRS has told Congress that backup tapes from 2011 no longer exist. Yet, Mr. Cain testified in terms of the interview with this committee that backup tapes may in fact exist. So can you now, under oath, definitively state that the relevant backup tapes that this committee has sought do not in fact exist?

Mr. KOSKINEN. As I understand from your press release, what Mr. Cain said was the information we provided in June was accurate to the best of everyone's knowledge at that time. What he said since then is that the inspector general——

Mr. DESANTIS. Well, wait. You said, too, with all due respect, you said, on June 20th, 2014, to the Ways and Means Committee, that we, meaning the IRS, confirmed that backup tapes from 2011 no longer existed because they had been recycled pursuant to the IRS's normal policy. So that was a definitive statement on your part. Now we are getting information from Mr. Cain, well, the IRS isn't exactly sure that that is in fact true.

Mr. KOSKINEN. What Mr. Cain reported was information that the inspector general has started to review tapes to see if there is additional information on them. Mr. Cain said, therefore, there may be backup tapes that were recycled, but may be recoverable. We have no information, I have no information what the inspector general is doing with those tapes. In fact, the inspector general advised us that he was reviewing those tapes and asked us not to do any further investigation, not to have any further conversations. And I understand he asked this committee as well not to make the existence of their review of those tapes public. But at this point I have no information as to whether there is anything usable on those tapes.

Mr. DESANTIS. We have been told obviously about Lerner's hard drive failure, then Ways and Means has identified as many as seven or eight additional individuals who are relevant to the investigation whose hard drives also crashed during this period. Now, based on testimony from Mr. Cain, it could be as many as 18 or 19 different hard drives that have crashed that would be relevant. So can you definitively state to this committee the number of hard drives from relevant individuals that crashed during the period in question?

Mr. KOSKINEN. I can tell you what I know at this time, which is in the first six months of 2011, over 300 hard drive crashes occurred, and there were over 5,000 reports of hardware problems. In the first six months of this year, for example, over 2,000 hard drives have crashed. Not every hard——

Mr. DESANTIS. I understand. But that is your whole agency. We are talking about people who happen to be relevant in a relatively small universe of people, and the number of hard drive crashes seem to be getting higher the more we investigate.

Mr. KOSKINEN. Right. And in May I asked our people, once we knew that there was an issue with Ms. Lerner's crash, I asked for what the industry standards were for hard drive crashes, was advised that 3 to 5 percent of hard drives crash. I asked then for a review of the question you are asking, of custodians, how many of those 83 had hard drive crashes.

We reported on June 16th to the Ways and Means Committee in a staff interview that we knew there were probably at least six or seven. The next morning, promptly on receipt of that information, the Ways and Means Committee issued what turned out to be an erroneous press release saying that all of those emails had been lost, including the emails of Nicole Flax. It turned out, in a little further investigation, that it appears no emails for Ms. Flax were lost because the hard drive that crashed was not her office computer.

Mr. DESANTIS. But——

Mr. KOSKINEN. I am sorry, can I answer the question?

Mr. DESANTIS. But my question was the number of hard drive crashes. I understand you have mentioned the Ways and Means press release in numerous statements that you have made before Congress and I have read your other statements, but the numbers. Where do we stand on the number of hard drive crashes?

Mr. KOSKINEN. Where we stand on the number is thereafter the IG was requested by Congress to do an investigation and the IG asked us not to do any further interviews or investigations, so we have not pursued further what the additional implications are, how many hard drive crashes of custodians or what the implications are because the inspector general is investigating that very issue. So I cannot give you a definitive answer at this point as to either how many custodians had crashes or, if they did, how many of them lost emails, because I would emphasize not every crash leads to a loss of emails.

Mr. DESANTIS. Well, Mr. Cain put the upper limit at 20, so there seems to be a contradiction there.

My time is up. Mr. Chairman, thank you for indulging me, and I yield back.

Mr. JORDAN. I thank the gentleman.

The ranking member of the full committee is recognized.

Mr. CUMMINGS. Commissioner, I want to thank you for testifying before the committee today and for the third time in a month. When you testified on June 23rd, 2014, and July 9th, 2014, you told us that the IG was investigating circumstances of Ms. Lerner's computer crash. On June 11th, 2014, you wrote to this committee reiterating that the IG is conducting an investigation into the loss of Ms. Lerner's emails and that, as you previously testified, you would honor the Inspector General George's request to prioritize his investigation.

Has the inspector general expressed concern to you about the release of non-public information about an ongoing IG investigation?

Mr. KOSKINEN. When the inspector general first talked to me and asked us to give a priority to his investigation and not to do any further investigation or witness interviews ourselves, he explained to me that they were concerned that they did not want to muddy the waters, they wanted to have their ability to talk to witnesses and then go back and talk to them again without anyone having conversations in between time. So they were very concerned that witnesses that they were interviewing in the investigation be allowed to proceed with the inspector general only.

Mr. CUMMINGS. And do you know when that was that you had that conversation with the inspector general?

Mr. KOSKINEN. The conversation was shortly after they were asked by the Finance Committee and Congress to make the investigation. I can't remember which the date was in mid-June.

Mr. CUMMINGS. The IG has expressed similar concerns to our committee. For example, on July 2nd, 2014, committee staff held a conference call with the inspector general in which the IG described the investigation into Lois Lerner's hard drive as "very active, open, and ongoing," and asked our committee to refrain from publicly disclosing the non-public information regarding this ongoing investigation. Is the IG's investigation into this matter still active and ongoing, to your knowledge?

Mr. KOSKINEN. To my knowledge, it is still active and ongoing.

Mr. JORDAN. Would the ranking member yield for just a question?

Mr. CUMMINGS. Yes.

Mr. JORDAN. Were majority staff member present at that briefing where the inspector general conveyed that information?

Mr. CUMMINGS. Yes.

Mr. JORDAN. Our staff says that they weren't. And if I could, and you will get all your time plus some extra, if you would like. The inspector general called our counsel yesterday, he happened to be in my office with Mr. Meadows, and said that they had talked to you but did not express any of the comments you made in your opening statement or, frankly, any of the comments you are making in your line of questioning now. So I just wanted that on the record.

The gentleman is recognized.

Mr. CUMMINGS. Well, why don't we have him here next week under oath, since we are having all these IRS hearings, and see what he has to say?

Mr. JORDAN. I am open to that.

Mr. CUMMINGS. Because we can go back and forth on this, and I want to be very clear as to what he said. So when you are talking about he say, she say, it is better that we have him here and we will do that, if you so choose. But I would be happy to.

The IG has expressed similar concerns, again, to this committee. So it is your understanding that the IG's investigation is still ongoing.

Mr. KOSKINEN. It is, as far as I know.

Mr. CUMMINGS. So in spite of the inspector general's request, on July 21st Chairman Issa issued a press release stating that based on the interview of IRS Deputy Associate General Counsel Thomas

Cain, "new developments" have created uncertainty regarding the existence of backup tapes.

Commissioner Koskinen, is it your practice to release non-public information about an ongoing IG investigation?

Mr. KOSKINEN. No.

Mr. CUMMINGS. And why not?

Mr. KOSKINEN. Because we made a commitment to the IG that we would honor his priority, that we would not do anything that would interfere with his investigation. He could talk to anybody he wanted, they could look at any evidence they wanted, and we would not have an ongoing discussion with any of the witnesses he was talking to because we did not want to interfere.

Mr. CUMMINGS. Of course, Chairman Issa's press release released statements from Mr. Cain and other witnesses that undermine a partisan narrative. Mr. Cain told the committee that he was aware of a "potential issue" regarding the backup tapes, but he did not know any additional details. When asked whether he had seen "any evidence that any IRS employee intentionally destroyed documents or emails to avoid their disclosure," Mr. Cain said, "I have not seen anything to that effect."

Have you seen any evidence of obstruction by IRS employees?

Mr. KOSKINEN. I have not.

Mr. CUMMINGS. Yesterday the committee staff interviewed IRS National Director for Legislative Affairs Leonard Oursler. He told the committee staff that based on the information available at the time, your June 13th, 2014 letter to the Senate Finance Committee stating that backup tapes from 2011 had been recycled was accurate. Is that right?

Mr. KOSKINEN. I don't know what he said, but I understand from the press release about Mr. Cain that he said the information we had and provided on June 13th was accurate and that is what everybody knew at the time.

Mr. CUMMINGS. Now, Mr. Oursler also told us that earlier this month he was made aware of an issue with a backup tape, but that he did not know if the backup tape was from 2011 or whether it was mislabeled. He said that even if the unrecycled backup tapes exist from 2011, the IRS does not know whether they contain emails from Ms. Lerner not previously produced to the committee.

Sitting here today, do you know any additional details regarding the backup tape issue that the IG is currently looking at?

Mr. KOSKINEN. No. All I know is actually what Mr. Cain said, that at this point nobody had any information as to what was on those tapes or whether they were relevant.

Mr. CUMMINGS. And until the IG determines the facts regarding this backup tape issue, are you in a position to correct your earlier statements?

Mr. KOSKINEN. No. My point has been that we are going to honor the IG's investigation. I look forward, as everybody does, to his completion, and we will see what his facts are and what he determines happened three years ago and we will respond accordingly.

Mr. CUMMINGS. And you were asked earlier about computer crashes and you said that you were not aware of the folks who may have some relevance to this investigation concerning their crashes. Would you normally have that kind of information?

Mr. KOSKINEN. Normally, if things had proceeded as they might do, when I asked in May for the answers to this question, that is, how many custodians had hard drive crashes in light of the fact the industry says they crash regularly, I had asked for a review of how many had crashed and what the implications were. We had not completed that review when we provided our June report, and basically we had that morning, the following Monday, our IT people had been advised, I had not been advised, that we knew there were six or seven custodians that had had hard drive crashes. That information was actually provided to the Ways and Means Committee. We have not been able to pursue whether there are 6, 12, or 15 because, once the IG started, we agreed that we would not pursue any of those issues until they have completed their investigation.

Mr. CUMMINGS. Now, just a last question. When the DOJ was here the other day, and you were asked about this a bit earlier, they talked about the fact that they had not gotten information about the crash back in April. They got it in June, I think, like everybody else.

Mr. KOSKINEN. Correct.

Mr. CUMMINGS. Why is that?

Mr. KOSKINEN. When we, in April, determined that in fact there had been a hard drive crash and some emails may have been lost, our next step was to in fact investigate how many emails did we actually have and could we find, and our plan and proposal was that we would pull all of that information together, including information about custodians, and make a public presentation to the committees, including a description of why it takes us so long in our archaic system to actually respond to requests for documents.

We provided that information in the June 13 report, as I testified earlier. We did that before the complete production of Lois Lerner emails, which is when we originally intended, because the Senate Finance Committee asked us for an update on both the determination process documents as well as the other searches we were doing. We gave them that. We noted that we had found nothing beyond what we had noted in our March letter with regard to the determination process, which was the subject of the investigations when they started. But we had not completed, at that time, the review of the custodians, nor had we completed, until the end of June, the production to the tax writers of all of Lois Lerner's emails and we are moving toward producing the redacted version to this committee.

So our plan was when we pulled it all together, we would be able to explain what our process was, the difficulties, what we had learned about Lois Lerner's emails, what we had learned about others, and what we had been able to determine. As I noted, we were able to recover 24,000 Lois Lerner emails. We thought all of that was important information for people to have rather than simply saying, well, there is a problem with her computer and we are now investigating how many emails there were, which would have triggered hearings six weeks earlier, but we would not have known nearly as much as we now know.

But we don't know everything we would like to know because we have in fact stopped asking people about it while the IG is doing

his investigation, which we fully support. I have confidence that the IG is independent of us, he was appointed by a different administration. He has 15 people working on it, according to the filings they made last Friday, and we have told him and I have told him personally whatever he needs, documents, whatever people he wants to find, he can have access to and we will stay out of the way. So we have gone out of our way not to talk to anyone who potentially he might want to interview about what happened three years ago when the hard drive crashed.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Mr. JORDAN. Mr. Koskinen, real quick. Russell George told you that he did not want this committee and Congress interviewing the same witnesses he was interviewing?

Mr. KOSKINEN. No. He told me that he did not want us interviewing any witnesses——

Mr. JORDAN. Well, that is fine. That is not the same as Congress. Why did you make it so difficult for us to get—why did we have to subpoena Mr. Cain?

Mr. KOSKINEN. Because the IG, in our discussions, had said he did not want us to do anything that would cause any of our employees to be interviewed before he had a chance to interview them.

Mr. JORDAN. Just for the record, so the inspector general did not tell you that it would hinder his investigation if Congress interviewed the same people he was interviewing.

Mr. KOSKINEN. No, the inspector general told us if we started providing names, let alone witnesses, it would interfere with their investigation, and that is why we did not testify——

Mr. JORDAN. That is not my question.

Mr. KOSKINEN. I testified two weeks ago and said that we were trying to cooperate with the IG, and as I recall Chairman Issa said he understood that, which is why you all don't release full transcripts, and that you would work——

Mr. JORDAN. You have conveyed to this committee that the inspector general told you he didn't want this committee interviewing the witnesses he was interviewing. And he did not say that to you.

Mr. KOSKINEN. No, what I——

Mr. JORDAN. Okay, that's all I need.

Mr. KOSKINEN. Okay.

Mr. JORDAN. That is all I need.

The gentleman from North Carolina is recognized, Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman.

Mr. Commissioner, I want to go back to one thing that the gentleman from Maryland just asked and make sure I heard you correctly. So if you know the testimony that you have given to Congress is not correct, you are not going to correct that until we get a final report from the IG? Did I hear that correct? Because that is I thought what you said.

Mr. KOSKINEN. No. No, what I said was the testimony I have given in the past was accurate as of the time with what I knew. I testified as to what I knew. Right now the question is do I know anything more about tapes, backup tapes, and the answer is I don't know any more other than the IG is investigating whether there are backup tapes and whether in fact they are recoverable.

Mr. MEADOWS. So if you find, during the course of your normal business, that what you have told Congress is incorrect, you will come immediately to us and let us know, is that correct?

Mr. KOSKINEN. I am happy to correct. In fact, the chairman, with regard to——

Mr. MEADOWS. So within 24 hours of you finding that you have given us incorrect testimony, you will come and let us know?

Mr. KOSKINEN. Yes, sir. If I know it is incorrect, and, in fact, if the committee has any questions, Chairman Issa was very thoughtful and said, when Lois Lerner's lawyer talked about what she did with records, he sent me a letter and said here is what she said, here is what you said, take a look at it and correct it, and I appreciated that.

Mr. MEADOWS. Well, we appreciate the fact that you will come back to us, because I thought you were saying you were going to wait until the IG gave you a report.

Mr. KOSKINEN. No, no. I said I wouldn't know until the IG investigation is complete what the answer is in terms of how many custodians had——

Mr. MEADOWS. But you won't know what they found until they come back, but you will know what you—so are you saying that you are not talking to Mr. Cain or anybody?

Mr. KOSKINEN. I am not——

Mr. MEADOWS. So you are not talking to anybody in the IRS about any of this?

Mr. KOSKINEN. I am not talking to any potential witnesses for the inspector general about what happened three years ago in the investigation——

Mr. MEADOWS. All right. So when you read the reports about Mr. Cain, did you talk to him and say, hey, this doesn't jive with what I know?

Mr. KOSKINEN. No, because Mr. Cain is someone that I assume the IG is going to be talking to in terms of what did he know and when, and what do we know about——

Mr. MEADOWS. So did you talk to somebody who talked to him?

Mr. KOSKINEN. No. All I did was I read the release that this committee put out.

Mr. MEADOWS. All right. So did you read the release of the Ways and Means press release that talked about a scratched hard drive?

Mr. KOSKINEN. I saw that this morning. It was put out last night, I understand.

Mr. MEADOWS. Does that concern you, that it was scratched, and not crashed? Would that concern you? It concerns me. Does it concern you, if that is accurate?

Mr. KOSKINEN. I don't know—if it is accurate. As I say, I haven't talked. I don't know the gentleman, I don't know what he said. All I know is——

Mr. MEADOWS. But if it is accurate, would that concern you?

Mr. KOSKINEN. I understand——

Mr. MEADOWS. That it was scratched. Let me tell you why it concerns me.

Mr. KOSKINEN. Okay, good.

Mr. MEADOWS. And this is an HP laptop. To get to the hard drive, it is no easy task. You have multiple screws that have to be

taken to get to it. Then once you get to that, you actually have a hard drive inside that has seven more screws that have to be taken off to get to the hard drive in order for it to be scratched. Would that concern you that if it were indeed scratched, that there may be some other motive?

Mr. KOSKINEN. It would be a piece of information that I assume——

Mr. MEADOWS. Would it concern you, yes or no?

Mr. KOSKINEN. I wouldn't know whether to be concerned or not.

Mr. MEADOWS. Okay.

Mr. KOSKINEN. I don't know anything about whether—as I understand from the press release——

Mr. MEADOWS. Well, it concerns me, and I am going to ask my staff to go and see how long it would actually take to get to that hard drive to make—if indeed it were scratched.

Mr. KOSKINEN. I know. But I assume there are a lot of ways hard drives get scratched.

Mr. MEADOWS. I can assume that too.

Mr. KOSKINEN. I know nothing about that. I am sure the IG is going to look into that and I am sure he has already talked to that witness, or would like to have talked to him before——

Mr. MEADOWS. Well, I hope so. So let me go back to the numbers. I think earlier you just said you had 2,000 hard drive crashes this year?

Mr. KOSKINEN. Yes.

Mr. MEADOWS. Is that correct? All right, so let me ask you about numbers. And you know that I am a numbers guy, because I just did the numbers real quickly. If you look at your entire body of some 84,000 to 90,000 IRS employees, depending on which year, but let's take that, that is a 2.2 percent failure rate.

Mr. KOSKINEN. Correct.

Mr. MEADOWS. All right. In the people that truly are involved in this, in that sphere of 80 people, if indeed we had 16 to 18 hard drive crashes, why would the hard drive crash of that group of people be 10 times greater than what you have throughout the agency? Can you explain? What would be the probability of that happening?

Mr. KOSKINEN. First of all, I have no information as to know whether that is the actual number or not.

Mr. MEADOWS. All right. Well, let's take the number that you do know, seven, that you testified.

Mr. KOSKINEN. Right.

Mr. MEADOWS. All right? That still would be four times greater than your overall average. Can you explain that?

