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4 AN UPDATE ON THE IRS RESPONSE TO

5 ITS TARGETING SCANDAL

6 Wednesday, July 23, 2014,

7 House of Representatives,

8 Subcommittee on Economic Growth,

9 Job Creation & Regulatory Affairs,

10 Committee on Oversight and Government Reform,

11 Washington, D.C.

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

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

18 Also Present: Representatives Gowdy, Lummis, and Kelly.

19 Staff Present: Melissa Beaumont, Majority Assistant
20 Clerk; Molly Boyl, Majority Deputy General Counsel and

21 | Parliamentarian; David Brewer, Majority Senior Counsel; Drew
22 | Colliatie, Majority Professional Staff Member; Linda Good,
23 | Majority Chief Clerk; Christopher Hixon, Majority Chief
24 | Counsel for Oversight; Mark D. Marin, Majority Deputy Staff
25 | Director for Oversight; Jessica Seale, Majority Digital
26 | Director; Andrew Shult, Majority Deputy Digital Director;
27 | Sarah Vance, Majority Assistant Clerk; Rebecca Watkins,
28 | Majority Communications Director; Tamara Alexander, Minority
29 | Counsel; Portia Brown, Minority Counsel; Aryele Bradford,
30 | Minority Press Secretary; Susanne Sachsman Grooms, Minority
31 | Deputy Staff Director/Chief Counsel; Elisa LaNier, Minority
32 | Director of Operations; Donald Sherman, Minority Chief
33 | Oversight Counsel; and Katie Teleky, Minority Staff
34 | Assistant.

35 Mr. JORDAN. The committee will come to order.

36 I want to thank our witness for being here again.

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

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

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

46 As we continue to explore a number of questions, the
47 time line of the crash, the inconsistency of the probability
48 of lost emails by multiple people within Government, we
49 appreciate that you were not in Government; you were not
50 doing this at the time. But as you can imagine, not just the
51 Internet, not just Fox, but America is beginning to question
52 how convenient so many emails of so many people at the heart
53 of targeting conservative groups for their views, for their
54 politics, and for the fact that Citizens United was objected
55 to by the President, how many of them had loss of data and
56 how much is not available to the American people.

57 A cover-up is normally described as something that
58 happens during an investigation around here. In other words,
59 things go missing during the investigation. But when it

60 | comes to the loss of data, it is clear that data began
61 | disappearing and not being able to be yet found at a time
62 | when Congress as just beginning to look at wrongdoing that is
63 | now confirmed that began with the President objecting to
64 | Citizens United, that began with Democratic members of the
65 | House and Senate writing letters asking for investigation of
66 | people that were politically the opposite of their party, not
67 | asking for investigations about all people who may be
68 | involved in political activities in addition to their
69 | nonprofit work.

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

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

82 | Today we will explore not only the time line, but when
83 | this committee received that time line. It was your watch to
84 | give us accurately and keep us up to date on developments

85 | related to Lois Lerner and other parts of our investigation.
86 | It is my view that you could have done better. You will and
87 | have paid a price in public opinion for not being as
88 | forward-leaning and proactive as you could have been.

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

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

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

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

110 [Prepared statement of Mr. Issa follows:]

111 ***** COMMITTEE INSERT *****

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

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

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

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

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

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

151 | Rather than waiting a few weeks, Chairman Issa
152 | disregarded the IG's request and demanded that the IRS make
153 | its employees available to him now. Commissioner Koskinen
154 | explained that the inspector general did not want IRS
155 | employees subjected to multiple interviews, but Chairman Issa
156 | just began issuing more unilateral subpoenas. He forced the
157 | IRS employees to appear before the Oversight Committee and he
158 | excluded Chairman Camp's staff from participating. When the
159 | commissioner testified here before, Republicans accused him
160 | of obstruction, claiming that he was hiding witnesses from
161 | the committee. When he again explained that the inspector

162 | general asked him not to subject IRS employees to multiple
163 | interviews, Chairman Issa said he was going to follow up with
164 | the inspector general directly.

165 | Well, that apparently didn't happen. Yesterday I asked
166 | my staff to contact the inspector general's office to find
167 | out exactly what was going on. They spoke with the Deputy
168 | Inspector General for Investigations, and I can report what
169 | he told us. The Deputy IG for Investigations confirmed that
170 | his office is now conducting the investigation that Chairman
171 | Camp requested. He confirmed exactly what Commissioner
172 | Koskinen told us, which is that the inspector general prefers
173 | that IRS employees not be subjected to multiple interviews in
174 | order to avoid "tainting their testimony."

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

182 | Contrary to these requests, Chairman Issa has been
183 | forcing IRS employees to come before our committee for
184 | transcribed interviews, and since he is excluding Chairman
185 | Camp's staff, IRS employees are also being forced to appear
186 | before Ways and Means. Invariably, after each of these

187 interviews, Chairman Issa and Chairman Camp issue dueling
188 press releases with tidbits of information or cherry-picked
189 transcript excerpts in their effort to compete for more
190 headlines, no matter how unsubstantiated their claims are.

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

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

204 With that, I will yield back.

205 [Prepared statement of Mr. Cummings follows:]

206 ***** COMMITTEE INSERT *****

207 Mr. JORDAN. I thank the gentleman.

208 Mr. ISSA. Mr. Chairman?

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

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

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

226 So I certainly would say that while questioning the
227 intent in some argument about Republicans not getting along,
228 the ranking member managed to go beyond the ordinary opening
229 statement and claiming the intent. In fact, the ranking
230 member, in June of 2013, went on national television claiming
231 the investigation was over. This investigation is not over.