Mr. KOSKINEN. I don't know what the details were. I do know, when I asked for the industry statistics, once you get beyond the warranty period, the failure rate goes to 10 to 15 percent.

Mr. MEADOWS. But Lois Lerner's laptop was a new laptop, it was not an old one. And, actually, the probability of her hard drive failing at that time was at the lowest, according to industry standards, was at the lowest possible time. Does that surprise you?

Mr. KOSKINEN. No.

Mr. MEADOWS. All right. But it does surprise you that her hard drive failed?

Mr. KOSKINEN. No. I tell you, my understanding about it is, from the industry, it is 2 to 5 percent, depending on the computers, are regularly——

Mr. MEADOWS. So out of this circle, if you have 10 times that amount, would you say that is an anomaly?

Mr. KOSKINEN. If you had 10 times the amount, that would be an anomaly. I don't know whether we——

Mr. MEADOWS. Well, I am giving you the numbers, so that would be an anomaly.

Mr. KOSKINEN. If you stipulate you have 10 times as many as the industry average, that would be an anomaly.

Mr. MEADOWS. All right, thank you.

I yield back.

Mr. JORDAN. The gentleman from Pennsylvania, Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Mr. Koskinen, the very first question you got in your testimony today was something to the effect Mr. DeSantis, my colleague, put the question to you whether you were aware you were under investigation by the Department of Justice. You know, this is a very public hearing. This is a very, very public. We invite members of the press to come to these hearings, and these hearings are televised, and I think it is important that we don't lead the public down the wrong path on what the truth is here.

Mr. Koskinen, have you received a target letter from the Department of Justice to say that you are under investigation?

Mr. KOSKINEN. No.

Mr. CARTWRIGHT. Has anyone, anyone told you verbally that you are under investigation by the Department of Justice?

Mr. KOSKINEN. No.

Mr. CARTWRIGHT. Has anyone, anyone said to you verbally anything that would hint to you that you are under investigation by the Department of Justice?

Mr. KOSKINEN. No.

Mr. CARTWRIGHT. Has anyone, anyone said anything to you to hint to you that you might be the target of a Justice Department investigation sometime in the future?

Mr. KOSKINEN. No.

Mr. CARTWRIGHT. Thank you for that.

Another thing that you have been trying to get out, and you are continually interrupted in your answers, were comments about industry statistics about computer failures. I want to give you a chance now to make full sentences.

Mr. KOSKINEN. In May, when I was advised we had this problem and we were proceeding to find how many Lois Lerner emails we could have, I asked, A, what are the industry standards for hard drive crashes, and I was told it is somewhere between 2 to 3, sometimes 5 percent within the warranty period. If you have older computers, which a lot of our employees have, it goes as high as 10 to 15 percent. I then asked that we do a review of all of the 82 other custodians to determine what, if any, of them had hard drive crashes and, if they had them, whether it caused any loss of emails. We have, as I said, over 2,000 crashes already this year, but all of those didn't result in loss of emails. In fact, you can lose emails without your hard drive crashing.

So at the time we were starting down that road to complete our review of exactly what were the situations with regard to the production of documents. As I say, that has stopped from coming to closure because the IG himself is actually looking at all of that.

Mr. CARTWRIGHT. Thank you.

Now, Mr. Koskinen, on June 20th you testified before the Ways and Means Committee that even after discovering Ms. Lerner's 2011 hard drive crash you said, "The IRS took multiple steps over the past months to assess the situation and produce as much email as possible for which Ms. Lerner was an author or recipient. During this time and into May we were also identifying and reviewing Lerner emails to and from 82 other custodians. By mid-May, as a result of these efforts, the IRS had identified the 24,000 Lerner emails between January 1 and April 2011."

Commissioner Koskinen, why did the IRS take these steps to recover Ms. Lerner's emails?

Mr. KOSKINEN. It was an attempt on our part to produce as many Lois Lerner emails, either from her accounts or other accounts, as possible in response to the request of this committee and the Ways and Means Committee to produce all of Lois Lerner's emails. So we were trying to make sure that there were no emails anywhere in the system to or from Lois Lerner that we had not located and had not provided.

Mr. CARTWRIGHT. All right. So despite the hard drive crash, the IRS has still produced 24,000-plus additional emails from Ms. Lerner, is that right?

Mr. KOSKINEN. That is correct.

Mr. CARTWRIGHT. All right. Now, witnesses have told this committee that in February of 2014 IRS employees discovered that there were fewer of Lois Lerner's emails from January 2009 to April 2011 than there were for other periods, and upon this discovery IRS officials immediately took steps to determine the reasons for this discrepancy and whether they could locate additional emails from Ms. Lerner during that time period.

The question there is why didn't you inform us about the discrepancy in Ms. Lerner's emails when you testified before this committee in March?

Mr. KOSKINEN. Because in March I did not know and we didn't know whether we had lost emails or not. One of the first things that was investigated in February and into March was to review all of our production processes to see if anything in the way we had reached into the system to produce the emails, put them into our search method had caused us to in fact misplace those emails, because it wasn't clear initially as to whether, whatever her problems with her computer were, had resulted in any loss of emails.

So the first process while we were producing all the other documents regarding the determination process was to make sure that we hadn't ourselves done anything in the process to cause emails in that period to be lost. And we determined ultimately into April and May that nothing that we had done in the search process had caused the emails to be not producible.

Mr. CARTWRIGHT. All right. I thank you, Mr. Commissioner.

I yield back.

Mr. JORDAN. I thank the gentleman.

Now recognize the gentleman from Pennsylvania, Mr. Meehan.

Mr. MEEHAN. I thank the gentleman.

Commissioner, thank you for taking the time to come up and be with us again today. I know you came here before and I know we are going through a lot of detailed testimony, but the baseline is accurate, that to the best of your knowledge, when you testified before that the emails were not available from Ms. Lerner during the period that they had been, to the best of your knowledge, that they had been destroyed because they had been recycled on the tape. And I am not questioning that at this particular moment.

But I think what has people interested is Mr. Cain came up here not so long ago and he is a pretty sophisticated guy. His job is to produce documents for investigations and litigation and other kinds of thing and, therefore, he not only has a very detailed understanding of the process, but a deep appreciation of the implications to do or failure to do, including exposure for failure to do things. He also has a very sophisticated understanding of how to answer questions with respect to this, appreciating that when he is under oath, anything that he says would put him in a particular position in which, if it is known to be wrong, it could expose him to further scrutiny. Let's just put it that way.

So I am curious as to why he would come and testify that, I don't know if there is a, and this is his words, I don't know if there is a backup tape with information on there or there isn't; that he was now unsure about whether there were some backup tapes from the period of time that may not have been erased. I am using his direct testimony. There is an issue as to whether or not there is a—that all of the backup recovery tapes were destroyed on the six-month retention schedule. I don't know whether they are or they aren't, but it is an issue that is being looked at.

What do we know about this issue and why would he have made that statement?

Mr. KOSKINEN. What we know about that, or what I know about that issue is I was advised by the inspector general that they had taken tapes they had found, I don't know how they found them, and they were reviewing those tapes to see if they had been totally recycled or whether they were not recycled and usable. I was advised about that because the inspector general, again, wanted us not to do any—because he knew, however they had found them, somebody knew that the IG had them. He didn't want us to in fact do anything to investigate further what those tapes were, where they were found, who found them, what they did with them.

So our guy said that was fine, and at this point, I haven't talked to Mr. Cain about this, but according to his testimony, what he has said is what he knows is, because, as you say, he has been involved in it, is that the inspector general is looking at some tapes, I don't know how many and which ones, to see whether in fact any of them turned out not to be recyclable or any of them have information that is recoverable. But at this point, as Mr. Cain's testimony states, it is not clear whether they do or don't.

Mr. MEEHAN. Or whether in fact substantively there is information, when he gave you that identification that they are, as you said, it was believed that they had all been produced, but now

maybe some of them have been found. Weren't you concerned about what procedure they used to potentially come up with new tapes?

Mr. KOSKINEN. When the inspector general advised me of that, I was interested as to why they were looking at tapes that we had been advised had all been recycled, but I didn't cross-examine the inspector general about it, I agreed with him that they would do the investigation, we wouldn't do anything to interfere with that; I wouldn't and none of our people would talk to anybody about it. So I can't tell you how they found them, what they are, and, as Mr. Cain said, whether there is anything on them or not. At this point, we are supporting the inspector general.

Mr. MEEHAN. Do you have any idea about what the issue is that he referred to? Because that was the very specific thing. There is an issue as to whether all of the backup tapes had actually been recycled.

Mr. KOSKINEN. Yes. And the issue, as I just said, is that he obviously is aware of what the inspector general advised me, which is the inspector general has taken some tapes, I don't know which ones, and is reviewing those to see if they have been recycled, if there is information on them that can be found or used. That is all I know and I assume that is all he knows. But beyond that I haven't talked to anybody about this, I haven't asked anybody about it because, again, our position with the inspector general is he is doing the investigation.

Mr. MEEHAN. Just one follow-up question. But why are these not available from a third party vendor who, in the event of a cyber attack, would protect us against the destruction of all records which would put our Government in a remarkably perilous situation, so we take steps to ensure that essential documents are preserved by having them in third-party data storage situations? Why were the documents that are relevant to this period, particularly the documents relevant to the 2009, 2011 area, why were they not backed up and available today?

Mr. KOSKINEN. That is a very good and important question. As I have testified earlier, there has been no loss of any information and no actions taken since this investigation started with regard to any information and production of documents. We have frozen and saved and backed up all emails from six months before the start of the investigation forward.

What we are talking about is what happened three years ago, and three years ago the process was to use backup tapes for basically disaster recovery purposes and recycle them every six months. That was the protocol and the process that had gone on for some years and, in fact, it used to be they only kept them for one month, and it was increased to six months. But that was the process three years ago. Whatever emails were lost three years ago were not lost. They were lost then. Nothing has been lost, as far as I know, since this investigation started. We have gone out of our way to protect all of the data and all of the documents.

Mr. MEEHAN. Thank you. I have other questions, but my time has expired. Thank you.

You are an attorney, and you talked about these documents having been missed. But at the period of June 29th, 2011, Lois Lerner is informed that some of the activities that she has been associated

with may have been involved with discriminatory practices. Now, you are a Yale lawyer, and you understand the situation in which there is a potential for litigation and the requirements that when there is a potential for litigation, that there is a requirement consistent with the record-keeping responsibilities to preserve the documents that may be relevant to that. All of this occurred before the period of time that we are now looking some years down the road.

So if you were informed that somebody was holding your agency, or you in particular, as having potentially engaged in discriminatory practices, would you preserve the documents from that era?

Mr. KOSKINEN. We have, any time there is an investigation, we have litigation document hold policies and procedures. As I say, we have done our best to protect every document for the last year and a half, almost two years now, and anytime anyone raises a serious question about the production of evidence, we go out of our way to protect it. I don't know what the circumstances were three years ago.

Mr. MEEHAN. Well, this was knowledge that there were discriminatory practices and she was informed that she was central to the potential that there were complaints about discriminatory practices on the part of the IRS. Would that be the kind of a document that you would preserve in anticipation of potential litigation?

Mr. KOSKINEN. Again, our protocol is if there is going to be an investigation, if there is a serious issue raised, we protect and preserve documents. As I have testified, one of the things I had asked about early in this investigation is we need to have an email system of record so that it would be easier to protect official records, preserve them, and it would be much easier to search them.

As I have said, we should not have to spend $18 million answering straightforward questions for documents, but that is the system we have. The constraints on the budget have been significant over three or four years. Going forward, we are looking again at is there a way to get out of the late 20th century and into just the early part of the 21st century, because we should have an email system that is, as I say, much more searchable and a system that is a system of record.

Mr. MEEHAN. Thank you, Mr. Chairman.

Mr. JORDAN. Well, I thank the gentleman. I think his question cuts right to the chase. She was on notice that there was a problem and suddenly her computer crashes. But it is worse than that. The IRS has identified 82 custodians of information that are relevant to the investigation, and now we know from Mr. Cain's testimony last week up to 20 may have had computer hard drive crashes. So this is way beyond the 3 to 5 percent that the commissioner keeps citing; this is approaching 25 percent of the relevant people that they have identified have had computer problems and may not be able to get us the documents. I appreciate the gentleman's questioning.

We recognize the gentlelady from Illinois for her time.

Ms. KELLY. Thank you, Mr. Chair.

Good morning, Commissioner.

Mr. KOSKINEN. Good morning.

Ms. KELLY. On July 7th, 2014, you testified that since you were confirmed in December 2013, the IRS has "probably provided

300,000 to 400,000 documents to Congress." To date, how many pages of documents has the IRS produced to Congress in furtherance of the ongoing investigation about the IRS's review of tax-exempt applications?

Mr. KOSKINEN. As I testified earlier, we have produced 960,000 pages to the tax writing committees; redacted documents we have produced 700,000 pages to this committee.

Ms. KELLY. I would imagine amassing a document production of this magnitude takes an extraordinary amount of time and money, as you talked about the money.

Mr. KOSKINEN. Yes. It has been a significant distraction. We spent, as I noted, at last count, $18 million responding. We continue to produce documents. We hope shortly to be able to complete the production of redacted Lois Lerner emails to this committee. But in an area of declining resources, most of it is done in our Office of Chief Counsel. There are 500 fewer people in the chief counsel's office now than there were four years ago, so it has been a significant strain on our chief counsel's office.

Ms. KELLY. And how many employees have been involved in this process and how many hours have been logged in to comply with all of these requests, to comply with Congress?

Mr. KOSKINEN. We have had over 250 employees at various times involved, we have had over 100,000 or 120,000 hours of efforts devoted to it, and we continue to work on the production of those documents.

Ms. KELLY. I understand that current agency staff, many of whom have other job responsibilities, have been tasked with complying with congressional document requests. Is that correct?

Mr. KOSKINEN. That is correct. Our IT department has been asked for information. We have witnesses that are being interviewed as we go. As I have noted, the entire issue about the (c)(4) investigation and the (c)(4) operations involved about 800 employees in the entire exempt organization; only a portion of them work on this. That means we have 89,000 other hardworking, dedicated IRS employees working on matters of importance to the Government and to taxpayers.

Ms. KELLY. The individuals working on this, they have had to put their, I would imagine, current workload aside.

Mr. KOSKINEN. Yes. And particularly lawyers is a problem for us because they have obligations to represent the agency in tax cases. They have an obligation to continue to work with Treasury on the development of rules and regulations and procedures, so it is a constraint.

Ms. KELLY. Thomas Cain, the IRS Deputy Associate Chief Counsel for Administration and Procurement, was interviewed by committee staff on July 17, 2014. He said that the IRS currently exists "with an increased workload and a reduced staff from where we were several years ago. We have taken these people from their day jobs. They have no replacements for them because there are no replacements, so we have pulled together people from all parts of the organization to contribute to the project, again, on a full-time basis. But there is no one to backfill the work that continues to exist and pile up, and that is particularly critical when you are dealing with people in the field that ordinarily are trying cases that have dead-

lines. So that type of staffing commitment and resource commitment has been a drain on the entire Office of the Chief Counsel."

Commissioner, would you agree with Mr. Cain's assessment of investigations impact on your agency's workload?

Mr. KOSKINEN. I would.

Ms. KELLY. Mr. Cain was also asked about the impact that Chairman Issa's subpoena for his testimony had on the morale of his team. He said that his employees have been working tirelessly to help the IRS comply with Congress who are "visibly impacted in a very negative way." Commissioner, I would like to give you an opportunity to address any concerns you may have about the impact the various congressional investigations are having on your agency's morale and ability to perform its core functions.

Mr. KOSKINEN. Well, as Mr. Cain apparently noted, we have a large number of people who have day jobs who have been in part or totally devoted to this who have been trying to be responsive. When they then are subject to depositions and recorded interviews, it sends, these are all career people, a deleterious effect on morale because they thought they were actually doing what they were asked to do, they were trying to provide information. Most of them have never had a deposition of theirs taken; they haven't spent six, eight hours under cross-examination. So for everybody else who is working on this project, they are now looking over their shoulder, worrying about, well, am I going to get called up next; and all they have been doing is producing documents.

Ms. KELLY. Okay, thank you. Thank you for your time.

Mr. CUMMINGS. Would the gentlelady yield?

Ms. KELLY. Yes, I will.

Mr. CUMMINGS. I was sitting here listening to some questions that the chairman asked you, and I got convinced that you are damned if you do and you are damned if you don't, and this is what I am talking about. The IG, appointed by a Republican, asked you not to engage in, I don't want to take words out of your mouth, but what did the IG ask you not to do?

Mr. KOSKINEN. Not to do any further investigations or interviews or discussions with employees about anything having to do with the hard drive crash, any other hard drive crashes while they did their investigation.

Mr. CUMMINGS. And the chairman went on to say that he didn't tell you that this committee was under the same restrictions. That is accurate, right? He didn't tell you, the IG didn't say to you, what I am telling you about your restrictions does not have anything to do with the committee. You understand my question?

Mr. KOSKINEN. Yes.

Mr. CUMMINGS. I am going back to what the chairman said because I am trying to figure out how do you obey the law and obey the wishes of the IG.

Mr. KOSKINEN. No, the question was, and I answered it, was that the IG didn't tell you that he was telling the committee, giving any instruction to the committee. The only conversation I know he had with the committee was when he told me about the existence of the backup tapes and asked us not to do any further questioning about that. He said he had provided that information to the investigative

committees and had asked them to treat it confidentially while his investigation was going on.

Mr. CUMMINGS. So if something came up now where we contacted you and said we want to meet with X person in the IRS because we think, that is, this committee thinks that that person has something relevant to our investigation, is there any way you would treat that differently now than you would have if you had never had the conversation with the IG? You follow what I am saying?

Mr. KOSKINEN. No. Actually, we have tried to be responsive as best we can to the wide range of requests we have. We have six investigations and a number of requests coming in, and requests for interviews. While we have tried with more success in some areas than others to try to figure out what the priorities are so that we can do it in the right order, which is at my hearing in March we agreed the next priority after we completed the determination issue was to provide all the Lois Lerner emails we had, and we had a long discussion back and forth and committed that would be our next priority, and we are getting close to completing that.

Mr. CUMMINGS. I guess what I am getting at is that I assume you wouldn't have a discussion, based upon what the IG told you, you wouldn't have a discussion with an employee of the IRS now because the IG told you not to.