232 | I would ask that such items, including unseemly, be taken
233 | down.

234 | Mr. JORDAN. Without objection?

235 | Mr. CARTWRIGHT. I object.

236 | Mr. JORDAN. Okay.

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

243 | And I would make one last request. I ask unanimous
244 | consent that the staff be able to place t he time line into
245 | the record so that the ranking member's clearly erroneous
246 | claim that our request for the first hearing came after the
247 | events, when in fact the time line will show that the
248 | subpoena had been served prior to the announcement from Ways
249 | and Means. And as the ranking member would know if he had
250 | ever chaired this committee, the fact is it takes a long
251 | period of time to prepare a subpoena, to write a subpoena, to
252 | go to the clerk and get it approved, and then to serve it.
253 | So I would hope that the ranking member, once he sees that in
254 | the record, would recognize that in fact he has been clearly
255 | erroneous in his claims.

256 | And I yield back.

257 Mr. JORDAN. I thank the gentleman for yielding.

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

261 Mr. CONNOLLY. Mr. Chairman?

262 Mr. JORDAN. Would that be satisfactory?

263 Mr. CONNOLLY. It certainly is satisfactory.

264 Mr. JORDAN. I thank the gentleman.

265 [The information follows:]

266 ***** COMMITTEE INSERT *****

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

269 Mr. JORDAN. Do you really have to?

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

275 Mr. JORDAN. Well said.

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

281 I thank the chair.

282 Mr. JORDAN. Thank the gentleman for his comments.

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

290 First, we were promised that the IRS would produce all
291 of Lois Lerner's emails. Then we learned that some of Ms.

292 Lerner's emails had been destroyed and there was absolutely
293 no way he could produce all of Ms. Lerner's emails to
294 Congress.

295 Second, we were told the IRS had confirmed that all
296 backup tapes with Lois Lerner's emails had been destroyed.
297 Then we learned last week from IRS attorney Thomas Cain that
298 a backup tape may in fact exist.

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

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

308 Fourth, we were told that the IRS found out in April
309 2014 that Ms. Lerner's emails were lost. But then we learned
310 from Mr. Cain that the IRS knew on February 4th, 2014 about
311 Ms. Lerner's hard drive crash and that it found out just days
312 later that the hard drive had been recycled and its contents
313 were unrecoverable.

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

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

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

337 Let me just reiterate that. James Cole, Deputy Attorney
338 General of the United States Department of Justice, said last
339 week, in that same chair, to this same committee, that they
340 are investigating why the Internal Revenue Service delayed
341 months in telling the Congress, the American people, and,

342 | most importantly, the FBI and the Justice Department about
343 | the loss of Lois Lerner's emails. Rather than the IRS coming
344 | to Congress and informing us what it knew when it knew it,
345 | the IRS waited four months. The IRS only came forward to
346 | finally acknowledge the missing emails when it had no choice,
347 | and it disclosed the news the only way it knows how, by
348 | burying the information on page 7 of enclosure 3 in a Friday
349 | afternoon letter to the Senate. Information obtained by the
350 | committee in the last few days provides more questions than
351 | answers about the missing emails.

352 | But remember this isn't information the IRS is offering
353 | up willingly. It has taken almost a month for the IRS to
354 | finally start coming clean and it has taken subpoenas to get
355 | people to talk. Mr. Cain, we tried for weeks to get Mr. Cain
356 | to come talk. We finally had to subpoena him. The IRS
357 | wouldn't provide him. We had to subpoena him to get him to
358 | come for the deposition last Thursday.

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

367 mission of the oversight committee and, again, that is why we
368 meet today.

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

372 [Prepared statement of Mr. Jordan follows:]

373 ***** COMMITTEE INSERT *****

374 Mr. CARTWRIGHT. Thank you, Mr. Chairman.

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

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

395 And we heard about requests for a time line, and we
396 ought to look at that time line because it was on June 16,
397 shortly after Chairman Camp, of Ways and Means, announced
398 that he would be holding a hearing with you, Commissioner

399 | Koskinen, on June 24th, that Chairman Issa of this committee
400 | issued a unilateral subpoena compelling the commissioner to
401 | testify before this committee on June 23rd. In response,
402 | Chairman Camp moved his hearing up to June 20th. So it is
403 | something like a children's fairy tale that we are looking at
404 | here.

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

411 | I also want to address Republican claims that the
412 | alleged targeting of conservative groups is this
413 | Government-wide conspiracy initiated after the Citizens
414 | United decision involving the President, the IRS, a
415 | conspiracy including the Department of Justice and other
416 | Federal agencies. This committee has obtained no evidence
417 | linking these accusations to what we all know now were
418 | inappropriate criteria used by IRS employees in Cincinnati.
419 | Some of my colleagues on the other side of the dais have
420 | chosen to overlook the funneling of dark money into the
421 | political system of the United States. Republicans have
422 | demanded accountability from the IRS, but have not demanded
423 | the same from corporations who influence our national

424 | elections.

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

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

444 | As I said before in previous hearings, this is about
445 | groups doing everything they can do to hide where they get
446 | their money, obscure their true intentions, and have undue
447 | influence on the political system tax-free. Anonymous money
448 | in politics is something we don't need in this Country,

449 something that disrupts the democratic process, and something
450 that has to be changed.