Mr. KOSKINEN. That is correct. So when we have had witnesses coming to testify and give depositions here and Ways and Means, we have not talked to them beforehand, they have simply come up. Again, we don't feel that we want to do anything that would interfere with the IG's investigation or this committee's investigation, so people have come up and, to the extent they have been interviewed, they have done that on their own, without any conversations with me.

Mr. CUMMINGS. Now, the gentlelady just asked you about morale at the IRS. The IRS is a kind of tough position because nobody seems to like the IRS.

Mr. KOSKINEN. That is right.

Mr. CUMMINGS. On the other hand, if you don't get revenue, you have a problem. We have a problem as a Nation.

Mr. KOSKINEN. Right.

Mr. CUMMINGS. But when you think about the reduction in employees, and based upon what Mr. Cain said that the gentlelady just read, it seems like something has to give, and I am just curious as to what is giving. You follow what I am saying? In other words, if you have, based upon what Mr. Cain said, you are pulling people from different areas to do certain things, you said that some of them have quit responsibilities and deadlines. The point is something has got to give, something.

Mr. KOSKINEN. Right.

Mr. CUMMINGS. Can you tell us what we are losing?

Mr. KOSKINEN. Well, what has to give is obviously we have 10,000 fewer employees than we had four years ago; we have 500 fewer in the Office of Chief Counsel. So what happens is people either have to spend a lot longer working. At some point you run out of things you can do. We have done our best and taken people from around the agency, particularly around Chief Counsel, and put them on the production effort. To do that means that the work that

they otherwise would have done doesn't get done because we have no capacity to add more people, to hire more people. We are only replacing one in every five people who leave the agency, so we continue to shrink rather than expand.

So we haven't complained about it, we basically simply produce documents as fast as we can. We have explained that our biggest problem and obstacle is that we have this sort of arcane, archaic system where you have to search each hard drive to pull out data to actually get it into a search machine, which we would like to change going forward. But it does mean that, particularly in the Office of Chief Counsel, you put them under more stress, it makes it much more difficult with the other ongoing day jobs they have.

My concern, more importantly, though, is over the course of certainly the three and a half years I am left, we will have other issues, and as we ask people to do productions and just respond to congressional inquiries, if they become subjects of depositions and cross-examinations, it is going to be harder to get people to decide they want to leave their day job and help us respond to Congress. So that is our only broader concern. But, again, we think it is appropriate and we are happy to cooperate with the committee as best we can.

Mr. CUMMINGS. Thank you.

Mr. JORDAN. I would just make one point. The witness testified that they don't talk about this issue and prepare and discuss and prep for it. That is just not accurate. We interviewed Mr. Oursler yesterday, and he told us specifically that when Steve Manning came and briefed the Ways and Means Committee, there was prep sessions done for Mr. Manning to get ready to come in front of Congress. So to portray it as you are not talking about this issue as you bring people before Congress is just not accurate.

And regarding the morale issue, if the IRS would have been willing to let Tom Cain come and be interviewed, we wouldn't have had to issue the subpoena. One thing that impacts morale is when you get a subpoena. I get that. But that is your cause. You caused the subpoena, Mr. Koskinen, we didn't. We tried for weeks to get Mr. Cain to come and be interviewed, and you guys said, no, can't do it, so we had to issue the subpoena; and we got all kinds of information that contradicts testimony you have given in front of Congress.

So that is the issue. If we are talking about morale, you could have helped morale of the very employees you represent if you had let him be interviewed by us without a subpoena.

Mr. KOSKINEN. We actually agree. Subpoenas sound different, but when they come for an interview, it is still under oath and it is still a transcribed interview and it looks just like a deposition, and that is, for people who have never done it before, of concern; they get nervous.

Mr. JORDAN. And my point is by you making it so we had to subpoena, that only adds to the anxiety of the employee. So that is your creation on your employees, not ours.

Mr. KOSKINEN. And that is why we were delighted to work out with you a schedule where there won't be subpoenas, but people will still come——

Mr. JORDAN. We appreciate that. But it took a subpoena to get that rolling.

The gentleman from South Carolina is—oh, I am sorry.

Mr. CUMMINGS. I just asked you for a—because we have a tendency to ask questions and not let him answer. I want to understand this, and I think it is for the benefit of the entire committee. Why did Mr. Cain have to be subpoenaed? Why is that?

Mr. JORDAN. Because we tried——

Mr. CUMMINGS. No, no, no, I didn't ask you. I asked him.

Mr. JORDAN. Oh. I didn't know who you were asking.

Mr. CUMMINGS. No, I am asking him.

Mr. JORDAN. That is fine. He can answer.

Mr. CUMMINGS. Thank you.

Mr. KOSKINEN. We were in the process of discussing production of witnesses. We, as I say, were concerned about interfering with the IG's investigation, and while we were doing that, as the chairman said, then Mr. Cain got a subpoena, which did, A, allow him to appear without any further ado and did allow us to basically have a conversation about setting up a production schedule of witnesses. So the chairman is right, we were in the process of trying to do this, but I would say we take some responsibility for the fact that you had to do a subpoena. I would agree with that.

Mr. JORDAN. You take all of it. We asked. Mr. Cain told during his deposition, because he had to be subpoenaed, he told committee staff that he wasn't even notified by you, Mr. Koskinen, or Ms. Duvall or whoever, that we had requested an interview. He didn't even know that. All he knew was he got the subpoena. So you didn't even tell him that we were trying to interview him. That is what he told us in the deposition last Thursday. So it is all on you. You are the reason we had to subpoena the individual to get his testimony.

Mr. CUMMINGS. But he eventually came voluntarily, is that right?

Mr. JORDAN. Yes. After he hired private counsel after we went his subpoena.

Mr. CUMMINGS. All right.

Mr. JORDAN. The gentleman from South Carolina is recognized.

Mr. GOWDY. Thank you, Mr. Chairman.

It is good to see you again, commissioner. I want to read a quote to you from June of 2014. I want you to tell me if you know who said it, okay? "We confirmed the backup tapes from 2011 no longer existed because they had been recycled pursuant to the IRS normal policy." Do you know who said that?

Mr. KOSKINEN. Sounds like me.

Mr. GOWDY. It is you. Can you tell us who "we" is in that quote?

Mr. KOSKINEN. The "we" is the IRS. I tend to take responsibility for the agency and talk about it. I was advised, when the draft report was submitted to me, that people had talked to everyone in the agency to ensure that in the course of our several months of looking for backup tapes——

Mr. GOWDY. So "we" is the royal we, just speaking on behalf of the entire IRS. How about the word "confirmed?" What does the word "confirmed" mean to you, that you "confirmed" the backup tapes no longer exist?

Mr. KOSKINEN. Confirmed. When I read that, I asked the question, was told——

Mr. GOWDY. By whom?

Mr. KOSKINEN. I don't remember who; we had four or five people who were working on the report. And was told, and I gather Mr. Cain said in his testimony, that that was accurate as of June 13th.

Mr. GOWDY. What does the word "confirmed" mean to you?

Mr. KOSKINEN. Confirmed means that somebody went back and looked and made sure that in fact any backup tapes that had existed had been recycled.

Mr. GOWDY. Are you still confirmed?

Mr. KOSKINEN. At this point, I have no basis for not being confirmed. I do understand the IG advised me that they were looking at tapes. I have not been advised as to whether any of those tapes——

Mr. GOWDY. Well, confirmed is a pretty strong word, commissioner. Are you still confirmed that no backup tapes exist?

Mr. KOSKINEN. Well, at this point, I know the IG is looking and he hasn't found anything, so as far as I know.

Mr. GOWDY. I am glad you mentioned the IG. And I find this confounding, I find it vexing, that once the IG is involved, nobody else can do anything. That is not supported by the law. Can there be a criminal investigation while there is an IG investigation?

Mr. KOSKINEN. There can be all sorts of investigations. What I was talking about was the IG.

Mr. GOWDY. Right. And there could be a congressional investigation while there is an ongoing IG investigation also, correct?

Mr. KOSKINEN. Of course.

Mr. GOWDY. And there can be an IRS investigation. If there were sexual harassment or discrimination in the workplace, are you telling this committee that you would wait until the IG investigated it before you would stop some insidious practice?

Mr. KOSKINEN. We would take whatever action was necessary.

Mr. GOWDY. Precisely. You would not wait until an IG concluded his or her investigation.

Mr. KOSKINEN. Can I answer that question?

Mr. GOWDY. Sure.

Mr. KOSKINEN. Our policy, and it has been my understanding when I chaired the Council of Inspectors General across the Government, that if the IG starts an investigation, the agency will not themselves run a competing investigation to try to get there first. Basically, the IG advises us what the investigations are. When they advise us about those investigations, we allow them to proceed. If there are——

Mr. GOWDY. Let me give you possibly an alternative view, commissioner, which is that people cite ongoing IG investigations when it suits them to not cooperate, and they don't cite ongoing IG investigations when it doesn't suit them.

Mr. KOSKINEN. That is not my policy.

Mr. GOWDY. Well, you can certainly understand how a cynic might view it that way, right? Because there is nothing about an ongoing IG investigation that would keep you from doing your job. Just like there is nothing about an ongoing IG investigation that keeps the Department of Justice from a criminal investigation or

a committee of Congress from a congressional investigation. There is nothing talismanic about an IG investigation.

Mr. KOSKINEN. In this particular case, as a general matter, my policy has always been if the IG is doing an investigation wherever I am, we won't interfere with that investigation; we want it to be independent.

Mr. GOWDY. Words have consequences, Mr. Koskinen. Nobody is asking you to interfere. You can have a dual investigation without interfering, can't you?

Mr. KOSKINEN. I think it is very difficult.

Mr. GOWDY. So you are saying that if there is an allegation of sexual harassment or racial discrimination within the IRS, you would not look into that until the IG had completed his or her investigation? Is that what you are telling me?

Mr. KOSKINEN. I am not telling you that. I am telling you, as a general matter, that is not what the IG would be investigating. As a general matter, those claims would come to personnel; they would be immediately investigated by our legal department.

Mr. GOWDY. Well, the IG doesn't have criminal jurisdiction; the IG doesn't have jurisdiction over legislative policy; the IG doesn't have jurisdiction over appropriations. All three of those are very important areas. So those should be ongoing even while an IG is doing his or her investigation, correct?

Mr. KOSKINEN. Actually, the IG does do criminal investigations.

Mr. GOWDY. No, sir, they refer to an entity that actually has the power to indict, which does not include the IG.

Mr. KOSKINEN. They actually, my understanding, mark our criminal investigations——

Mr. GOWDY. It might be the same people who gave you the understanding that you were confirmed that the tapes don't exist, so my advice is to be very careful who you take your advice from. And I am going to say this in conclusion, Mr. Koskinen. I really could not believe the colloquy that you had with one of our colleagues about the morale at the IRS. It takes a lot to stun me, but that stunned me. Here's a piece of advice I would give. If the folks like Lois Lerner and others would have spent more time working on the backlog, more time working on their caseload, and less time targeting groups and less time trying to overturn Supreme Court decisions they didn't agree with, maybe morale would be better and maybe their backlogs would be lessened.

Mr. ISSA. Would the gentleman yield?

Mr. GOWDY. I would be thrilled to.

Mr. ISSA. Commissioner, I just want to maybe summarize what the gentleman was asking you with a question. Do you have full faith and trust that your IG is doing a thorough investigation at the same level as would be done if you were doing it as the commissioner?

Mr. KOSKINEN. I do. I said earlier I have a lot of confidence in the inspector general. They have far more capacity in some of these areas; they have 15 people working on this. I am very comfortable and confident that they are doing a thorough job, and I have told them we will do whatever we can to——

Mr. ISSA. So at least as to your own investigation, you consider the IG's investigation to be your investigation.

Mr. KOSKINEN. I do not. We do not control the IG; he is very independent. He is doing an independent investigation of all of this. I am satisfied that when he gets done we will have an independent review and investigation of what went on.

Mr. ISSA. Thank you.

Mr. JORDAN. The gentleman from Virginia is——

Mr. MEADOWS. Will the gentleman from Virginia yield for just one follow-up question?

Mr. JORDAN. You will get time added if the gentleman—it is his call, but if you yield, I will give you some additional time. I have been very generous.

Mr. CONNOLLY. I thank the chair. Of course I would be glad to yield.

Mr. MEADOWS. I thank the gentleman from Virginia.

I want to follow up on the gentleman from South Carolina's point, because what you are just saying is that your belief is that it is wrong for you to do an investigation at the same time as an IG is doing an investigation, is that correct?

Mr. KOSKINEN. As a general matter, if we were doing an investigation, it would interfere with his investigation.

Mr. MEADOWS. So what you are saying is that your predecessors who did exactly that in 2012 were wrong, because when the IG started it, they did their own—under sworn testimony, they did their own investigations. So what they did was not right.

Mr. KOSKINEN. Everybody has their own policies. I don't know what they did or didn't do.

Mr. MEADOWS. But in your opinion that would not be right.

Mr. KOSKINEN. If the IG——

Mr. MEADOWS. I just want to show the hypocritical point there that it is not consistent with what IRS has already done.

Mr. KOSKINEN. My point only was it is consistent with how I have behaved in the past and how I will behave in the future. My view is that the IG is an important independent source of investigations. Whenever the IG is doing an investigation, I think it is important to cooperate with it and not interfere with it.

Mr. MEADOWS. All right, I thank the gentleman from Virginia for yielding.

Mr. JORDAN. Great question.

Mr. MEADOWS. I ask unanimous consent that all his time be——

Mr. JORDAN. He has it.

Mr. CONNOLLY. I thank my friend from North Carolina and I thank the chairman.

Welcome back, Mr. Koskinen.

Mr. KOSKINEN. Always a pleasure to be here.

Mr. CONNOLLY. I can tell. It must be a thrill and the highlight of your week. And I guess we are going to do this as long as we are in session.

By the way, just sort of a sidebar, I wish my friend from South Carolina was still here, because his concern for morale at the IRS is really touching. And, gosh, if we were really that serious about it, maybe we wouldn't have slashed eight hundred and something million dollars from your budget in the last four years and recommended another $350 million this year. But that is a different matter.

Mr. KOSKINEN. Actually, you actually recommended another billion on top of the $350 million. So at this point we are a billion 350 under water.

Mr. CONNOLLY. A billion 350. But the morale, we will keep on flogging people until the morale is improved. That seems to be the philosophy of some of my friends on the other side of the aisle.

At any rate, I am glad we are talking about the IG, because I am amazed that J. Russell George, the TIGTA, would have thought it wise or prudent to completely omit from the May 14th final audit report any mention of a critical, and I think astonishing, analysis that was conducted by TIGTA's own head of investigations the weeks leading up to the release of the May 14th report.

Mr. Chairman, without objection, I would like to enter into the record the conclusion of TIGTA's Deputy Inspector for Investigations, Tim Camus, which was sent in a May 3rd, 2013 email to TIGTA's Acting Principal Deputy IG Michael Phillips, Acting Deputy Inspector General for Audit Michael McKinney, Chief Counsel Michael McCarthy, Assistant IG for Exempt Organizations Gregory Kurtz, and two TIGTA employees whose names have been fully redacted. It is just a one-pager.

Mr. JORDAN. Without objection.

Mr. CONNOLLY. I thank the chair.

This astounding email from TIGTA's chief investigator concluded that after obtaining and reviewing 5,500 IRS emails from identified staff members of the Exempt Organizations Division in Cincinnati, that in addition to there being no email directing staff to target Tea Party or other political organizations and no conspiracy or effort to hide emails about such a directive, according to Mr. Camus, "Review of these emails revealed that there was a lot of discussion between the employees on how to process the Tea Party and other political applications. There was a be-on-the-lookout list specifically naming those groups."

"However, the emails indicated the organizations needed to be pulled because the IRS employees were not sure how to process them, not because they wanted to stall or hinder the application. There was no indication that pulling these selected applications was politically motivated. The email traffic indicated there were unclear processing directions and the group wanted to make sure they had guidance in processing the applications, so they pulled them. This is, he says, a very important nuance."

Would you agree with that finding, Mr. Koskinen?

Mr. KOSKINEN. It sounds right to me.

Mr. CONNOLLY. Have you any idea why the inspector general would not include such a critical finding after all of the strum and drum, and after the press compliantly giving the headline to my friends on the other side of the aisle every single time, Tea Party targeted, here is a critical piece of information, maybe even a smoking gun if we are looking for exoneration, from the head of investigations in TIGTA's own office. Why would that not be included in the May 14th final audit report?

Mr. KOSKINEN. I have no idea.

Mr. CONNOLLY. Is it worthy of your time to ask that question, respecting the independence, of course, of the two offices?

Mr. KOSKINEN. I would not ask the IG that question. He has done his report; he has done his investigation. When they do investigations, they have any number of them going on. When they do the reports, we agree most of the time, sometimes disagree with recommendations, sometimes disagree with the process, but we do that in the orderly course of responding to their report. Thereafter, we don't go back and question them.

Mr. CONNOLLY. But, Mr. Koskinen, here you are for the third time before this committee, and probably not the last, and your reputation and that of your organization has been called into question with a charge that has unfortunately not been critically examined as often as I would like by the media, despite our efforts on this side of the aisle. Here is the head of investigations in your organization under TIGTA that says otherwise, that directly challenges the propounded thought that only Tea Party and conservative groups were challenged, and it was deliberate and it was targeted. He says otherwise and the TIGTA doesn't put it in his final audit report.

By the way, an inspector general who has been questioned by a number of us up here, and we have formally requested an investigation of his conduct before the Council of IGS, so he is under a cloud myself. And I have heard my friend, the chairman, Mr. Jordan, question other employees of the IRs because of their political giving, while Mr. George was a Republican staff member on this committee, he has given political contributions to Republican candidates, he is a Bush appointee, and he met solely with the Republican side of the aisle in getting ready for his audit. That raises serious questions. If it is sauce for the goose, it is sauce for the gander about his independence. But this is a critical piece of information, it seems to me, and I can't imagine you could be copacetic with its elimination from an audit report that is a pretty critical audit report for your organization and, indeed, for your leadership.

Mr. KOSKINEN. Well, it is an interesting piece of information that obviously is useful for people to review. As I have said, I do have confidence in Mr. George that he is independent. He actually is the Treasury Department inspector for IRS, and we have supported him the past and he is doing an independent review of all of this, and I look forward to his response and findings about what happened with regard to the hard drive crash.

Mr. CONNOLLY. Well, how about his response to why he didn't include this important missive from his head of investigations in the final audit report of May 14th?

Mr. KOSKINEN. That is a question that I am probably not going to ask him.

Mr. CONNOLLY. I yield back, Mr. Chairman.

Mr. JORDAN. I would just ask the gentleman which way do we want it. Do we want to say this committee can't get access to witnesses because there is an ongoing inspector general's investigation and at the same time we are waiting for the inspector general to do his good work and at the same time criticize the work he did before where he identified the targeting of conservative groups? It seems to me you can't have it both ways.

Mr. CONNOLLY. Well, Mr. Chairman, there are a number of us who have been raised and been quite consistent in raising ques-

tions about the objectivity and professionalism, frankly, of Mr. George. Mr. Cartwright and I have both filed a complaint, formal complaint, and I would be glad to share it with the chairman because——

Mr. JORDAN. With all due respect, then you should be advocating we get access to the witnesses and not wait until the inspector general has them first.

Mr. CONNOLLY. Well, actually, maybe a new inspector general is really the answer.

Mr. JORDAN. Well, relative to this idea that somehow it was just mismanagement, 80 percent of the applicants in the backlog were filed by conservative groups, less than 7 percent were filed by liberal groups. According to the Ways and Means Committee, the IRS approved every single group with the word progressive in its name. USA Today reported the IRS did not approve a single tax-exempt application filed by a Tea Party group from September 2010 to May 2012. During the same time they approved dozens of liberal and progressive groups. The idea that was just how—if it was mismanagement, it was mismanagement in a targeted way, because none of the treatment to conservative groups was given in the same way to progressive groups.

Mr. CONNOLLY. Mr. Chairman, I have a memo from Gregory Kutz saying targeted is actually not accurate. I also have materials that were presented to IRS for training that have elephants and donkeys, they have Tea Party, they have Patriots, they have progressive——

Mr. JORDAN. 298 cases in the IRS backlog. Only three had the word progressive; four used the word progress and none used the word occupy. No progressive group was denied its (c)(4) status. Hundreds of Tea Party conservative groups were in fact denied. Some still waiting. Some still waiting, just for the record.

Mr. CONNOLLY. Well, I guess you and I could argue that all day, Mr. Chairman, and we need to get on with this hearing and allow Mr. Koskinen to get back to his job.

Mr. JORDAN. Mr. Koskinen, why June 13th? Why that date? Let me ask you this. Why not February 2nd, when you first learned there was a big gap in a bunch of emails that looked like they were missing? Why not February 4th, when, as Mr. Cain testified—and, Mr. Koskinen, you know Mr. Cain. Do you know Tom Cain?

Mr. KOSKINEN. I do know Mr. Cain.

Mr. JORDAN. Is Mr. Cain a solid lawyer, professional good employee at the Internal Revenue Service?

Mr. KOSKINEN. Certainly is.

Mr. JORDAN. All right. So why not February 4th, when Mr. Cain, who testified just last Thursday, said they knew her hard drive had crashed? Why not tell us, look, we may have a problem? Why not come and disclose that to someone on February 4th? Or how about this? How about mid-February, when Mr. Cain said last Thursday that we know, we knew then in mid-February that the data on her computer was unrecoverable? Why didn't you tell us in mid-February? Or how about the hearing we have talked a lot about, Mr. DeSantis raised in the opening questions, why not at March 26th? Why not disclose on March 26th, when you were in front of this committee and everyone on both sides of the aisle asked you about

Lois Lerner's emails and you assured us that you would produce all her emails, and yet you knew, according to Mr. Cain's testimony, a good professional employee, lawyer at the IRS, you knew that in mid-February her emails were unrecoverable?

Mr. KOSKINEN. You should be careful to note that is what Mr. Cain knew, that is not what I knew.

Mr. JORDAN. Well, that is a problem too. That is something you should have known. Mr. Cain is a high-ranking official in charge of documents, and you didn't know?

Mr. KOSKINEN. I did not know. I have testified——

Mr. JORDAN. Do you know Kate Duvall?

Mr. KOSKINEN. Pardon?

Mr. JORDAN. Do you know a person named Kate Duvall?

Mr. KOSKINEN. Kate Duvall I do know.

Mr. JORDAN. And what is Kate Duvall's responsibilities, what is her title at the Internal Revenue Service?

Mr. KOSKINEN. She is counselor to the commissioner.

Mr. JORDAN. So she is counselor to you.

Mr. KOSKINEN. Yes.

Mr. JORDAN. She is your lawyer.

Mr. KOSKINEN. Yes.

Mr. JORDAN. She knew in mid-February, according to Mr. Cain's testimony, and she didn't tell you?

Mr. KOSKINEN. What she told me, and I have testified at some length at at least a couple hearings on this, and I am happy to stand by that testimony. If you want to go over it again, basically, what I have told you is in mid to late February I knew that we had taken the Lois Lerner emails that had been produced and instead of looking at them from search terms——

Mr. JORDAN. That is not the point. Tom Cain said they were unrecoverable.

Mr. KOSKINEN. I did not——

Mr. JORDAN. And he said he told Kate Duvall. Did she tell you that they were unrecoverable?

Mr. KOSKINEN. She did not tell me they were unrecoverable.

Mr. JORDAN. Well, that is a problem.

Why not tell us April 4th, when Ms. Duvall briefs this committee, both Republican and Democrat staff members, and the briefing was about how we would deal with how the IRS was going to deal with committee requests for producing Lois Lerner's emails, they didn't know they were lost at the time? Why didn't you tell us April 4th? Ms. Duvall could have told the committee at that time.

Mr. KOSKINEN. I have testified at some length in the past, and earlier today, that——

Mr. JORDAN. Well, here is the key question. Let me jump in here a second. Why not mid-April, when you knew? In fact, let's put up the slide. This is a question we had earlier in one of our hearings. Why not, when you knew, what date did you learn you could not get all of her email? I learned that in April. Why not April?

Mr. KOSKINEN. As I testified then, and I have testified on numerous occasions, my judgment was, A, we needed to find out what emails we did have; we needed to put them together in a full report, which we did, and——

Mr. JORDAN. Why not any time in April? Someone at the IRS told someone at Treasury, who then told someone at the White House, according to press reports. So if it was good enough to pass on to Treasury and the White House, why not tell us sometime in April?

Mr. KOSKINEN. Because I thought that at that point we did not have the full information as to what was involved, how many emails there were——

Mr. JORDAN. You learned in April they were unrecoverable. Your chief lawyer in charge of document production knew in mid-February they were unrecoverable. Kate Duvall knew in mid-February they were unrecoverable. And you wait until June 13th.

Mr. KOSKINEN. Right.

Mr. JORDAN. Why June 13th?

Mr. KOSKINEN. First of all, I would note all of those emails that determine whether they were—that she had a hard drive crash or not, what she had tried to do, our emails were provided to this committee, and the tax writers knew as early as the fall she had had a hard drive crash. The materials were produced. The materials about the email chain, about her trying to restore her hard drive were produced to the tax writers in April and to this committee in May. So there was no secret that we were hiding. We were processing through——

Mr. JORDAN. No, no, no. You were giving us emails, but you didn't tell us there were emails you couldn't give us. That is my question. Why didn't you tell us the IRS had destroyed emails that belonged to Lois Lerner? Why didn't you tell us that?

Mr. KOSKINEN. It is not clear—first of all, emails from Ms. Lerner may or may not haven lost; they were not destroyed as a conscious effort by the IRS to destroy them.

Mr. JORDAN. The tapes were recycled and——

Mr. KOSKINEN. Right. Backup——

Mr. JORDAN. When backup tapes are destroyed and they are recycled, so at some point they are destroyed. Why didn't you tell us you could not produce those emails, that they were lost, in April?

Mr. KOSKINEN. This hearing is noted to be an update on what we are doing. I have given you, on at least two different occasions——

Mr. JORDAN. Okay, then answer the question. Why June 13th? Why not June 12th? Why not June 10th? Why not May 10th? If you couldn't do it in April, why did you have to wait two more months?

Mr. KOSKINEN. We are going to be here a long time if you want to repeat all of the questions I have answered in the 11 and a half hours of hearings before.

Mr. JORDAN. Do you know what I think?

Mr. KOSKINEN. But let me just answer this question. But I have answered it before and I am happy to answer it again, but it is in the testimony I have given before that you have read closely. We were producing Lois Lerner emails. Our strategy and thoughts were and I thought the most efficient way to proceed was to complete the production so we would know how many Lois Lerner emails we had from her account, how many Lois Lerner emails we had been able to retrieve from other accounts so you would have a full idea what the universe was. I had hoped that we would be

able to find out how many other problems we had with custodians, and we would produce all of that as a report to the committees and a public report that would explain what our email process is, why it is so complicated, what we had determined about Lois Lerner's emails and her crashes, and what the emails would have been able to recover, and it would be a full report.

June 13th was a Friday. I should have known Friday the 13th was going to be an interesting day. We had been asked by the Finance Committee, which was considering trying to come to closure on their report, whether we would give them an update on our March letter in which we advised the tax writing committees that we had completed the production of all of the information we had about the determination process, which was the start of the investigation. That was the IG was focused on, as you have just discussed. We said we would do that.

They then called and we were going forward, we didn't know when. They then called and said they would like that report no later than that Friday because they were going to have a meeting the following week. So we pulled the document together at that point. We had not completed, as I noted earlier, the review of how many custodians were involved with hard drive crashes and what the impacts were. We had no idea if you lost a hard drive, one of the custodians, and in fact one of the custodian hard drive crashes was in February of this year, not very relevant.

So to meet the Friday deadline we actually produced that document and shared it with everybody on Friday, June 13th, and it was to meet a request from the Finance Committee, which was having a meeting the next week and wanted to consider whether they had enough information to do a report.

Mr. JORDAN. So your testimony is the Senate Finance Committee drove the timing of when you disclosed that you had lost Lois Lerner emails.

Mr. KOSKINEN. Yes, because we were actually going to produce that report——

Mr. JORDAN. I think it is something different, I just do. Obviously, you are going to disagree, but I think you were never going to tell us. You have to remember what happened here. Judicial Watch does a FOIA request and they learn on April 18th of this year that the IRS and the Department of Justice had been working on possible ways to bring false claims action against Tea Party groups, and there was an email from that FOIA request, Richard Pilger, a lawyer at the Justice Department, and Ms. Lerner had an exchange in 2013 after a Senate hearing. We saw that email. We said, you know what, we are going to talk to Mr. Pilger, the lawyer at the Justice Department, who was meeting with Ms. Lerner just days before the TIGTA report went public, in May of 2013.

So on May 6 we interview Mr. Pilger and we learn, in Mr. Pilger's opening statement in that deposition, we learn this: he said—I am reading straight from Mr. Pilger's statement: "Turning to my contacts with Ms. Lerner, in the fall of 2010"—shocked us. We didn't know that they were meeting clear back in 2010, that the Justice Department was meeting with the IRS clear back in 2010. "In the fall of 2010, at the direction of the chief of the Public Integrity Section at the Justice Department, Jack Smith, I con-

tacted the Internal Revenue Service. When I contacted them, they directed me to Lois Lerner, who met once at the Public Integrity Section offices for about an hour with some of her staff, my chief, Jack Smith, other personnel from my section, and the FBI."

So now we learn in 2010 the Justice Department, with the FBI, is meeting with Lois Lerner, and so we said, you know what, we better subpoena documents from the Justice Department. And we said to the Justice Department we want any communications with Lois Lerner that you have had. And we get this slide. We get this email. Let's put this up, if we can. We get this communication from Lois Lerner and Richard Pilger.

Now, Mr. Koskinen, did you give us this email, do you know?

Mr. KOSKINEN. I don't know.

Mr. JORDAN. Well, I can tell you you didn't. We got it from the Justice Department. And after we got this from the Justice Department, we contacted you all on June 9th and we said, hey, how come we didn't get this email from you? There is no 6103 issue with this email. We were concerned. This is an email from clear back in 2010. So we contact you, Mr. Koskinen, in a letter and we said, you know, we are wondering why the IRS hasn't sent us this email from four years ago. And then, suddenly, four days later you tell the Finance Committee, the Congress, more importantly, the American people, you know what, we lost Lois Lerner emails. We have lost a bunch of Lois from that time period.

My theory is this, Mr. Koskinen: You guys weren't ever going to tell us until we caught you. And we caught you because Judicial Watch did a FOIA request; they found out there was this collaboration going on between the Justice Department and the IRS. We took that email, we interviewed Mr. Pilger. Mr. Pilger told us he met with Lois Lerner in 2010. We then subpoenaed Justice. They complied with our subpoena, gave us the email. We contact you and say why didn't you give it to us, and then you knew you were caught.

You didn't tell us this, but you knew, we didn't give it to you 'cause we don't got it. Now we have to tell the whole world we lost them. And what better time to do it than Friday, June 13th, saying we are complying with some Senate concern, said it in a letter, put it on page 7 of the third addendum, and say, you know what, we may have a problem with Lois Lerner emails? That is what I think.

Mr. KOSKINEN. Good. If you find——

Mr. JORDAN. I think all kinds of people logically going through this would say, you know what, that is what prompted these guys. Four days after they get a letter from this committee saying why didn't you send us these emails, you just say, well, we better come clean. Plus, you have already told us you knew clear back in April that you lost them. So you wait two months and then you say, wow, we better do it June 13th, just four days after they figured out Justice and the IRS were working together in 2010, and they got an email that indicates that and we can't produce it.

Mr. KOSKINEN. When you find any direct evidence to support that assertion, I would be happy to see it. If you think that this organization, in four days, could produce that report, you don't understand how large organizations function. You could ask anybody

who worked on that report; there is a whole series of people. That report was under production for a long time since——

Mr. JORDAN. I am not saying it wasn't. I am saying including the statement we lost Lois Lerner emails was put in that report.

Mr. KOSKINEN. It was in that report and it was in that report——

Mr. JORDAN. And one thing I have learned in these investigations, it is always important to look at the time line.

Mr. KOSKINEN. Look at the time line——

Mr. JORDAN. Look at the time line. You knew in April; you didn't tell us until June 13th. What events happened between April, when you knew, and June 13th? One key event was the FOIA request from Judicial Watch, finding this collaboration between the IRS and the Justice Department, us getting that email because we subpoenaed the Justice Department; they give it to us, it is in the relevant time frame, 2010 to 2012, when you lost Lois Lerner emails, and suddenly you say, you know what, they got us. We have to come clean.

Mr. CUMMINGS. Mr. Chairman?

Mr. JORDAN. And then you do the letter on June 13th.

Mr. KOSKINEN. Can I respond? That is a very serious charge.

Mr. JORDAN. Sure.

Mr. KOSKINEN. There were a whole set of serious staff people in the Senate Finance Committee who will dispute your assertion. And if you find any direct evidence of this to anybody who worked on that report, in terms of the timing of it, the fact that we were otherwise not going to deliver it, I will be not only surprised, I will be astounded, because there is no such evidence. And it seems to me, and I have been very patient about all of this, but before you make that kind of charge and claim, you ought to have better evidence than a single email dated June 9th.

Mr. CUMMINGS. Mr. Chairman?

Mr. JORDAN. We have a few other emails from that exchange.

Mr. KOSKINEN. That is fine.

Mr. CUMMINGS. Would the chairman yield for one moment?

Mr. JORDAN. I would be happy to yield.

Mr. CUMMINGS. I know a lot has been said about what Thomas Cain said. Well, last week Thomas Cain told our staffs that the IRS always intended to alert us about Ms. Lerner's lost emails. So I know you have all these theories. Unfortunately, our committee has been going when we put out these headlines and then we go chasing facts that never exist.

Mr. JORDAN. All I am saying——

Mr. CUMMINGS. But I am just saying include everything when you are asking your questions.

Mr. JORDAN. Great point. All I am saying is this. They get a letter from us on June 9th, where they know we now have this email from the Justice Department that they can't produce, and four days later they tell the world we have lost Lois Lerner emails, when they knew that, according to Mr. Koskinen's testimony in questioning from me, that he knew in April they couldn't get Ms. Lerner's emails. So they waited two months. And then when they decided to tell us, it was four days after, on a Friday, four days

after we knew there were emails we were getting from Justice that we weren't getting from the Internal Revenue Service.

Now, all I am saying is that timing is pretty suspect, particularly in light of the fact all the other things we have heard from the IRS. One computer crash. No, it was seven. No, it was eight. Now may be up to 20. We can confirm that there are no backup tapes that are available. Oh, we can't confirm that, now there may be one available. In light of everything we have heard from the IRS, when you start looking at the time line, it looks pretty suspect.

Mr. CUMMINGS. Well, Mr. Chairman——

Mr. JORDAN. And all I am saying is I am not sure they were going to tell us.

Mr. KOSKINEN. You didn't say I am not—I am sorry——

Mr. CUMMINGS. Would the chairman yield?

Mr. JORDAN. I would be happy to yield.

Mr. CUMMINGS. Mr. Chairman, this has been very interesting because one member on your side, the gentleman, I don't know his name, said that the man was under investigation. I was in that entire hearing and he never said that. By the way, the Justice Department never said that. Then you, Mr. Chairman, of course, have made some strong accusations, and when you make these kind of accusations, I would appreciate it if you would just give the witness an opportunity to answer, because these are the kind of allegations that tarnish one's reputation, and you have come up with this theory, and I am not saying your theory is—your theory is what it is, but he ought to be able to answer, please. That is all I am asking.

Mr. JORDAN. Appreciate the ranking member.

Mr. KOSKINEN. As I said, I haven't seen Mr. Cain's testimony, but it doesn't surprise me that he would say that we had been producing this report for some time and clearly planned on making it public. You can talk to people. We would be happy to give you those contacts, the people we talked to at Finance who were in fact did have a meeting the following week, had asked us for an update that we did provide. They asked for it no later than that Friday.

I am confident and I am very confident that no one working on this report had any idea about it other than that we were going to produce it and provide all of the information to the public. I think any other assumption is not based on facts.