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

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

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

460 [Prepared statement of Mr. Cartwright follows:]

461 ***** COMMITTEE INSERT *****

462 Mr. JORDAN. I thank the gentleman.

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

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

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

472 [Witness responds in the affirmative.]

473 Mr. JORDAN. Let the record show the gentleman answered
474 in the affirmative.

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

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

480 Mr. KOSKINEN. Thank you. Chairman Jordan, Ranking
481 Member Cartwright, members of the subcommittee, thank you for
482 the opportunity to appear before you today. With your
483 permission, I will provide a brief introductory statement and
484 submit a copy of my complete testimony for the record.

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

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

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

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

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

523 To date, we have now produced more than 960,000 pages of
524 unredacted documents to the tax writing committees and more
525 than 700,000 pages of redacted documents to the House

526 Oversight and Government Reform Committee. In addition, at
527 the request of the Oversight Committee and other committees,
528 the IRS has been working on the identification and production
529 of Lois Lerner emails. As part of this document production,
530 the tax writing committees have received 67,000 emails that
531 we found involving Ms. Lerner. We are continuing to provide
532 redacted versions to the Oversight Committee, which to date
533 has received more than 54,000 emails from Lois Lerner. We
534 are working to provide these documents as quickly as we can.

535 In the course of collecting and producing Ms. Lerner's
536 emails, the IRS determined that her hard drive crashed in
537 2011. At that time, Ms. Lerner had asked IT professionals at
538 the IRS to restore her hard drive, but they were unable to do
539 so. Nonetheless, the IRS has or will produce 24,000 Lois
540 Lerner emails from the period between 2009 and 2011, largely
541 from the files of other individuals.

542 The IRS provided information about the hard drive crash
543 to all six investigating entities in a public report we
544 released in June. I would note that our June report, to the
545 extent that it focused on Ms. Lerner's hard drive crash, was
546 based in part on emails we had already provided to the
547 congressional committees, the inspector general, and the
548 Department of Justice. Some of those emails were produced as
549 long ago as last fall. Those emails were provided in the
550 normal course of production related to the search terms

551 | agreed upon previously. So all six investigators have had
552 | initial information about the hard drive crash since last
553 | fall. Also, additional emails about Ms. Lerner's hard drive
554 | crash were produced this spring to investigators, prior to
555 | the release of our June report.

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

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

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

575 | Since releasing our June report, we have continued to

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

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

586 [Prepared statement of Mr. Koskinen follows:]

587 ***** INSERT *****

588 Mr. JORDAN. I thank the gentleman.

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

591 Mr. DESANTIS. Thank you, Mr. Chairman.

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

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

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

605 Let me ask you this. The committee interviewed IRS
606 Deputy Associate Chief Counsel Thomas Cain, and he testified
607 that senior IRS officials, including Catherine Duvall, the
608 counselor to the commissioner, realized that Lois Lerner's
609 emails were missing, that there was a hard drive crash on
610 February 4th, 2014, and that by mid-February they realized
611 that the emails would not be recoverable off that hard drive.
612 Yet, you testified in front of this committee on March 26th,

613 | 2014, and after being asked numerous times whether you would
614 | produce all of Lois Lerner's emails consistent with the
615 | subpoena, you said you would.

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

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

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

636 | I was advised near the end of February that we were now
637 | reviewing all of our production capacity to make sure nothing

638 | had been done in the production capacity that would have
639 | explained or would have caused the loss of any emails. That
640 | process went forward, but at the same time I would remind
641 | everybody we were focused primarily on the request from this
642 | committee and the Finance Committee and the Ways and Means
643 | Committee to complete the production of all documents we had
644 | related to the determination process, and we did that and, in
645 | mid-March, provided to the tax writing committees a letter
646 | saying we had now produced all the documents we had regarding
647 | the determination process.

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

658 | Let me ask you this about these backup tapes. The IRS
659 | has told Congress that backup tapes from 2011 no longer
660 | exist. Yet, Mr. Cain testified in terms of the interview with
661 | this committee that backup tapes may in fact exist. So can
662 | you now, under oath, definitively state that the relevant

663 | backup tapes that this committee has sought do not in fact
664 | exist?

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

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

677 | Mr. KOSKINEN. What Mr. Cain reported was information
678 | that the inspector general has started to review tapes to see
679 | if there is additional information on them. Mr. Cain said,
680 | therefore, there may be backup tapes that were recycled, but
681 | may be recoverable. We have no information, I have no
682 | information what the inspector general is doing with those
683 | tapes. In fact, the inspector general advised us that he was
684 | reviewing those tapes and asked us not to do any further
685 | investigation, not to have any further conversations; and I
686 | understand he asked this committee. as well, not to make the
687 | existence of their review of those tapes public. But at this

688 | point I have no information as to whether there is anything
689 | usable on those tapes.

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

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

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

711 | Mr. KOSKINEN. Right. And in May I asked our people,
712 | once we knew that there was an issue with Ms. Lerner's crash,

713 | I asked for what the industry standards were for hard drive
714 | crashes, was advised that 3 to 5 percent of hard drives
715 | crash. I asked then for a review of the question you are
716 | asking, of custodians, how many of those 83 had hard drive
717 | crashes.