Mr. JORDAN. Well, are you willing to make those witnesses available or are you going to make us subpoena them so they can come here under oath and testify that, yes, in fact, from mid-April, when the commissioner knew that Lois Lerner emails were lost, we were planning on telling the Congress as soon as we got all the information? They will come and testify to that or will they come and testify, you know what, after the June 9th letter we decided we better put in the information that we lost Lois Lerner emails?

Mr. KOSKINEN. I don't think you will find anyone will make that latter testimony.

Mr. JORDAN. But my question to you is are you willing to have those people come testify. Tell us who they are, who the people who worked on this report.

Mr. KOSKINEN. We will be happy to talk with you. You have already talked to some of them and you have others on your schedule.

Mr. JORDAN. All right.

The gentleman from Nevada is recognized, Mr. Horsford.

Mr. HORSFORD. Thank you, Mr. Chairman.

You know, I do share concerns by some of my colleagues on the other side about why the IRS delayed in providing Congress with notification regarding the unrecoverable emails, because it raises questions. I don't share in the chairman's or other members' conspiracy and rush to judgment about any motives as to why there was a delay, and I feel, again, as I have said in previous meetings, that we fail to get all the facts in order to then make a proper decision. I am not a defender of the IRS or any other Federal agency. I have said from the beginning that I believe that there was wrongdoing, but the chairman and others want to conclude or make conclusions about that wrongdoing without justification or evidence to support their assertion.

Now, Mr. Chairman, you just read into the record some comments by Mr. Pilger that I had asked to be entered into the record the full transcripts, so I am going to ask again for unanimous consent that the transcribed interview opening statements of DOJ officials Richard Pilger and Jack Smith be allowed to be entered into the record, particularly since you just handpicked certain statements, and I am requesting the full transcript be entered. Will the chairman please provide that courtesy for this to be entered into the record under unanimous consent?

Mr. JORDAN. If the gentleman would yield for just a second. I read from the opening statement that Mr.——

Mr. HORSFORD. That is what this is, the transcribed——

Mr. JORDAN. If you are just asking for the opening statement, not the full questions from Democrat staff, Republican staff, but just the opening statement from Mr. Pilger and Mr. Smith, we would be happy to do that.

Mr. HORSFORD. Thank you.

Mr. JORDAN. All right.

Mr. HORSFORD. I also want to follow up to some of the claims that have been made by my Republican colleagues and give you an opportunity to respond. It has now been stated twice today that Mr. Cain testified during his July 17th interview that in mid-February 2014 the IRS realized that Lois Lerner's emails would not be recoverable. I want to clarify here, because I don't want Mr. Cain's statements to be taken out of context. It is true that Mr. Cain told us that he had discovered that Ms. Lerner's hard drive had crashed and that the contents of the hard drive were unrecoverable.

However, that does not mean that Mr. Cain said that he thought, in February of 2014, that the IRS would never be able to produce those emails to Congress. In fact, Mr. Cain was asked, "And as of March 2014, you were not aware that the IRS would be unable to recover all of Ms. Lerner's documents," and he answered, "That is correct." He further explained, as you have, that the IRS was engaged in an extensive process to find Ms. Lerner's emails from other sources at the IRS; and, in fact, those efforts were successful and yielded the production of an additional 24,000 Lois Lerner emails. Is that correct, Mr. Koskinen?

Mr. KOSKINEN. That is correct.

Mr. HORSFORD. Mr. Cain also explained that the IRS's goal with respect to the document productions to Congress was to fully comply with those requests as expeditiously as possible. He stated with respect to fulfilling that goal, "I have tried my best, and everyone that I work with have tried their best." Commissioner Koskinen, do you share that belief that every effort was made to provide this committee and others with those emails that were you able to recover?

Mr. KOSKINEN. I do.

Mr. HORSFORD. And beyond the issue of failing to notify us in a timely manner, then the question becomes what can be made of why that time line was delayed.

Mr. KOSKINEN. Right. And as I have said, first of all, all of the emails in question had been provided in the normal course to this committee and the other investigators, so there was no attempt to not produce information that showed that in fact there had been a problem with Lois Lerner's hard drive. In fact, none of us at the IRS or investigators noted that in the fall productions there were emails from Lois Lerner saying she had problems with her hard drive and had lost emails.

But everybody then was looking at subject matter. But it is not as if any of these emails were withheld or not produced in a regular manner. So that as we were working in April and May pulling all the information together, trying to determine how many emails we actually had, we were producing emails as a regular matter, and the emails that were the basis of our June 13 report had all been provided previously to all of the investigators.

Mr. HORSFORD. Thank you.

Mr. DESANTIS. [Presiding] The gentleman's time has expired.

The chair now recognizes the chairman of the committee, Mr. Issa.

Mr. ISSA. Thank you.

Commissioner, I really wish we had your IT guys here instead, because it is inherently a little hard when we are asking you so many questions that are not related directly to your past experience. But I appreciate your continuing to volunteer to come up. Hopefully, as we interview some of your IT professionals and others involved, it will make it easier to direct questions.

But a lot has been done to talk about this, a drive this large that apparently went so bad that not a single piece of information could be saved, and you have asked us to believe that your very special experts couldn't save one piece of data from this drive, or one just like it, correct?

Mr. KOSKINEN. That is what I was advised, yes. And that is what the email strain that we produced and I testified about at previous hearings says.

Mr. ISSA. The American people don't believe that. You realize that the idea that we can recover the last 17 or 18 seconds from Challenger exploding above our atmosphere, falling to the sea and being left under the sea for a year that we could recover the voice from that makes people wonder why a product that simply came in and out of the office with Lois Lerner every day, suddenly, not one piece of data could be recovered. It doesn't surprise you the American people just have a hard time believing that, does it?

Mr. KOSKINEN. Well, I don't know whether the American people broadly believe that, but I do understand that when our Criminal Investigation Division, which our experts at extracting information say they could not recover any emails, that seems probative on the one hand, but on the other hand I could understand people saying, well, if you kept trying——

Mr. ISSA. But do you think it is reasonable for us to check with your Criminal Investigation people, interview people involved to see if that passes the reality check, in spite of what the American people may think or the doubts they may have? Do you think it is fair for us to check into that?

Mr. KOSKINEN. Yes. In fact, those interviews are being scheduled. Some of them, I gather from the press release I saw from Ways and Means, that some of those IT people have already been interviewed.

Mr. ISSA. So it is fair for us to do an interview and to investigate on our own in order to bring the credibility that we bring as if, you will, a doubting Thomas, to the process. You would agree with that?

Mr. KOSKINEN. Yes. I have never had any concern or objection to the oversight. As I said, I spent four years in the Senate that Senator Ribicoff was on, the Government Operations Oversight, chaired that committee. I am a big believer in congressional oversight.

Mr. ISSA. And I appreciate that you are. One of the things that we discovered that was not made available to us early on was the existence of what is called OCS, this chat capability that exists within the IRS's network, is that right?

Mr. KOSKINEN. That is correct. I spent some time testifying a couple weeks ago about that.

Mr. ISSA. Right. And you wrote me back a letter when I asked about it, and in the letter it said, basically, that no records were kept because it was the equivalent of visits or phone calls. Do you remember that in the letter?

Mr. KOSKINEN. Yes.

Mr. ISSA. Now, would it surprise you to know that we disagree with you? That in fact it is the opinion of this committee that the Federal Records Act, unless you can train and guarantee that no policy decisions, none of the kinds of activities we are discovering in email could be done on OCS, that in fact you should turn on that switch and you should collect and you should retain OCS chat unless you can assure us that it is not doing the equivalent. And I will be brief, but I will explain something to you.

Years ago, when I was a subcommittee chairman and President Bush was in office, we investigated the Mineral Management Service, and what we discovered there was that they had systematically signed leases that were simply wrong and cost the American people billions of dollars; and we could find not a shred of evidence in emails to show the absurdity of how this came to pass. So after we deposed people repeatedly, we finally discovered that they all admitted that only the cover sheet was brought to them, that they signed or initialed, and they never read the leases; so that one mistake was passed through multiple signatures.

But, more importantly, as we went through the process, what we discovered was, at Mineral Management Service, a now-defunct and disgraced organization to a certain extent after the BP disaster, they had a policy of what they called talking over the transom. Lawyers made no memos for the record. Lawyers went out of their way to have no paper trail of things they did in their consultation.

I will tell you today that has to end; that the American people expect that the Federal Records Act, the Presidential Records Act is not something to be avoided, and you should not be trying or allowing the bypassing of future oversight that you said rightfully so, with your experience, you believe in.

Maintaining data so that it can be analyzed by your inspector general, who is conducting your primary investigation, you have full confidence in, activities going on in Ways and Means, which are slightly different than ours, our activities, or anything in the Senate are hampered by policies of any part of Government that allow the use of something that clearly bypasses future oversight.

So I hope today that in addition to your willingness to cooperate and help us in getting to the answers I mentioned on this, that you will recognize that your letter is not acceptable; that email is a substitute not just for the old-fashioned letter, but it is a substitute for a visit, it is a substitute for a phone call; and that, in fact, the reason that those are important is that the phone call and the visit, in the old days you would have done a memo for the record if in fact you wanted to do your job. That isn't being done. Emails and these chats are extremely important.

And I would like to have a second round at some time, but I would yield back at this time.

Mr. CARTWRIGHT. Mr. Chairman, I have a point of information. Yesterday Chairman Issa informed committee members that he will be holding yet another hearing on this topic next Wednesday. We have the notice. Could the chairman please inform us who will be testifying at that hearing on Wednesday?

Mr. ISSA. Pursuant to the rules, we will inform at the appropriate time. But at this time they haven't sent anything out and I appreciate your inquiry.

Mr. CARTWRIGHT. So you don't know or you won't tell us?

Mr. DESANTIS. I think we will——

Mr. ISSA. Regular order, please.

Mr. DESANTIS. We will do regular order and the chair, at this point, will now recognize the gentleman from Michigan, Mr. Bentivolio, for five minutes.

Mr. BENTIVOLIO. Thank you very much, Mr. Chairman.

Commissioner, if any of my constituents were not as forthcoming as the IRS, there would be a presumption of guilt, they would be fined and/or have their wages garnished and/or liens laid on their home and/or savings accounts seized.

When I go back to the district, I had the opportunity to talk to many IRS former employees at the IRS, now retired, and I asked them what they thought of what was going on at the IRS, and I heard despicable behavior every step of the way. The IRS no longer credible.

I think at this point, Mr. Chairman, I would like to yield back.

Mr. ISSA. Would the gentleman yield?

Mr. BENTIVOLIO. Yield to the gentleman from California.

Mr. ISSA. Thank you. I appreciate that. In regular order, this is helpful not to need a second round.

Commissioner, there has been approximately a year of production of emails. In your earlier hearing I remember that it might take two years, sort of an estimate. But let me ask you a question. Have you reviewed the time line when this committee issued lawful demands for Lois Lerner's emails? Have you reviewed the time line of who did what and when?

Mr. KOSKINEN. No.

Mr. ISSA. Would you be prepared to deliver to us a time line, meaning calendars, activities of individuals who were charged with going out and finding those emails, what they did, and when they did it?

Mr. KOSKINEN. As I say, we have approximately 250 people doing that work.

Mr. ISSA. Well, no. Actually, you have had people redacting and you have had people legal reviewing. I am only talking about who went and got the information, the emails, who accumulated them, the gathering.

Mr. KOSKINEN. Yes. That is not just one or two people, that is a set of people. But we would be happy to provide you the information in any form that would be usable.

Mr. ISSA. Well, here is the inquiry I will ask you today. And, again, we appreciate your coming, but you are not the IT guy, you are not any of the 200 people, per se. It is clear, now, from this side of the dais, that we issued requests and subpoenas. Two things were to occur: one, at the moment we issued our first letter, it required that you preserve information. There is a question about whether that was preserved, because in order to preserve it you would have to go look for it. So the tapes that now your own people have admitted they are not sure whether they exist or not, they have undercut your claim that you are very comfortable that they were gone at the end of six months, that means that nobody went out to say where are the tapes, what are the tapes, are there any.

Additionally, in order to not know that Lois Lerner had this gap, either you weren't looking extensively all at once or, and this is one of my concerns, people just didn't want to admit that they weren't going out and looking for emails by essentially what we expected, was to do a key word search on a server and deliver the data.

Remember that for months, even before you came onboard, we were being told, well, here are some key words and we want to search on these key words; and the IRS was adding key words that allowed them to deliver the false narrative that progressives were being targeted. They were adding self-serving words and they were searching them.

This committee had a reasonable expectation that you were searching the entire database, you were searching not six months worth of emails, not 6,000 emails or less that had been preserved, but you were searching the historic emails. Not until recently, the last six weeks, did we understand that if that was how you were getting all of your information, you were knowingly looking at a small fraction of the historic two-or three-year email selections.

We now understand no more than 6,000 emails, only six months of record, so it is now appropriate for us to understand your employees' search techniques, what they did, because at some point they must have started searching, okay, who has PSTs? Send us your PSTs. Or did they, and this is why we have to ask directly, did they send out one of these do you have any information relevant and please send it to us. Because the key word search would imply that in fact they were accumulating all these PSTs, these downloaded local files and then searching them.

If in fact that process didn't begin in earnest in the first week or month, if in fact your predecessor was delivering selected data from what was basically the last six months of things still preserved, we need to know that, because it does appear as though, in this long investigation, there has been either an absence of a willingness to disclose problems or an absence of real fact-finding, getting these emails quickly, or deliberate obstruction.

We don't know which and we would like to know, as I said in the beginning of this, who went looking for what when. Not interested in who read them, not interested in who edited them, who redacted them or who released them. And that information would be equally valuable whether it was pursuant to the House or Senate's request or to Ways and Means or this committee's request.

But giving us that gives us a time line of who was involved in going and looking so we know who knew that in fact something like Lois Lerner's email on her personal hard drive was of any relevance, because this committee didn't know that there was a lack of a central database for the first almost year of this investigation.

I thank the chairman and yield back.

Mr. DESANTIS. The gentleman yields back.

The chair now recognizes the gentlelady from Wyoming for five minutes.

Mrs. LUMMIS. Thank you, Mr. Chairman.

I have no doubt, Mr. Koskinen, that morale at the IRS is low. I want to tell you about morale in Wyoming. The people of Wyoming, who I work for, all feel targeted. They think the IRS is out to get them. They are lower than a snake's belly about the IRS because they know that Lois Lerner was brought into the IRS from the Federal Elections Commission, where she had a history of political targeting, political bias. They know that she was tapped to enforce the largest tax increase in history, Obamacare, after, after she targeted conservative groups while overseeing 501(c)(4)s, tax-exempt organizations. They saw her come to this committee and say I have broken no laws and then take the 5th. They know that we subsequently found out that she did break a law, that she provided confidential taxpayer information to another Federal agency, which is against the law.

And they know that so far she has gotten away with that, that the Justice Department isn't doing anything about it and that she got away scot-free. They know that when they get letters from the IRS, that they are being targeted. I have a constituent who got a letter and an investigation from the IRS that has cost her $50,000 just to close her estate, because they keep asking her what make and model is your bed. Your bed? They think her bed is some ex-

pensive antique. Incidentally, she is a very active member of the Republican party. She feels targeted.

Morale is low in Wyoming because our government has turned against us. So this is a legitimate investigation. I hope it continues at length. I hope it goes on until we get to the truth, because the people we work for feel like the Government is getting away with their tax dollars that they don't know; they feel like the Government is denying them tax-exempt status that they deserve; they feel like they can't trust the IRS. That is why this investigation. That is why you are here and asked the same questions over and over. I am sure it is frustrating. We are frustrated too, but it is because our constituents are mortified and scared, and are going to take matters into their own hands, because they don't feel we have the ability to do it ourselves.

So, with no apologies for the morale at the IRS and no apologies for how many times we are asking you the same questions over and over, Mr. Chairman, While I thank you for your attendance, I do yield back the balance of my time.

Mr. ISSA. Would the gentlelady yield?

Mrs. LUMMIS. I will.

Mr. ISSA. Some people just don't have enough questions for you, commissioner.

I mentioned the time line and my interest in that. Let me just ask you one other question, which is when you look at this investigation and you look at the fact that a Federal judge is now ordering you to show certain things, you look at your IG's investigation, you look at our investigation, are you aware and do you recognize the three separate channels are perceived and in reality are very different as to what your responsibilities are and how you approach them?

Mr. KOSKINEN. My response to all of them is the same; if people have, from any branch of Government, questions, we have an obligation to respond to them in response to——

Mr. ISSA. I appreciate that, but the IG does in fact work under you; he has limited authority.

Mr. KOSKINEN. Absolutely not.

Mr. ISSA. I understand his independence, but in fact——

Mr. KOSKINEN. He is the Treasury Department IG. We have no control, influence over him. He doesn't work in the IRS.

Mr. ISSA. But in fact he has testified that when he wants information, he has to ask for it and he may not always get it, that in fact there is a process and sometimes it is very frustrating for him to get information. Even though you say he is independent, he doesn't have the authority to demand things and automatically get them, isn't that true?

Mr. KOSKINEN. I have never had, in my time here or other places, an experience with an IG not able to get the information he needs, and I am committed, as Mr. George knows, that whatever information he wants in any investigation, he is welcome to have.

Mr. ISSA. Well, we will certainly hold you to that. Thank you.

Mr. KOSKINEN. I am happy to be.

Mr. ISSA. Yield back.

Mr. DESANTIS. Thank the chairman.

For the other members who do want to do a second round, we will do that, so I will kick it off and recognize myself.

I just want to reiterate people mentioned the morale, and, granted, a lot of the things that happened were before you were there, but I do think it is worth mentioning that there are a lot of taxpayers who have had their morale hit. When they see some of the conference spending that has gone on, $50,000 for a Star Trek parity video and other lavish expenses on their dime, and, again, that was before you were there, but that really irks a lot of folks and certainly our constituents. And I think the same goes for the targeting. When people feel like they were being targeted or in fact were targeted simply from exercising their constitutional rights, I think that hurts their morale too. So I just think it is important that we mention that.

Now, a lot has been going on about when you knew there was a problem, why you delayed telling Congress, and I think it is the case that the standard that would be applied to an official such as yourself is not simply what you actually knew, but what you should have known. In other words, you can't bury your head in the sand and not be apprised of what people in your organization know. So I think that is going to be a question. Clearly there were people at the senior leadership level at the IRS early February, mid-February, who knew that the problems were more substantial than what you indicated to us that you personally knew, so the question is going to be why did you not know more.

And I think that goes into what I and some other folks have raised. And I know my friend Mr. Cartwright disputed the notion that this is being investigated by the Justice Department. And just so we are clear, because I don't want to be lobbing charges that aren't true, here is the transcript from last week's hearing with James Cole, DOJ Deputy AG.

Chairman Jordan: The fact that the commissioner, meaning you, at the Internal Revenue Service delayed telling Congress, the American people, the FBI, and the Justice Department is a matter that you are going to investigate?

Mr. Cole replied, We are going to look into what the circumstances were around that, yes.

So we are concerned about it and the DOJ seems also to be concerned about it, and I think that that is important to know.

Let me ask you this. You mentioned that you have seen the Ways and Means press release about their conducting interviews with different IRS technical witnesses about what in fact happened to the hard drive, so they told Ways and Means that the hard drive was scratched and that data was likely recoverable from it; and, of course, the IRS, just last week in Federal court, has filed a declaration saying, consistent with what I think you have testified to, that the hard drive was destroyed and in fact no data was recoverable for it.

So my question is what is an American to think when they see some witnesses telling a congressional committee scratched, may be recoverable, but yet the IRS is representing in Federal court that it was destroyed and completely unrecoverable?

Mr. KOSKINEN. I wasn't there and I haven't talked to those people, and I don't know what that interview yesterday——

Mr. DESANTIS. But they were the technical people, would be the ones that we would most want to talk to about that, correct?

Mr. KOSKINEN. All I know is the emails that actually I have testified at a couple previous hearings about show that there were efforts made by Ms. Lerner and the IT department to restore the hard drive. It went to the Criminal Investigation Division, and they are experts and they said they were not able to retrieve information from that hard drive. That is all I know and that is what the emails contemporaneously at the time showed and said, was that they had tried, the experts in the IRS had tried; they were unable to recover any information.

Mr. DESANTIS. Okay. And I read the pleadings and I take that point, but we are getting conflicting information, it seems, in the Congress at this point, so I think it is going to be important that that be resolved, because clearly you can't be telling the court one thing and then having people in the organization who are on the ground and maybe had intimate knowledge telling the Congress the other thing.

I am almost out of time, but just very quickly, switching gears a little bit. The D.C. Circuit issued an opinion about the IRS's regulation as respects to Obamacare subsidies, taxes, and mandates in the States that have exchanges not run by a State, but run by the Federal Government. Given that right now there is a circuit split, where you have the 4th Circuit saying that basically it was either a close call or a scrivener's error, you have the D.C. Circuit saying actually the IRS didn't have the authority to issue that ruling, are you going to rescind that rule until this can be resolved by the Supreme Court, or what is the IRS's position in light of the Halbig case?

Mr. KOSKINEN. The rule about the granting of advanced premium tax credit all is run by HHS. Our regulation said that, in fact, it was appropriate and acceptable to go through the Federal marketplace. We have no plans, until the issue is revolved in court, to rescind or change that rule or change our preparation for the next filing season.

Mr. DESANTIS. And is it your position, as the IRS, that you have construed that to be that there may have been a drafting error on the statute, but the intent of Congress was that the subsidy should go, and is that why the IRS has taken the position that they have taken?

Mr. KOSKINEN. I am fully supportive of the Justice Department opinion, which was upheld in the 4th Circuit, not upheld in the D.C. Circuit. I don't have a different view of the legality; I think the Justice Department puts it very well that they think the statute is enforceable and the regulations are appropriate.

Mr. DESANTIS. Okay, I am out of time, and I will now yield to the ranking member of the full committee, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

On July 9th you appeared before the Subcommittee on Government Operations for a hearing entitled Solutions to Close the $106 Billion Improper Payments Gap. Even though it was clearly not the stated purpose of the hearing, Republican members of the committee asked you a number of questions regarding the committee's

investigation into the IRS treatment of applications for tax-exempt status.

At the hearing, Chairman Issa also released emails from Lois Lerner regarding the IRS instant messaging system, called OCS, that he claims proved that Ms. Lerner "intentionally sought to hide information from Congress." Despite your testimony that you were unfamiliar with the system and would be happy to look into its use, Republican members repeatedly questioned you about the specifics of OCS.

Commissioner, now that you have learned of the system, can you describe what OCS is?

Mr. KOSKINEN. Yes. I actually provided a letter to the committee that Chairman Issa referenced earlier. What I have been advised is OCS is a system that exists in Microsoft systems and it basically allows people around the Country, its primary use is to have a teleconference and you can put the same information up on the screen and everybody looks at it at the same time, and it is a way to have a telecommunications gathering in a meeting.

It allows you also to, in effect, have an instant messaging capacity for those who use it—not everybody uses it; I don't use it because I didn't know it existed—that much like your cell phone, somebody, if they see you are online, can send you a text message and it is like calling you on the phone. So like all text messages, it is a sometimes faster and more efficient way to communicate than picking up the phone and calling someone.

Mr. CUMMINGS. Despite the fact that the email exchange occurred on April 9th, 2013, nearly two years after Ms. Lerner's computer crashed, and more than one year after the inspector general's audit began, Chairman Issa declared that the email exchange was a "smoking gun." On July 11th, the IRS sent a letter to the committee explaining that OCS messages "are substitutes for telephone calls and in-person meetings" and "the IRS does not currently preserve communications sent and received through OCS." Is that accurate?

Mr. KOSKINEN. That is accurate.

Mr. CUMMINGS. The IRS further explained that the Federal Records Act "does not require recording or retention of telephone calls or meetings as a substitute for telephone calls and in-person meetings that would not normally be recorded. Communications sent through OCS are not considered records subject to Federal records or other retention requirements."

I ask unanimous consent that the letter be entered into the record, Mr. Chairman.

Mr. DESANTIS. Without objection.

Mr. CUMMINGS. Commissioner Koskinen, does the Federal Records Act require retention of the OCS messages?

Mr. KOSKINEN. It is my understanding it does not. In fact, it is my understanding that now our review, our record-keeping process and in 2011 we got a score of 93 and in 2012 got a score of 99. But we are meeting with NARA. We have reached out to them to try to work with them to ensure, A, that we are complying with the Act now and if there are ways we can improve our official records-keeping, we are very anxious to do that. As I say, ultimately we

hope some day to be able to afford to have, in effect, an email system that is a system of record.

Mr. CUMMINGS. Are you aware of any evidence that Lois Lerner used the OCS system to intentionally hide information from Congress or the inspector general?

Mr. KOSKINEN. I am not. As note, we produced 43,000 emails from her account, so she obviously used email significantly.

Mr. CUMMINGS. To the best of your knowledge, has any IRS employee used the OCS system to intentionally hide communications from Congress or the inspector general?

Mr. KOSKINEN. I have no knowledge of any such activity.

Mr. CUMMINGS. Once again, your testimony is corroborated by the results of the committee's investigation. After receiving hundreds of thousands of pages of documents and interviewing dozens of IRS employees, the committee has not identified any evidence supporting the chairman's allegation that Ms. Lerner or any other IRS employee used the OCS system to intentionally hide information from Congress.

I want to thank you, Mr. Koskinen, for your testimony. I have 14 seconds left. Is there anything else you wanted to tell us?

Mr. KOSKINEN. No. I would just add to the congresswoman from Wyoming, talking about she works for taxpayers, my view is we all work for taxpayers. I, as the head of the agency, am basically employed by the American people. We have important responsibilities to be careful stewards of the money we spend; it is ultimately money that comes from the American people.

And we have an obligation to ensure that everyone is treated fairly and the same, and to the extent that there are people who have lost trust and confidence in the IRS to do that, one of our major challenges is to restore that trust. Whenever we are going to continue and audit people, as I have said in the past. Some of them will be Democrats, some will be Republicans, some may not belong to a party, some may have voted for one person or another, some may be active in politics; and what they need to be confident of is when they hear from the IRS, it is not because of any of that, it is all irrelevant.

When they hear from us, it is because of some question in their tax return. And if somebody else had that same question, they would be heard from us as well. But we have an obligation and a commitment to treat everybody fairly and evenly across the board. I have met with over 11,000 IRS employees across the Country, and I have never seen a more dedicated workforce dedicated to the mission to the IRS, to providing taxpayer service to enforcing the Internal Revenue Code, and I am delighted to be part of that workforce.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Mr. DESANTIS. Before I recognize the chairman of the subcommittee, I just will, with respect to Lois Lerner's emails in terms of OCS, when she initially wrote the email to Maria Hooks saying she had a question about OCS, she said she was cautioning folks about email and that we have had several occasions where Congress has asked for emails and there have been an electronic search for responsive emails, so we need to be cautious about what

we say in emails. Someone asked if OCS conversations were also searchable. I didn't know, but told them I would get back to them.

So I just think it is important the context, when she was asking about OCS, was to try to evade congressional oversight.

With that, I will recognize the chairman of the subcommittee, Mr. Jordan.

Mr. JORDAN. I thank the chairman.

Let me go to the Helbig decision, Mr. Koskinen. Does the IRS have an obligation to now tell taxpayers the tax credit may in fact not be available?

Mr. KOSKINEN. I think we have an obligation to keep taxpayers informed about all aspects of the Affordable Care Act, all aspects of the Internal Revenue Code. We have a program of public information to advise taxpayers now, if they are getting premium tax credits, before these decisions. If their information changes, they should go back and make sure the credit is correct. To the extent that we go forward——

Mr. JORDAN. Are you going to educate taxpayers on the potential ramifications of the Halbig decision?

Mr. KOSKINEN. We actually will put out information regarding it. As I say, right now, at this point, two courts have come to different conclusions, so we don't intend to make any different changes. Therefore, I think our advice, although it is not totally in my control because it is a policy issue of how to deal with it and we are just tax administration, but my general assumption is people will and should continue to operate as they have thus far until we get to a final court decision. And the courts have not indicated that anyone should do anything differently.

Mr. JORDAN. Let me go to the Ways and Means statement yesterday, their press statement. One of the things they say in the lead paragraph, it says, in-house professionals at the IRS recommended the agency seek outside assistance in recovering the data. Are you going to do that, or have you done that already, outside professionals to recover data lost or that may be recoverable on the scratched hard drive or the tape that now in fact may be available? Is that something the IRS is going to do?

Mr. KOSKINEN. As you know, my understanding is that that hard drive is the normal process. Once the Criminal Investigation Division determined they could not restore any information from it, that hard drive was recycled and no longer exists.

Mr. JORDAN. When that took place, when you were trying to get to the data, did you in fact go get outside assistance in trying to recover the data?

Mr. KOSKINEN. I was not around at that time, but I am not aware of any attempt to go outside the IRS.

Mr. JORDAN. So even though in-house professional says, you know what, this might be a little above our pay scale, we should go get the outside tech experts, the super wiz kids who can do this stuff, we should bring them in, to your knowledge, that was not done?

Mr. KOSKINEN. To my knowledge, I don't know even about that statement. I haven't seen his transcript as to whether—I was not aware that that recommendation has been made, but I have no information indicating that that was done, i.e., that outside experts

were sought. All I have seen is the emails that I actually have testified about in which Criminal Investigation Division reported they could not restore the hard drive. But I have no information that the IRS at that time did anything else.

Mr. JORDAN. They did not. I just want to be clear. It is your understanding that there was not outside professionals who were brought in to try to recover the data.

Mr. KOSKINEN. That is right. I have no indication that was done, and it is my assumption by the emails that I saw when I testified that when the Criminal Investigation Division——

Mr. JORDAN. So no outside experts were brought in, even though in-house experts recommended they be brought in.

Mr. KOSKINEN. I had no information about the in-house recommendation.

Mr. JORDAN. I am going by what the Ways and Means Committee is reporting, that they said in-house professionals said in fact we should go get some outside experts. This is beyond our scope; we need someone else to come get this because this is such important information. And you are saying you don't think that was done.

Mr. KOSKINEN. I don't think it was done. But I haven't seen the full context of what that gentleman said, either.

Mr. JORDAN. Okay. You don't think it was done and you don't know if it was asked for. They are reporting that it was asked for and it wasn't done.

Mr. KOSKINEN. It wasn't done. Right.

Mr. JORDAN. Which is a problem. Which is a big problem, when your tech experts say we need outside tech experts to come in and get the data, no, no, no, we don't want to do that, it is unrecoverable. As reported by what you have said in testimony and what has been filed with the court that it is unrecoverable.

Mr. KOSKINEN. You have to remember this was three years ago, and there were no investigations ongoing at that time. In fact, the IRS had already taken extraordinary attempts even to go to the CID people——

Mr. JORDAN. But that is the point. If it is three years ago, that is why they said we need the outside experts. That is why they wanted the help. And you are saying it didn't happen.

Mr. KOSKINEN. Right.

Mr. JORDAN. Which is a concern.

Let me just do one other question, if I could.

So, according to your testimony, a month ago the Ways and Means Committee said the IRS, in February, identified documents that indicated Ms. Lerner had experienced computer failure in 2011, consistent with Mr. Cain. You knew in February there was a problem, February 2nd, February 4th you knew there was a big problem, according to Mr. Cain's testimony. In mid-February you knew it was unrecoverable. Your testimony says in mid-March 2014, this review, we learned the data stored on her computer hard drive was determined to be unrecoverable. So Mr. Cain says he knew in February; you knew in mid-March.

Mr. KOSKINEN. That is right. I actually knew——

Mr. JORDAN. But you were kept abreast——

Mr. KOSKINEN. I actually knew in mid-April, and that is a misstatement on my part. If you read my testimony before this committee in the now three hearings I have had——

Mr. JORDAN. This is your written testimony in Ways and Means. This is not accurate?

Mr. KOSKINEN. My written testimony?

Mr. JORDAN. This is your opening statement, what you said to the Ways and Means Committee. The IRS, in February, identified documents that indicated Ms. Lerner experienced a computer failure in 2011. Mid-March review, 2014, the data stored on her computer hard drive was determined to be unrecoverable.

Mr. KOSKINEN. No, I am sorry, that is correct. That was what the IRS knew——

Mr. JORDAN. So here is my question.

Mr. KOSKINEN. Yes.

Mr. JORDAN. Mr. Cain says on February 4th he knew. You indicate in your testimony mid-February we knew there were big problems, and you indicated in mid-March we knew it was unrecoverable. You knew, even though your key staff people, Mr. Cain and Ms. Duvall, knew in mid-February. You testified February 5th to the House Ways and Means Committee, February 26th to the House Appropriations Committee on Financial Services, March 26th to this full committee, and April 8th to the Senate Finance Committee.

In those hearings you were asked about Ms. Lerner and email and different things. You had four different opportunities in front of Congress. So I am wondering, in the back of your mind, were you wondering, when you answered these questions, that we are going to produce all of Lois Lerner emails, when we are going to comply, in the back of your mind, were you thinking maybe I should let these guys in on the little kind of important fact that, you know what, we have already determined that her hard drive is unrecoverable?

Was that ever in the back of your mind when you were answering questions from members of Congress in four different committees over the time period when you have already learned significant facts. Even though in your mind, according to your testimony, you didn't fully know that we had lost them all for good, even though you sort of knew that it was pretty darn likely you had lost them all for good, in the back of your mind, did you think, you know what, maybe I should fully disclose what the real status is of Ms. Lerner's emails?

Mr. KOSKINEN. No. As I have testified several times in the past——

Mr. JORDAN. That didn't enter your mind at all?

Mr. KOSKINEN. I didn't know that there were emails lost. I personally didn't know, and that is what I was testifying about, until the middle of April. When I testified, and I have said this before in several hearings, when I testified on March 26th, I did not know that her emails were not recoverable.

Mr. JORDAN. But this is your testimony right here. I am reading. This is John Koskinen testimony.

Mr. KOSKINEN. Right.

Mr. JORDAN. In the mid-March 2014 time frame, we learned the data stored on her computer hard drive was determined to be unrecoverable. So that is certainly before the March 26th hearing and the April 8th hearing in front of the Senate Finance Committee. So you had two opportunities where you already know it is unrecoverable. That means you are not going to get what is there.

Mr. KOSKINEN. No, I am sorry. I take, and I go to the point earlier, I take responsibility for the agency. When I said, in that, trying to report to people what we knew, that is what the IRS knew. When you ask me specifically what did I know, I knew and didn't know until April. If you told me now that Tom Cain said he knew in February, I would henceforth say we, as the IRS, knew in February. I myself, personally, did not know.

When I testify, I tell you what I know.

Mr. JORDAN. This goes right to the chairman's point. When our chief counsel knows in February, mid-February, that it is unrecoverable, you can't come in front of Congress and say I didn't know, that is why I didn't answer. Your chief counsel knows. You should have known.

Mr. KOSKINEN. I should have known.

Mr. JORDAN. And you should have disclosed that, and you didn't.

Mr. KOSKINEN. I didn't know and I, therefore, couldn't disclose. And you are exactly right. I have not hidden behind the fact that somehow this is somebody else's responsibility. I am perfectly prepared to take full responsibility for exactly what we did with the production of the information to the Congress.

Mr. JORDAN. But you didn't tell us that in your testimony. You didn't tell us, on March 26th, when you answered, you didn't tell us that. It would have been nice if we had known at that point. Kate Duvall and Tom Cain already knew it was unrecoverable, but somehow they didn't tell you because you would have to disclose that when asked about it in Congress, was that why they didn't tell you?

Mr. KOSKINEN. I have no idea. This was an iterative process. At that point we were spending most of our time trying to produce all of the information for the determination process, which we were able to do by the middle of March.

Mr. JORDAN. This is what no one can figure out. Something this important, Lois Lerner, the lady who sat in your chair and took the Fifth, the central figure in this investigation, you lose her emails; your chief counsel knows in February, the lawyer in charge of document production knows in February, and they don't tell you, and you can come in front of Congress four times and not disclose that. And then when you do learn in April, you can wait until June 13th. That is what the American people are like, no wonder there is some morale concern and no wonder there is a distrust. That is unbelievable.

Mr. KOSKINEN. Well, can I just add one point?

Mr. JORDAN. We didn't know, your chief counsel knew.

Mr. KOSKINEN. You are going to talk to the chief counsel, and she will tell you what she knew or didn't know.

Mr. JORDAN. We already talked to Tom Cain, and he told us she knew.