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

727 | Mr. DESANTIS. But--

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

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

735 | Mr. KOSKINEN. Where we stand on the number is thereafter
736 | the IG was requested by Congress to do an investigation and
737 | the IG asked us not to do any further interviews or

738 | investigations, so we have not pursued further what the
739 | additional implications are, how many hard drive crashes of
740 | custodians or what the implications are because the inspector
741 | general is investigating that very issue. So I cannot give
742 | you a definitive answer at this point as to either how many
743 | custodians had crashes or, if they did, how many of them lost
744 | emails, because I would emphasize not every crash leads to a
745 | loss of emails.

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

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

750 | Mr. JORDAN. I thank the gentleman.

751 | The ranking member of the full committee is recognized.

752 | Mr. CUMMINGS. Commissioner, I want to thank you for
753 | testifying before the committee today and for the third time
754 | in a month. When you testified on June 23rd, 2014, and July
755 | 9th, 2014, you told us that the IG was investigating
756 | circumstances of Ms. Lerner's computer crash. On June 11th,
757 | 2014, you wrote to this committee reiterating that the IG is
758 | conducting an investigation into the loss of Ms. Lerner's
759 | emails and that, as you previously testified, you would honor
760 | the Inspector General George's request to prioritize his
761 | investigation.

762 | Has the inspector general expressed concern to you about

763 | the release of non-public information about an ongoing IG
764 | investigation?

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

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

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

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

788 | Is the IG's investigation into this matter still active and
789 | ongoing, to your knowledge?

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

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

794 | Mr. CUMMINGS. Yes.

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

798 | Mr. CUMMINGS. Yes.

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

807 | The gentleman is recognized.

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

811 | Mr. JORDAN. I am open to that.

812 | Mr. CUMMINGS. Because we can go back and forth on this,

813 | and I want to be very clear as to what he said. So when you
814 | are talking about he say, she say, it is better that we have
815 | him here and we will do that, if you so choose. But I would
816 | be happy to.

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

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

821 | Mr. CUMMINGS. So in spite of the inspector general's
822 | request, on July 21st Chairman Issa issued a press release
823 | stating that based on the interview of IRS Deputy Associate
824 | General Counsel Thomas Cain, 'new developments' have
825 | created uncertainty regarding the existence of backup tapes.

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

828 | Mr. KOSKINEN. No.

829 | Mr. CUMMINGS. And why not?

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

837 | Mr. CUMMINGS. Of course, Chairman Issa's press release

838 released statements from Mr. Cain and other witnesses that
839 undermine a partisan narrative. Mr. Cain told the committee
840 that he was aware of a "potential issue" regarding the
841 backup tapes, but he did not know any additional details.
842 When asked whether he had seen "any evidence that any IRS
843 employee intentionally destroyed documents or emails to avoid
844 their disclosure," Mr. Cain said, "I have not seen anything
845 to that effect."

846 Have you seen any evidence of obstruction by IRS
847 employees?

848 Mr. KOSKINEN. I have not.

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

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

860 Mr. CUMMINGS. Now, Mr. Oursler also told us that earlier
861 this month he was made aware of an issue with a backup tape,
862 but that he did not know if the backup tape was from 2011 or

863 | whether it was mislabeled. He said that even if the
864 | unrecycled backup tapes exist from 2011, the IRS does not
865 | know whether they contain emails from Ms. Lerner not
866 | previously produced to the committee.

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

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

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

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

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

886 | Mr. KOSKINEN. Normally, if things had proceeded as they
887 | might do, when I asked in May for the answers to this

888 | question, that is, how many custodians had hard drive crashes
889 | in light of the fact the industry says they crash regularly,
890 | I had asked for a review of how many had crashed and what the
891 | implications were. We had not completed that review when we
892 | provided our June report, and basically we had that morning,
893 | the following Monday, our IT people had been advised, I had
894 | not been advised, that we knew there were six or seven
895 | custodians that had had hard drive crashes. That information
896 | was actually provided to the Ways and Means Committee. We
897 | have not been able to pursue whether there are 6, 12, or 15
898 | because, once the IG started, we agreed that we would not
899 | pursue any of those issues until they have completed their
900 | investigation.

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

906 | Mr. KOSKINEN. Correct.

907 | Mr. CUMMINGS. Why is that?

908 | Mr. KOSKINEN. When we, in April, determined that in fact
909 | there had been a hard drive crash and some emails may have
910 | been lost, our next step was to in fact investigate how many
911 | emails did we actually have and could we find, and our plan
912 | and proposal was that we would pull all of that information

913 together, including information about custodians, and make a
914 public presentation to the committees, including a
915 description of why it takes us so long in our archaic system
916 to actually respond to requests for documents.

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

931 So our plan was when we pulled it all together, we would
932 be able to explain what our process was, the difficulties,
933 what we had learned about Lois Lerner's emails, what we had
934 learned about others, and what we had been able to determine.
935 As I noted, we were able to recover 24,000 Lois Lerner
936 emails. We thought all of that was important information for
937 people to have rather than simply saying, well, there is a

938 | problem with her computer and we are now investigating how
939 | many emails there were, which would have triggered hearings
940 | six weeks earlier, but we would not have known nearly as much
941 | as we now know.

942 | But we don't know everything we would like to know
943 | because we have in fact stopped asking people about it while
944 | the IG is doing his investigation, which we full support. I
945 | have confidence that the IG is independent of us, he was
946 | appointed by a different administration. He has 15 people
947 | working on it, according to the filings they made last
948 | Friday, and we have told him and I have told him personally
949 | whatever he needs, documents, whatever people he wants to
950 | find, he can have access to and we will stay out of the way.
951 | So we have gone out of our way not to talk to anyone who
952 | potentially he might want to interview about what happened
953 | three years ago when the hard drive crashed.

954 | Mr. CUMMINGS. Thank you, Mr. Chairman.

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

958 | Mr. KOSKINEN. No. He told me that he did not want us
959 | interviewing any witnesses--

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

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

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

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

975 Mr. JORDAN. That is not my question.

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

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

984 Mr. KOSKINEN. No, what I--

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

986 Mr. KOSKINEN. Okay.

987 Mr. JORDAN. That is all I need.

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

990 Mr. MEADOWS. Thank you, Mr. Chairman.

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

997 Mr. KOSKINEN. No. No, what I said was the testimony I
998 have given in the past was accurate as of the time with what
999 I knew. I testified as to what I knew. Right now the
1000 question is do I know anything more about tapes, backup
1001 tapes, and the answer is I don't know any more other than the
1002 IG is investigating whether there are backup tapes and
1003 whether in fact they are recoverable.

1004 Mr. MEADOWS. So if you find, during the course of your
1005 normal business, that what you have told Congress is
1006 incorrect, you will come immediately to us and let us know,
1007 is that correct?

1008 Mr. KOSKINEN. I am happy to correct. In fact, the
1009 chairman, with regard to--

1010 Mr. MEADOWS. So within 24 hours of you finding that you
1011 have given us incorrect testimony, you will come and let us
1012 know?

1013 Mr. KOSKINEN. Yes, sir. If I know it is incorrect, and,
1014 in fact, if the committee has any questions, Chairman Issa
1015 was very thoughtful and said, when Lois Lerner's lawyer
1016 talked about what she did with records, he sent me a letter
1017 and said here is what she said, here is what you said, take a
1018 look at it and correct it, and I appreciated that.

1019 Mr. MEADOWS. Well, we appreciate the fact that you will
1020 come back to us, because I thought you were saying you were
1021 going to wait until the IG gave you a report.

1022 Mr. KOSKINEN. No, no. I said I wouldn't know until the
1023 IG investigation is complete what the answer is in terms of
1024 how many custodians had--

1025 Mr. MEADOWS. But you won't know what they found until
1026 they come back, but you will know what you--so are you saying
1027 that you are not talking to Mr. Cain or anybody?

1028 Mr. KOSKINEN. I am not--

1029 Mr. MEADOWS. So you are not talking to anybody in the
1030 IRS about any of this?

1031 Mr. KOSKINEN. I am not talking to any potential
1032 witnesses for the inspector general about what happened three
1033 years ago in the investigation--

1034 Mr. MEADOWS. All right. So when you read the reports
1035 about Mr. Cain, did you talk to him and say, hey, this
1036 doesn't jive with what I know?

1037 Mr. KOSKINEN. No, because Mr. Cain is someone that I

1038 | assume the IG is going to be talking to in terms of what did
1039 | he know and when, and what do we know about--

1040 | Mr. MEADOWS. So did you talk to somebody who talked to
1041 | him?

1042 | Mr. KOSKINEN. No. All I did was I read the release that
1043 | this committee put out.

1044 | Mr. MEADOWS. All right. So did you read the release of
1045 | the Ways and Means press release that talked about a
1046 | scratched hard drive?

1047 | Mr. KOSKINEN. I saw that this morning. It was put out
1048 | last night, I understand.

1049 | Mr. MEADOWS. Does that concern you, that it was
1050 | scratched, and not crashed? Would that concern you? It
1051 | concerns me. Does it concern you, if that is accurate?

1052 | Mr. KOSKINEN. I don't know--if it is accurate. As I
1053 | say, I haven't talked. I don't know the gentleman, I don't
1054 | know what he said. All I know is--

1055 | Mr. MEADOWS. But if it is accurate, would that concern
1056 | you?

1057 | Mr. KOSKINEN. I understand--

1058 | Mr. MEADOWS. That it was scratched. Let me tell you why
1059 | it concerns me.

1060 | Mr. KOSKINEN. Okay, good.

1061 | Mr. MEADOWS. And this is an HP laptop. To get to the
1062 | hard drive, it is no easy task. You have multiple screws

1063 | that have to be taken to get to it. Then once you get to
1064 | that, you actually have a hard drive inside that has seven
1065 | more screws that have to be taken off to get to the hard
1066 | drive in order for it to be scratched. Would that concern
1067 | you that if it were indeed scratched, that there may be some
1068 | other motive?

1069 | Mr. KOSKINEN. It would be a piece of information that I
1070 | assume--

1071 | Mr. MEADOWS. Would it concern you, yes or no?

1072 | Mr. KOSKINEN. I wouldn't know whether to be concerned or
1073 | not.

1074 | Mr. MEADOWS. Okay.

1075 | Mr. KOSKINEN. I don't know anything about whether--as I
1076 | understand from the press release--

1077 | Mr. MEADOWS. Well, it concerns me, and I am going to ask
1078 | my staff to go and see how long it would actually take to get
1079 | to that hard drive to make--if indeed it were scratched.

1080 | Mr. KOSKINEN. I know. But I assume there are a lot of
1081 | ways hard drives get scratched.

1082 | Mr. MEADOWS. I can assume that too.