Mr. KOSKINEN. Right. He knew that, if you go back through there, that the hard drive had a significant problem. We did not know what emails we had. We, in fact, discovered and found 24,000 additional emails from Lois Lerner to other people——

Mr. JORDAN. I appreciate the chairman's indulgence.

All I am saying is this, when Tom Cain, the lawyer in charge of document production, the professional who you said does good work at the IRS, when he says unrecoverable, and they knew that in mid-February, and you come to Congress three times after they knew that, both he and your chief counselor, and you don't disclose that, you should have known that and you should have told us. And then when you do find out, you wait two more months. Come on. Come on, we are supposed to buy that?

I yield back.

Mr. DESANTIS. I thank the chairman.

I would point out, before I recognize my friend from Pennsylvania, here we are in, say, February, March, saying you didn't know how many Lerner emails were out there; and, granted, you were not commissioner during this whole time, but we have been asking for these things for over a year now. A subpoena was sent in August, reissued under your watch, so the IRS dragged its feet on that.

And I realize a lot of that is not necessarily on your watch, but don't tell me nine, ten months after we request this stuff and five or six months after a subpoena is issued, that somehow you just don't know how many emails you have. That should have been something that should have been ascertainable.

Thank you for the indulgence, and I will recognize Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chair pro tem.

Speaking of things that would be nice to know and things not disclosed, Mr. Koskinen, I asked the chairman of this full committee who the witnesses are supposed to be next Wednesday from the IRS. He declined to tell me. He declined to tell me whether he even knew who the witnesses next week will be. But I didn't ask you, Mr. Koskinen. This is your department. Do you know? Have you been informed by anybody on this committee who the witnesses sought for next week's hearing will be?

Mr. KOSKINEN. Until I came to this committee meeting, I had no idea that the committee was going to hold yet another hearing next week.

Mr. CARTWRIGHT. And would you agree with me that those are among the things that would be nice to know?

Mr. KOSKINEN. It is always nice to know in advance when we are supposed to show up for a hearing. I don't know whether I am expected to show up again next Wednesday.

Mr. CARTWRIGHT. Well, neither do I.

Well, let's delve into the IRS forensic lab together, shall we? There were comments today about scratches on hard drives, and that is not my area of expertise, and I dare say it is not yours either.

Mr. KOSKINEN. Right.

Mr. CARTWRIGHT. But we did have John Minsek, an analyst from the IRS Criminal Investigations Unit, meet with Ways and Means

staff on Monday. He told them he did not find anything suspicious about how a scratch got on Ms. Lerner's hard drive. The analyst, Mr. Minsek, said that he tried to recover Ms. Lerner's documents on two occasions, first with a normal tool set and then, using more advanced tools, he still couldn't recover any data.

Mr. Commissioner, contemporaneous emails confirm that the IRS Criminal Investigations Unit could not recover her documents. Am I correct in that?

Mr. KOSKINEN. That is correct.

Mr. CARTWRIGHT. And the CI analyst, Mr. Minsek, then told Ways and Means Committee staff that he gave his colleague in the IRS IT shop the name of a third-party vendor that he used on rare occasions to recover information, but IRS IT staff had already consulted with outside experts at HP.

Mr. Koskinen, do you know if IRS officials consulted with IT experts a second time in 2011 to recover Ms. Lerner's emails?

Mr. KOSKINEN. I do not know.

Mr. CARTWRIGHT. Okay.

All right, finally, I want to touch on something that the gentlelady from Wyoming mentioned. She just said that her constituents are going to take matters into their own hands. And I say this because about an hour ago somebody walked into the Cannon House Office Building with a handgun, according to Chad Pergram, our friend from Fox News locally.

Knowing that there are over 4,000 staffers and interns at risk here on the House side of the Capitol, and recalling the horrible Gabby Giffords tragedy and the loss of staffer Gabriel Zimmerman, I would ask that members refrain from making statements that could even possibly be misconstrued by the public as an invitation to do anything like that. It is obvious that Representative Lummis meant no such thing, but I think it behooves all of us to be very careful about the way we phrase things, because there are people out there ready and able to misconstrue things.

With that, Mr. Chairman, I yield back.

Mr. DESANTIS. The gentleman yields back.

The chair now recognizes the gentleman from Georgia, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chair, I appreciate it.

Mr. Koskinen, here we go again. I told the story last time, and it was the story of my young son, who, to some media reports, became famous, I guess, or infamous, however you want to describe it, on the stories that he used to tell, and I recounted this time line, and I wish I could sit here today and see you again and say that what was not plausible then has now gotten a little bit plausible. It actually just seems to not have gotten any more plausible. People ask why are we continuing to do this? Because it just looks like there is something new comes out all the time. One request will say this, then another request.

It was asked earlier—I had to leave and come back, and it was said how much paperwork that you have put to the committee and how many hours are being worked on. To restore trust in a relationship, whether it is between two people or whether it is between Government and the people that they serve, it should really be of no limit to restore that trust, especially with the IRS.

So, frankly, to tell me that you gave a million documents and that your hours you are spending, because of the issues that have been raised and the lack of trust on both sides, I have Democrats and Republicans in my district who are appalled at this; and they want it solved, they want the real answers and they want to continue, and they don't want to continue reading every week in the paper that something new has come up. I think that is an issue of trust that has to be maintained here; and, frankly, the plausibility story is just, again, getting to the level of unbelievable in a lot of ways.

But I do have some questions, because we have talked a lot about the Lois Lerner emails, but in addition to those the committee has also asked for other emails, and I want to talk to you about those for just a second and see the status of those, is that okay?

Mr. KOSKINEN. Sure.

Mr. COLLINS. Okay.

Holly Paz, emails responsive to the committee's request from August 2nd, 2013 to February 14th, 2014. Have you gathered all of those emails?

Mr. KOSKINEN. We have provided all of the emails with regard to the determination process. And, again, pursuant to what I thought were the agreed upon search terms, but apparently not totally agreed with the investigative committees, that we would select 83 custodians who were the ones most likely to be involved and that we would search——

Mr. COLLINS. Are those the same 83 that a quarter of their hard drives crashed?

Mr. KOSKINEN. It is not clear a quarter. At this point, nobody knows what that answer is.

Mr. COLLINS. Oh, so we could have more that have crashed.

Mr. KOSKINEN. We could have more, we could have less. I don't know until we find out.

Mr. COLLINS. I mean, does that just not boggle mind that of a small number, one about a quarter, and we can argue about a quarter, not a quarter, I am not a mathematician, neither are you, but that there may be others in that subset that deals with the areas we are asking for?

Mr. KOSKINEN. Yes. And that is a perfect example as to why it would be very helpful, had we been able to complete the investigation of what happened to the custodians, we could tell you. The reason I actually decided we would continue to find out how many Lois Lerner emails we had was because if we hadn't been able to do that, people would be talking about——

Mr. COLLINS. Let's not change the question. I asked about Holly Paz. We can get away form Lerner. I asked about Holly.

Mr. KOSKINEN. No, no, but my point is that to the extent we can provide the full story, your point, then it is a lot easier to know and you can disagree about it. But it is a lot better to know what the total picture is. So when you get the custodians, because the IG is now doing that, we don't know what the answer is, so it may be 10, it may be 20, it may be 5, it may be 25. I don't know, and at this point we aren't able to investigate that, and we are hoping

the IG, when he completes his investigation, would include, will conclude with the custodians as well.

Mr. COLLINS. Well, that is another source of contention.

Mr. KOSKINEN. That is the problem. Anyway, it is part of the problem we are doing this in dribs and drabs——

Mr. COLLINS. I understand.

Mr. KOSKINEN.—and every day having a press release about some aspect of some interview.

Mr. COLLINS. Thank you for saying drips and drabs, because that is what this investigation seems like it has been every since we started it, and especially even from your comments and others, that every day we get drips and drabs and drips and drabs, and the people are tired of it, this Congress is tired of it. And this is the problem we have because I am going to assume from your question—I am an attorney as well—that that is a no. After all you said, you have not gathered all her emails, or you don't know if you have gathered all her emails.

Mr. KOSKINEN. No, no, exactly right. I didn't mean to be evasive. We provided all of the emails that were determined to be relevant to the determination process. We have not yet provided all of her emails because our first priority, agreed with this committee in March, was we would find all of Lois Lerner's emails.

Mr. COLLINS. So, no. So the question on William Wilkins, same question, yes or no?

Mr. KOSKINEN. Same answer. You got all of his emails that are responsive to the investigation that started all of this.

Mr. COLLINS. Okay, but no to all. Jonathan Davis, same question.

Mr. KOSKINEN. Again, you got all of his——

Mr. COLLINS. No. I mean, because all is all. I mean, we had this conversation three months ago.

Mr. KOSKINEN. That is right. And as I said in March, we are happy to keep working with you to figure out what your next priority is. Obviously, thanks to the system, we can't produce it all at once. We have actually produced a lot of stuff, and it takes us a long time. Part of the background on the June 13th public report was to try to explain why, with our system, it takes so long to produce this stuff. We should not have to spend $18 million. We should have a better system. There is no doubt about that.

Mr. COLLINS. I don't disagree. The question I have, though, is we need them all, in the sense of the clarification issue here, and we have just got that.

I do have one quick—I want to go back to something that was asked a lot earlier and it was, I believe, from my friend from South Carolina. He said we confirmed, and you said I don't now who told me. And I have sat through this will be my third, I guess, with you listening, and there has been a lot of meetings in which you were told information, but you don't remember who was in the meeting or you don't know who told you that, and it hit me as I was sitting here. Maybe there were multiple people in the room and you are not sure who said it first or who told you first, so I am going to ask it differently. I don't want to know who told you first or last. I am not being specific in that nature. I want to know who was in the room when you were told that we have confirmed all that. And

surely you are a very bright individual. You would know at least who was in the room.

Mr. KOSKINEN. I have 12 meetings a day, on average.

Mr. COLLINS. I do as well. I know most of the ones in the meeting, especially when it is senior staff on something of this nature.

Mr. KOSKINEN. And those meetings average probably 8 to 10 people, so I cannot tell you about any meeting who was actually in the room. But I can tell you who was likely in the room, and that is the people who have been working on the production with your staff. Obviously, my counselor was in the room, probably my chief of staff was in the room. But I can't tell you, and I don't recall because it wasn't significant at the time, who else was in the room. We were reviewing the document.

Mr. COLLINS. It wasn't significant at the time that you may have lost emails? That was not a significant meeting?

Mr. KOSKINEN. The issue here was whether we could confirm, your question was whether we could confirm.

Mr. COLLINS. Confirm. But you are dealing with a bigger issue. I said is that not significant?

Mr. KOSKINEN. This entire issue was significant, but I am actually running an agency that has to deal with filing seasons; we have overseas voluntary disclosure programs; we have voluntary tax return programs we have been putting out; we have been simplifying for small charitable organizations——

Mr. COLLINS. And, look, I understand that and that is a great diversion to what we are asking right here. I get that the IRS has other issues, but I also get that the American people, even over years of making fun and doing everything else that unfortunately the IRS has had in the past. It is not now just the fact that they don't like the IRS because they have to send their money in.

They are now at an issue both party line irregardless, they are not sure about the IRS because they don't trust the IRS anymore. And when that is an issue, everything should be focused on that. And this is the question that makes it just completely implausible and we keep getting dribs and drabs. I appreciate what you said on dribs and drabs, because that is the problem we have right now.

Mr. DESANTIS. The gentleman's time has expired.

Mr. COLLINS. I will yield back.

Mr. KOSKINEN. Can I just make one point clear, and that is nobody has a greater interest of getting you all the information you need and getting closure on this than I do and the people at the IRS. If we could conclude one of these six investigations, find out what the determination of facts are and the recommendations are, we are delighted to take those recommendations. We have accepted all of the inspector general's recommendations. The last thing in the world that benefits us is to have this go on any longer than necessary. So whatever we can do, as fast as we can produce documents. The relevance of the 960,000 pages isn't, gee, isn't that a big amount. It takes a lot of time to get all that done in our system.

Mr. COLLINS. The one thing we will agree upon is getting to the end of this is the end result so that we can move and the people can restore the trust in a Government agency in which they need to have trust that they don't have now.

With that, I yield back.

Mr. DESANTIS. The gentleman's time has expired.

I am going to recognize the gentleman from California for five minutes.

Mr. KOSKINEN. This is round four?

Mr. ISSA. No, no. When people yielded me time under our arcane rules, that doesn't count.

Mr. KOSKINEN. Okay.

Mr. ISSA. But I will be brief.

Commissioner, we have a history, and I want to make sure I get the history straight today, because it does matter for this committee. You constantly talk about this agreement and discovery and so on. Were you aware that we considered that the IRS was stonewalling us and giving us information we didn't want and giving it to us in an order we didn't like it in the months of May, June, and July of 2013?

Mr. KOSKINEN. I was not aware of that.

Mr. ISSA. Well, we have a number of letters basically showing our dissatisfaction, including what we now know to be erroneous information, misleading information that would imply that progressive were being targeted, the false narrative that continues to be used at times.

On May 22nd, 2013, Lois Lerner took the Fifth. Shortly after that she became a person of extreme interest for this committee because in fact she had made statements outside of her assertion of the Fifth that she broke no rules, she broke no regulations. She additionally authenticated earlier testimony in statements again. After she took the Fifth, she then went back on the record. So under oath she made a number of statements.

As we began investigating, we became very aware that Lois Lerner was an active participant in Washington of targeting conservatives. In addition, in evaluating her history, we became very aware that she did not like conservatives and she had that sort of predisposition. Plus, her public speeches made it very clear that on behalf of the President "they want us to fix this" and certainly the President had been the outgoing spokesperson again Citizens United, that we had every reason to focus our investigation on her as the hub in a hub and spoke system of deliberately targeting conservatives for their values.

Therefore, I issued, if the ranking member were here, he would call it unilateral, but pursuant to the committee rules I issued a subpoena and made it very clear that our first priority was to have all of Lois Lerner's emails, and that that was the priority. Were you aware of that?

Mr. KOSKINEN. I am aware of that subpoena, yes.

Mr. ISSA. And you were aware that that was our goal?

Mr. KOSKINEN. You have eight items on that subpoena, and that is at the top of the list.

Mr. ISSA. Very good. Therefore, when we interviewed Thomas Cain and we asked him, so is it fair to say this subpoena had no—and this was the subpoena of August 2nd—this subpoena had no impact on the process that you were following or the documents that you were reviewing. That was our question. His answer: It didn't impact our production process, that is correct. Question: Did

it have any impact on which documents were chosen to review? Answer: No.

Additionally throughout that transcribed interview, what we discovered was that you all met, had a discussion, if you will, and decided that you were not going to prioritize any aspect of delivery of Lois Lerner's documents, even though she had taken the Fifth before this committee, even though she clearly had public statements and she had been a person who had already unlawfully leaked, by planting a question, the outcome of an IRS TIGTA investigation. All of that is undeniable.

Why in the world should the American people believe that you are cooperating with us when I issue a subpoena, our committee makes it clear in multiple letters that these are our priorities, and now we have sworn testimony or testimony under penalty of perjury that you didn't make any changes, you basically continued business as usual, which was delivering us based on you call it mutually agreed, but they were your criteria, primarily, as to search terms, and never disclosed to us that those search terms were searching but a small portion of what should have been the entire database? Do you have an answer for that?

Mr. KOSKINEN. I wasn't there. My understanding is there are five other investigations that are now going on and were going on then, that there were a wide range of requests for documents from the Senate Finance Committee, Ways and Means, Permanent Subcommittee.

Mr. ISSA. Did any of them issue binding subpoenas?

Mr. KOSKINEN. And I don't think anyone else had a binding subpoena. My understanding, and I wasn't there, was that——

Mr. ISSA. But after February 2014 we issued another subpoena. Did anything change then?

Mr. KOSKINEN. At that point, we were, as I have testified before, we began to pull the rest of Lois Lerner's emails. We started with the analysis of the emails already produced, and that is where it was discovered that there were fewer emails in the 2011 period.

One of the priorities at that time, though, competing priorities was to complete the production of the determination documents that everybody was interested in. There was kind of a, I gather, a process by which, with all of the conflicting questions to try to respond to documents that met as many of the requests as possible, and most of the requests certainly for Finance and, at that time, Ways and Means were for documents around the determination process.

That was completed, and then since that time the full court press has been to produce all of Lois Lerner's emails, whether in her account or any other account.

Mr. ISSA. Thank you. Earlier on I asked you for a discovery process of who was looking for when throughout a time line, and your assistant took it in very copious notes there. I want to just add one clarification to that process. Obviously, we are interested in what you did during subpoenas, but we are getting that. You have delivered some, I guess we are looking at an exorbitant number of documents that you constantly and many people constantly cite.

What we don't understand that I think the committee has an absolute obligation to understand, is in this process of what you

looked and where you looked, understanding the sources that this has come from, because we are a committee of oversight reform, we are a committee that has an obligation to see that you spend the American people's money properly.

It appears, from this side of the dais, as though the process is very fragmented, that in fact you are looking sort of under cookie jars, to use an expression of my youth; that you are providing large amounts of data from certain periods that based on a six-month backup and a very small server capacity wouldn't exist. So that means that they probably came from other places. And we need to understand all the places they came from, where you went.

You have sent us, in many cases, hugely redundant emails. In other words, the same emails can come from multiple places. Understanding that so that we can figure out how to prevent it in the future is important, because this is not the last time that a Federal judge, an IG, or a congressional committee is going to want to know details. I think we can all agree to that, just as corporate America receives countless subpoenas for document production, so much so that they develop software explicitly to do these kinds of searches and retention policies for that reason.

Can we have your agreement that we will receive some accounting of how that happens?

Mr. KOSKINEN. Yes. And we would be glad to talk further with your staff to make sure we give you exactly what you need. But you are exactly right, we looked in the logical places, and I understand we looked under every cookie jar. We actually were dedicated to making sure that we found every existent Lois Lerner email on her account or anybody else's so that we would be able to say these are all the Lois Lerner emails we have, and that has led to 67,000.

Mr. ISSA. And I will make a rather unusual request in this case. We are more than happy to have a small group briefing meeting, bipartisan meeting, with the individuals who have been involved in this so that separate from the investigation, which is important and ongoing, the question of efficiency, the cost-effect of fragmented data, the cost-effect of having, and I have held it up several times, individual drives like this that people have, notebooks that have been taken offline, all the other things that I suspect are one of the reasons this has become so expensive and difficult.