1083 | Mr. KOSKINEN. I know nothing about that. I am sure the
1084 | IG is going to look into that and I am sure he has already
1085 | talked to that witness, or would like to have talked to him
1086 | before--

1087 | Mr. MEADOWS. Well, I hope so. So let me go back to the

1088 numbers. I think earlier you just said you had 2,000 hard
1089 drive crashes this year?

1090 Mr. KOSKINEN. Yes.

1091 Mr. MEADOWS. Is that correct? All right, so let me ask
1092 you about numbers. And you know that I am a numbers guy,
1093 because I just did the numbers real quickly. If you look at
1094 your entire body of some 84,000 to 90,000 IRS employees,
1095 depending on which year, but let's take that, that is a 2.2
1096 percent failure rate.

1097 Mr. KOSKINEN. Correct.

1098 Mr. MEADOWS. All right. In the people that truly are
1099 involved in this, in that sphere of 80 people, if indeed we
1100 had 16 to 18 hard drive crashes, why would the hard drive
1101 crash of that group of people be 10 times greater than what
1102 you have throughout the agency? Can you explain? What would
1103 be the probability of that happening?

1104 Mr. KOSKINEN. First of all, I have no information as to
1105 know whether that is the actual number or not.

1106 Mr. MEADOWS. All right. Well, let's take the number
1107 that you do know, seven, that you testified.

1108 Mr. KOSKINEN. Right.

1109 Mr. MEADOWS. All right? That still would be four times
1110 greater than your overall average. Can you explain that?

1111 Mr. KOSKINEN. I don't know what the details were. I do
1112 know, when I asked for the industry statistics, once you get

1113 | beyond the warranty period, the failure rate goes to 10 to 15
1114 | percent.

1115 | Mr. MEADOWS. But Lois Lerner's laptop was a new laptop,
1116 | it was not an old one. And, actually, the probability of her
1117 | hard drive failing at that time was at the lowest, according
1118 | to industry standards, was at the lowest possible time. Does
1119 | that surprise you?

1120 | Mr. KOSKINEN. No.

1121 | Mr. MEADOWS. All right. But it does surprise you that
1122 | her hard drive failed?

1123 | Mr. KOSKINEN. No. I tell you, my understanding about it
1124 | is, from the industry, it is 2 to 5 percent, depending on the
1125 | computers, are regularly--

1126 | Mr. MEADOWS. So out of this circle, if you have 10 times
1127 | that amount, would you say that is an anomaly?

1128 | Mr. KOSKINEN. If you had 10 times the amount, that would
1129 | be an anomaly. I don't know whether we--

1130 | Mr. MEADOWS. Well, I am giving you the numbers, so that
1131 | would be an anomaly.

1132 | Mr. KOSKINEN. If you stipulate you have 10 times as many
1133 | as the industry average, that would be an anomaly.

1134 | Mr. MEADOWS. All right, thank you.

1135 | I yield back.

1136 | Mr. JORDAN. The gentleman from Pennsylvania, Mr.
1137 | Cartwright.

1138 Mr. CARTWRIGHT. Thank you, Mr. Chairman.

1139 Mr. Koskinen, the very first question you got in your
1140 testimony today was something to the effect Mr. DeSantis, my
1141 colleague, put the question to you whether you were aware you
1142 were under investigation by the Department of Justice. You
1143 know, this is a very public hearing. This is a very, very
1144 public. We invite members of the press to come to these
1145 hearings, and these hearings are televised, and I think it is
1146 important that we don't lead the public down the wrong path
1147 on what the truth is here.

1148 Mr. Koskinen, have you received a target letter from the
1149 Department of Justice to say that you are under
1150 investigation?

1151 Mr. KOSKINEN. No.

1152 Mr. CARTWRIGHT. Has anyone, anyone told you verbally
1153 that you are under investigation by the Department of
1154 Justice?

1155 Mr. KOSKINEN. No.

1156 Mr. CARTWRIGHT. Has anyone, anyone said to you verbally
1157 anything that would hint to you that you are under
1158 investigation by the Department of Justice?

1159 Mr. KOSKINEN. No.

1160 Mr. CARTWRIGHT. Has anyone, anyone said anything to you
1161 to hint to you that you might be the target of a Justice
1162 Department investigation sometime in the future?

1163 Mr. KOSKINEN. No.

1164 Mr. CARTWRIGHT. Thank you for that.

1165 Another thing that you have been trying to get out, and
1166 you are continually interrupted in your answers, were
1167 comments about industry statistics about computer failures.
1168 I want to give you a chance now to make full sentences.

1169 Mr. KOSKINEN. In May, when I was advised we had this
1170 problem and we were proceeding to find how many Lois Lerner
1171 emails we could have, I asked, A, what are the industry
1172 standards for hard drive crashes, and I was told it is
1173 somewhere between 2 to 3, sometimes 5 percent within the
1174 warranty period. If you have older computers, which a lot of
1175 our employees have, it goes as high as 10 to 15 percent. I
1176 then asked that we do a review of all of the 82 other
1177 custodians to determine what, if any, of them had hard drive
1178 crashes and, if they had them, whether it caused any loss of
1179 emails. We have, as I said, over 2,000 crashes already this
1180 year, but all of those didn't result in loss of emails. In
1181 fact, you can lose emails without your hard drive crashing.

1182 So at the time we were starting down that road to
1183 complete our review of exactly what were the situations with
1184 regard to the production of documents. As I say, that has
1185 stopped from coming to closure because the IG himself is
1186 actually looking at all of that.

1187 Mr. CARTWRIGHT. Thank you.

1188 Now, Mr. Koskinen, on June 20th you testified before the
1189 Ways and Means Committee that even after discovering Ms.
1190 Lerner's 2011 hard drive crash you said, "The IRS took
1191 multiple steps over the past months to assess the situation
1192 and produce as much email as possible for which Ms. Lerner
1193 was an author or recipient. During this time and into May we
1194 were also identifying and reviewing Lerner emails to and from
1195 82 other custodians. By mid-May, as a result of these
1196 efforts, the IRS had identified the 24,000 Lerner emails
1197 between January 1 and April 2011."

1198 Commissioner Koskinen, why did the IRS take these steps
1199 to recover Ms. Lerner's emails?

1200 Mr. KOSKINEN. It was an attempt on our part to produce
1201 as many Lois Lerner emails, either from her accounts or other
1202 accounts, as possible in response to the request of this
1203 committee and the Ways and Means Committee to produce all of
1204 Lois Lerner's emails. So we were trying to make sure that
1205 there were no emails anywhere in the system to or from Lois
1206 Lerner that we had not located and had not provided.

1207 Mr. CARTWRIGHT. All right. So despite the hard drive
1208 crash, the IRS has still produced 24,000-plus additional
1209 emails from Ms. Lerner, is that right?

1210 Mr. KOSKINEN. That is correct.

1211 Mr. CARTWRIGHT. All right. Now, witnesses have told
1212 this committee that in February of 2014 IRS employees

1213 discovered that there were fewer of Lois Lerner's emails from
1214 January 2009 to April 2011 than there were for other periods,
1215 and upon this discovery IRS officials immediately took steps
1216 to determine the reasons for this discrepancy and whether
1217 they could locate additional emails from Ms. Lerner during
1218 that time period.

1219 The question there is why didn't you inform us about the
1220 discrepancy in Ms. Lerner's emails when you testified before
1221 this committee in March.

1222 Mr. KOSKINEN. Because in March I did not know and we
1223 didn't know whether we had lost emails or not. One of the
1224 first things that was investigated in February and into March
1225 was to review all of our production processes to see if
1226 anything in the way we had reached into the system to produce
1227 the emails, put them into our search method had caused us to
1228 in fact misplace those emails, because it wasn't clear
1229 initially as to whether, whatever her problems with her
1230 computer were, had resulted in any loss of emails.

1231 So the first process while we were producing all the
1232 other documents regarding the determination process was to
1233 make sure that we hadn't ourselves done anything in the
1234 process to cause emails in that period to be lost. And we
1235 determined ultimately into April and May that nothing that we
1236 had done in the search process had caused the emails to be
1237 not producible.

1238 Mr. CARTWRIGHT. All right. I thank you, Mr.

1239 Commissioner.

1240 I yield back.

1241 Mr. JORDAN. I thank the gentleman.

1242 Now recognize the gentleman from Pennsylvania, Mr.

1243 Meehan.

1244 Mr. MEEHAN. I thank the gentleman.

1245 Commissioner, thank you for taking the time to come up
1246 and be with us again today. I know you came here before and
1247 I know we are going through a lot of detailed testimony, but
1248 the baseline is accurate, that to the best of your knowledge,
1249 when you testified before that the emails were not available
1250 from Ms. Lerner during the period that they had been, to the
1251 best of your knowledge, that they had been destroyed because
1252 they had been recycled on the tape. And I am not questioning
1253 that at this particular moment.

1254 But I think what has people interested is Mr. Cain came
1255 up here not so long ago and he is a pretty sophisticated guy.
1256 His job is to produce documents for investigations and
1257 litigation and other kinds of thing and, therefore, he not
1258 only has a very detailed understanding of the process, but a
1259 deep appreciation of the implications to do or failure to do,
1260 including exposure for failure to do things. He also has a
1261 very sophisticated understanding of how to answer questions
1262 with respect to this, appreciating that when he is under

1263 | oath, anything that he says would put him in a particular
1264 | position in which, if it is known to be wrong, it could
1265 | expose him to further scrutiny. Let's just put it that way.

1266 | So I am curious as to why he would come and testify
1267 | that, I don't know if there is a, and this is his words, I
1268 | don't know if there is a backup tape with information on
1269 | there or there isn't; that he was now unsure about whether
1270 | there were some backup tapes from the period of time that may
1271 | not have been erased. I am using his direct testimony.
1272 | There is an issue as to whether or not there is a--that all
1273 | of the backup recovery tapes were destroyed on the six-month
1274 | retention schedule. I don't know whether they are or they
1275 | aren't, but it is an issue that is being looked at.

1276 | What do we know about this issue and why would he have
1277 | made that statement?

1278 | Mr. KOSKINEN. What we know about that, or what I know
1279 | about that issue is I was advised by the inspector general
1280 | that they had taken tapes they had found, I don't know how
1281 | they found them, and they were reviewing those tapes to see
1282 | if they had been totally recycled or whether they were not
1283 | recycled and usable. I was advised about that because the
1284 | inspector general, again, wanted us not to do any--because he
1285 | knew, however they had found them, somebody knew that the IG
1286 | had them. He didn't want us to in fact do anything to
1287 | investigate further what those tapes were, where they were

1288 | found, who found them, what they did with them.