That meeting is not exactly on course with this investigation, but it is separately a question from a standpoint of the management of the $82 billion worth of funds that Government spends to see if in fact policy changes with OMB and others should be instituted and funding allocated so that this kind of fragmentation doesn't happen in the future.

So as one person who has worked in private America to another, that is something that your briefing can be informal, off the record, doesn't have to be definitive, but our committee, I think, really has to have an understanding so we can be part of policy formation, because what I know about how corporate America does it and what I am beginning to glean you have to do are very different.

Mr. KOSKINEN. They are very different. As I have said, I asked that question some time ago, that we should not have to spend $18 million and this amount of time responding to document and email requests. But I think if we could kind of get two birds with one

stone, we could, as you say, have that briefing that would answer your questions about how did this discovery process go and then what are the problems with that going forward, because it is my understanding that there has been a tremendous amount of effort made to make sure that we found every document responsive to the committee. It is a lengthy process.

Again, the June 13th report starts out trying to explain to all of the investigators what the process is and why it is so anachronistic and so difficult. And I agree with you totally, going forward it would certainly help all of us if we had a more efficient system for preserving and finding documents and emails.

Mr. ISSA. Thank you, commissioner.

I yield back.

Mr. DESANTIS. The gentleman yields back and that concludes our hearing today.

Thank you, Mr. Commissioner, and the hearing is adjourned.

[Whereupon, at 1:20 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Timeline

June 16, 2014, 4:45 p.m.	Subpoena to Commissioner Koskinen served on the IRS for testimony at a hearing on June 23, 2014.
June 16, 2014, 5:07 p.m.	Ways and Means Committee announced hearing with Commissioner Koskinen at a hearing on June 24, 2014.
June 16, 2014, 5:18 p.m.	Oversight and Government Reform Committee announced hearing with Commissioner Koskinen at a hearing on June 23, 2014.

[redacted]

From: Head of Investigations [redacted]
Sent: Friday, May 03, 2013 3:34 PM
To: Principal Deputy IG; Head of Audits [redacted]; TIGTA Chief Counsel; Tax Exempt Audit Head TIGTA
Cc: [redacted] TIGTA; [redacted] TIGTA
Subject: Review of E-Mails

Gentlemen,

As a result of our meeting with Russell a couple of weeks ago, we agreed to pull e-mails from identified staff members of the EO organization in Cincinnati to find out 1). If an e-mail existed that directed the staff to "target" Tea Party and other political organizations and 2). If there was a conspiracy or effort to hide e-mails about the alleged directive.

Audit provided us with a list of employees in question, key word search terms and a timeframe for the e-mails. We pulled the available IRS e-mails, which resulted in 5,500 responsive e-mails.

Review of these e-mails revealed that there was a lot of discussion between the employees on how to process the Tea Party and other political organization applications. There was a Be On the Lookout (BOLO) list specifically naming these groups; however, the e-mails indicated the organizations needed to be pulled because the IRS employees were not sure how to process them, not because they wanted to stall or hinder the application. There was no indication that pulling these selected applications was politically motivated. The e-mail traffic indicated there were unclear processing directions and the group wanted to make sure they had guidance on processing the applications so they pulled them. This is a very important nuance.

[redacted]

[redacted]
Deputy Inspector General for Investigations

Mr. Pilger. If I may.

[redacted] Please.

Mr. Pilger. Good morning.

My name again is Richard Pilger. I am a career prosecutor. I have served in the Public Integrity Section since July of 1992, when I was hired through the Attorney General's Honors Program following a Federal clerkship.

At this section, I have served as a trial attorney, senior trial attorney and in my current role as director of the Election Crimes Branch, which focuses on Federal election offenses.

I have spent virtually my entire career as a Federal prosecutor handling corruption cases -- public corruption cases, I should say, including election fraud and campaign finance crime cases across the country. I have investigated and prosecuted cases concerning judges, legislators, governors, law enforcement agents and many others.

In addition to my casework, in my current role, I consult with and advise attorneys in the 94 United States Attorney's Offices. I also advise and work with agents of the Federal Bureau of Investigation regarding campaign finance and other election offenses.

I have reviewed the committee's letter to the Attorney General dated April 23, 2014. I am here today in voluntary compliance with that letter's request for a transcribed interview with committee staff. And I understand there's a Congressman here today, too.

And I understand from the committee's letter that the subject of this interview is my contact with Ms. Lois Lerner, former director of

the Internal Revenue Service, Exempt Organizations Division, and the committee members' question regarding whether the Department of Justice has improperly targeted particular tax-exempt groups for prosecution based upon their political views.

The short answer to that question is absolutely not. I have pursued my career and continued my career at the Public Integrity Section precisely because it was formed in the wake of Watergate to stand against the abuse of power.

Since I joined the Public Integrity Section in 1992, I have never encountered politically motivated decisions. To the contrary, it has been my consistent experience this section has acted, without exception, on a strictly nonpartisan basis in all of its decisions and actions. In my experience, politics plays no role in our work as prosecutors, period.

Turning to my contacts with Ms. Lerner, she is a professional acquaintance, and my best recollection is that I have communicated with her on four occasions.

First, I was briefly introduced to Ms. Lerner many years ago when I was a junior prosecutor and she was visiting a colleague in my building.

Second, in the fall of 2010, at the direction of the Chief of the Public Integrity Section, Jack Smith, I contacted the Internal Revenue Service for the purpose of discussing and helping our section better understand the evolving legal landscape surrounding potential violations of the Federal Election Campaign Act, which I'll also call

FECA today. And that is following the Supreme Court's decision earlier that year in Citizens United v. FEC.

The Department -- that's the Department of Justice -- has jurisdiction over criminal violations of FECA both in the Public Integrity Section and in the U.S. Attorney's Offices.

The Citizens United decision expressly upheld the role of transparency mandated by Congress for our campaign finance system, and we wanted to ensure that our section would be vigilant against the potential circumvention of FECA and its reporting requirements by 501(c) organizations.

The IRS, when I contacted them, they directed me to Ms. Lerner, who met once at the Public Integrity Section offices for about 1 hour with some of her staff, my chief, Jack Smith, other personnel from my section, and the FBI.

Ms. Lerner shared general information about 501(c) organizations. She also expressed her view that it would be impossible to criminally prosecute the abuse of tax status by 501(c) organizations either as a tax offense or a FECA offense.

Third, in approximately January of 2011, I contacted Ms. Lerner. To the best of my recollection, this was for the purpose of identifying an appropriate person at the IRS who could provide certain tax information in response to a court order arising out of a specific investigation.

As I understand, the Department has made clear, in preparation for this interview and in accord with your direction about 6103

information and consistent with the longstanding Department policy, I am not in a position to discuss that investigation.

Fourth, in the spring of 2013, I had a contact with Ms. Lerner in connection with an April 9th, 2013, oversight hearing by the Senate Judiciary Subcommittee on Crime and Terrorism.

The topic of that hearing was campaign finance law enforcement. The witnesses included a two-person panel comprised of the Acting Assistant Attorney General for the Criminal Division and an IRS official.

In advance of the hearing, I recall that Ms. Lerner participated by telephone in a preparation meeting with the Department's Criminal and Tax Division personnel. I do not recall any personal interaction between myself and Ms. Lerner at that time.

Following the hearing and a subsequent letter from Subcommittee Chairman Sheldon Whitehouse -- that's Senator Sheldon Whitehouse -- my section chief again directed me to contact Ms. Lerner to follow up on the chairman's question about whether the Department of Justice, the Treasury Department and the IRS had an effective mechanism for the IRS to refer to the Department of Justice evidence regarding potentially false statements that might have been submitted to the IRS.

I contacted Ms. Lerner to follow up. I do not recall substantive discussion. I do recall that she informed me that she was about to leave on vacation and that her staff would contact me to follow up.

Within days of that contact, however, allegations of misconduct involving the IRS became known to the Public Integrity Section and

publicly, and I don't recall that any follow up occurred thereafter.

In conclusion, these are the professional contacts that Ms. Lerner and I have had that I recall. These professional contacts occurred in the context of a meeting to discuss and evaluate changes in the criminal enforcement landscape regarding Federal election law; a second time for the limited purpose of identifying a point of contact in connection with a particular law enforcement matter; and, lastly, for the purpose of responding to congressional inquiry simultaneously posed to both of our agencies -- that's the Department and the Treasury -- and the IRS.

To my knowledge, the IRS did not refer any matters to the Public Integrity Section as a result of contacts with Ms. Lerner. I do not believe that there was anything inappropriate about the direction given to me nor in my interactions with Ms. Lerner.

More specifically, I assure you that the Public Integrity Section never sought to target tax-exempt groups of any kind based upon the partisan content of any political speech, nor would I have ever tolerated such conduct.

Thank you.

Mr. Jordan. We need a copy of that. Can you make some copies?

[redacted] Do you have a copy of that?

[redacted] Yes. I think it may have some of his notes.

[redacted] Yes. So is there a way we could get a printout from the court reporter?

[redacted] Why don't we go off the record for a second.

Mr. Smith. I do.

[redacted] Witnesses that knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statements. Do you understand this?

Mr. Smith. I do.

[redacted] Is there any reason that you are unable to provide truthful answers to today's interview?

Mr. Smith. No.

[redacted] Do you have any questions before we begin?

Mr. Smith. No.

[redacted] Okay. I understand, sir, you have an opening statement you'd like to make?

Mr. Smith. I do.

[redacted] Please proceed.

Mr. Smith. My name is Jack Smith, and I have been a career prosecutor since graduating from law school nearly 20 years ago.

I began my career serving as an assistant district attorney in the Newark County District Attorney's Office from 1994 to 1999. Thereafter, I spent 9 years as an assistant United States attorney at the U.S. Attorney's Office for the Eastern District of New York, where I served in various capacities, including senior trial counsel, deputy chief of the Criminal Division, and chief of criminal litigation.

From September of 2008 to May of 2010, I served as the investigations coordinator for the Office of the Prosecutor at the International Criminal Court. I've served as the chief of the Public

Integrity Section at the Department of Justice since May of 2010.

I've received several awards during the course of my career as a prosecutor, including the Attorney General's Award for Distinguished Service, the Department of Justice Director's Award, the Eastern District Association's Charles Rose Award, the Henry L. Stimson Medal by the Newark County Bar Association, and the Federal Bar Association's Younger Federal Attorney Award.

I'm a 1994 cum laude graduate of Harvard Law School and a 1991 summa cum laude graduate of the State University of New York in Oneonta.

I'm here today with [redacted] who represents the Department of Justice.

The Public Integrity Section was formed more than 30 years ago to help ensure that public corruption investigations and prosecutions are carried out in a fair and nonpartisan manner and to avoid any political influence on the career prosecutors who carry out this important work.

Career prosecutors such as myself must be insulated from the political process in order to conduct the objective, fact-based, and nonpartisan investigations that the American public expects of us. Our job is to enforce the law and to do so without regard to politics.

Since I've been chief of the section, of the Public Integrity Section, I have never encountered, nor would I tolerate, any politically motivated decisions. Politics does not and cannot play a role in our work as prosecutors.

I'm here today in response to the committee's letter of May 22nd,

2014, requesting to conduct a transcribed interview of me regarding directions that I gave to the director of the Elections Crimes Branch, Richard Pilger, to engage with the IRS in 2010 and 2013.

While I understand and respect the committee's oversight responsibilities, I am concerned that the committee's inquiry relates to a criminal investigation that I'm currently involved in supervising. As you are aware, the Public Integrity Section and the Criminal Section of the Civil Rights Division are currently conducting an investigation of alleged targeting of Tea Party groups by individuals at the IRS. As chief of the Public Integrity Section, I am one of the supervisors of that investigation.

For the reasons I've described, it would be inappropriate for me to answer questions regarding such a pending investigation. And the Department has directed me not to answer any questions related to any investigation, including that one. While I fully understand the committee's interest in this ongoing investigation, I cannot discuss it with you today. Today, I will answer questions regarding the directions I gave Mr. Pilger to engage with the IRS in 2010 and 2013.

In September of 2010, I read an article that suggested that, as a result of changes in the law following the Supreme Court's decision in Citizens United v. FEC, groups might be attempting to falsely claim 501(c) tax-exempt status to circumvent existing campaign finance laws and disclosure requirements. As a result, I directed Mr. Pilger to set up a meeting with the IRS regarding the issue.

Subsequently, a meeting was held in the Public Integrity Section

conference room attended by, among others, Mr. Pilger, myself, and Lois Lerner from the IRS. To my knowledge, I had never met Ms. Lerner before that date.

During the meeting, Ms. Lerner expressed strong opinion -- her strong opinion that it would be difficult or impossible to prosecute the abuse of tax status by organizations making false representations to gain 501(c) status. No criminal investigations or prosecutions were subsequently referred by the IRS or opened by the Public Integrity Section as a result of this meeting.

In 2013, early 2013, Acting Assistant Attorney General for the Criminal Division Mythili Raman was asked to testify before the Senate Judiciary Subcommittee on Crime and Terrorism on the topic of campaign finance enforcement. To prepare Ms. Raman for her testimony, several meetings were held. I attended some but not all of these meetings. I later learned that Ms. Lerner participated in one of the meetings I did not attend. I did not meet with or speak with Ms. Lerner in connection with preparing Ms. Raman for her testimony.

Ms. Raman testified before the Senate Judiciary Subcommittee on Crime and Terrorism on April 9th, 2013. During that hearing, Senator Whitehouse questioned Ms. Raman regarding the Department's efforts to prosecute criminally false statements related to applications for tax-exempt status.

Following the hearing, Senator Whitehouse sent a letter to the Department on April 25th, 2013, requesting assurances that the Department was taking all appropriate steps to address the potentially

criminally false statements made in applications for 501(c)(4) status.

At some point after Ms. Raman's testimony or Senator Whitehouse's letter -- I can't recall which -- I did direct Mr. Pilger to contact the IRS to ensure that a mechanism existed for the IRS to refer to the Department information regarding potentially criminally false statements concerning tax-exempt status.

Shortly thereafter, the current allegations regarding the alleged IRS targeting of Tea Party groups became public, and the Public Integrity Section was tasked with participating in the investigation. From that point on, there was no further follow-up in the Public Integrity Section regarding Senator Whitehouse's concerns.

During my time at the Public Integrity Section, the section has also had contact with Ms. Lerner in connection with United States v. John Edwards, a criminal trial in the Middle District of North Carolina. In that case, Ms. Lerner was interviewed as a possible expert witness. Ultimately, Ms. Lerner was not called as a witness at trial, and I do not recall having any personal contact with Ms. Lerner with regard to that case.

Mr. Pilger's contacts with Ms. Lerner were undertaken at my direction. These contacts were entirely proper, and the decision to initiate them was mine alone, as chief of the Public Integrity Section. To this day, I am not aware of any referral by the IRS to the Department that resulted from those contacts with the IRS.

Thank you.

[redacted] Thank you, sir. We appreciate that.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

July 11, 2014

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Jim Jordan
Chairman, Subcommittee on Economic
Growth, Job Creation and Regulatory
Affairs
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Issa and Chairman Jordan:

I am responding to your request for more information about the commercial off-the-shelf (COTS) software application Microsoft ® Office Communicator 2007 (hereinafter referred to as OCS), including how the software is configured and used within the U.S. government computer system at the IRS.[1] Specifically, I am writing to confirm that, with the exception of IRS Criminal Investigation (CI),[2] the IRS does not currently preserve communications sent and received through OCS for reasons explained below.

OCS is described by Microsoft as "a unified communications application that helps end users be more productive by enabling them to communicate and collaborate easily with others in different locations or time zones using a range of different communication options, including instant messaging (IM), voice, desktop sharing and video."[3] At the IRS (including IRS Chief Counsel), employees are permitted to communicate with other IRS employees using OCS instead of using the telephone or an in-person meeting. IRS believes this is an appropriate use of OCS for the following reasons:

- The Federal Records Act (44 U.S.C. § 2901 *et seq.*) does not require the recording or retention of telephone calls or meetings. As a substitute for telephone calls and in-person meetings that would not normally be recorded, communications sent through OCS are not considered records subject to federal records or other retention requirements. The IRS has cautioned its employees that some issues are better dealt with through e-mail or direct contact, especially when an issue needs thorough explanation.[4]

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[1] The IRS has made OCS available to its employees since 2009.

[2] Because of the more stringent requirements imposed by criminal law and procedure on their activities, CI separately records and stores OCS communications for preservation and use in criminal investigations and prosecutions.

[3] Please see http://office.microsoft.com/ for the manufacturer's description of the software.

[4] The IRS Information Technology division maintains information about OCS and its use at the IRS on its internal website available to all employees.

- Information that meets the statutory definition of a federal record (44 U.S.C. § 3301) must be captured and managed in accordance with an approved Records Control Schedule. For example, documents sent or received through OCS retain the status such documents had when originally created, and thus, document retention policies and requirements remain applicable to those documents. Attached is Internal Revenue Manual section 1.15.6.14, which provides additional information about the records management considerations that must be addressed by employees using collaboration tools like OCS at the IRS.

- Because OCS communications are substitutes for telephone calls and in-person meetings, there is no obligation to preserve instant messages through OCS. In compliance with the law, the IRS does not require the recording of telephone conversations or in-person meetings.

- Additionally, the IRS has configured OCS to allow for communications only among persons logged on to the IRS computer system, so no person external to the IRS computer system can receive communications from any IRS employee through OCS. Only a person who has authenticated his/her identity and properly logged on to the IRS computer system can send or receive communications through OCS.

There was also a question asked in the hearing about whether communications sent or received through OCS would have been captured and stored on the back-up tapes of the agency's Microsoft Outlook email servers, which are backed up daily for disaster recovery purposes. The recording of OCS messages is turned off at a system level and cannot be turned on by an individual user, so no OCS messages could exist on back-up tapes because they are not stored.[5]

If you have any additional questions, please call me, or a member of your staff may call Leonard Oursler, Director, Legislative Affairs at (202) 317-6985.

Sincerely,

John A. Koskinen

Enclosure

cc: The Honorable Elijah Cummings, Ranking Member, House Committee on Oversight and Government Reform
The Honorable Matt Cartwright, Ranking Member, House Subcommittee on Economic Growth, Job Creation and Regulatory Affairs, Committee on Oversight and Government Reform

[5] As discussed in footnote 2, CI's system does separately record and store OCS messages.