1289 | So our guy said that was fine, and at this point, I
1290 | haven't talked to Mr. Cain about this, but according to his
1291 | testimony, what he has said is what he knows is, because, as
1292 | you say, he has been involved in it, is that the inspector
1293 | general is looking at some tapes, I don't know how many and
1294 | which ones, to see whether in fact any of them turned out not
1295 | to be recyclable or any of them have information that is
1296 | recoverable. But at this point, as Mr. Cain's testimony
1297 | states, it is not clear whether they do or don't.

1298 | Mr. MEEHAN. Or whether in fact substantively there is
1299 | information, when he gave you that identification that they
1300 | are, as you said, it was believed that they had all been
1301 | produced, but now maybe some of them have been found.
1302 | Weren't you concerned about what procedure they used to
1303 | potentially come up with new tapes?

1304 | Mr. KOSKINEN. When the inspector general advised me of
1305 | that, I was interested as to why they were looking at tapes
1306 | that we had been advised had all been recycled, but I didn't
1307 | cross-examine the inspector general about it, I agreed with
1308 | him that they would do the investigation, we wouldn't do
1309 | anything to interfere with that; I wouldn't and none of our
1310 | people would talk to anybody about it. So I can't tell you
1311 | how they found them, what they are, and, as Mr. Cain said,
1312 | whether there is anything on them or not. At this point, we

1313 | are supporting the inspector general.

1314 | Mr. MEEHAN. Do you have any idea about what the issue is
1315 | that he referred to? Because that was the very specific
1316 | thing. There is an issue as to whether all of the backup
1317 | tapes had actually been recycled.

1318 | Mr. KOSKINEN. Yes. And the issue, as I just said, is
1319 | that he obviously is aware of what the inspector general
1320 | advised me, which is the inspector general has taken some
1321 | tapes, I don't know which ones, and is reviewing those to see
1322 | if they have been recycled, if there is information on them
1323 | that can be found or used. That is all I know and I assume
1324 | that is all he knows. But beyond that I haven't talked to
1325 | anybody about this, I haven't asked anybody about it because,
1326 | again, our position with the inspector general is he is doing
1327 | the investigation.

1328 | Mr. MEEHAN. Just one follow-up question. But why are
1329 | these not available from a third party vendor who, in the
1330 | event of a cyber attack, would protect us against the
1331 | destruction of all records which would put our Government in
1332 | a remarkably perilous situation, so we take steps to ensure
1333 | that essential documents are preserved by having them in
1334 | third-party data storage situations? Why were the documents
1335 | that are relevant to this period, particularly the documents
1336 | relevant to the 2009, 2011 area, why were they not backed up
1337 | and available today?

1338 Mr. KOSKINEN. That is a very good and important
1339 question. As I have testified earlier, there has been no
1340 loss of any information and no actions taken since this
1341 investigation started with regard to any information and
1342 production of documents. We have frozen and saved and backed
1343 up all emails from six months before the start of the
1344 investigation forward.

1345 What we are talking about is what happened three years
1346 ago, and three years ago the process was to use backup tapes
1347 for basically disaster recovery purposes and recycle them
1348 every six months. That was the protocol and the process that
1349 had gone on for some years and, in fact, it used to be they
1350 only kept them for one month, and it was increased to six
1351 months. But that was the process three years ago. Whatever
1352 emails were lost three years ago were not lost. They were
1353 lost then. Nothing has been lost, as far as I know, since
1354 this investigation started. We have gone out of our way to
1355 protect all of the data and all of the documents.

1356 Mr. MEEHAN. Thank you. I have other questions, but my
1357 time has expired. Thank you.

1358 You are an attorney, and you talked about these
1359 documents having been missed. But at the period of June
1360 29th, 2011, Lois Lerner is informed that some of the
1361 activities that she has been associated with may have been
1362 involved with discriminatory practices. Now, you are a Yale

1363 | lawyer, and you understand the situation in which there is a
1364 | potential for litigation and the requirements that when there
1365 | is a potential for litigation, that there is a requirement
1366 | consistent with the record-keeping responsibilities to
1367 | preserve the documents that may be relevant to that. All of
1368 | this occurred before the period of time that we are now
1369 | looking some years down the road.

1370 | So if you were informed that somebody was holding your
1371 | agency, or you in particular, as having potentially engaged
1372 | in discriminatory practices, would you preserve the documents
1373 | from that era?

1374 | Mr. KOSKINEN. We have, any time there is an
1375 | investigation, we have litigation document hold policies and
1376 | procedures. As I say, we have done our best to protect every
1377 | document for the last year and a half, almost two years now,
1378 | and anytime anyone raises a serious question about the
1379 | production of evidence, we go out of our way to protect it.
1380 | I don't know what the circumstances were three years ago.

1381 | Mr. MEEHAN. Well, this was knowledge that there were
1382 | discriminatory practices and she was informed that she was
1383 | central to the potential that there were complaints about
1384 | discriminatory practices on the part of the IRS. Would that
1385 | be the kind of a document that you would preserve in
1386 | anticipation of potential litigation?

1387 | Mr. KOSKINEN. Again, our protocol is if there is going

1388 | to be an investigation, if there is a serious issue raised,
1389 | we protect and preserve documents. As I have testified, one
1390 | of the things I had asked about early in this investigation
1391 | is we need to have an email system of record so that it would
1392 | be easier to protect official records, preserve them, and it
1393 | would be much easier to search them.

1394 | As I have said, we should not have to spend \$18 million
1395 | answering straightforward questions for documents, but that
1396 | is the system we have. The constraints on the budget have
1397 | been significant over three or four years. Going forward, we
1398 | are looking again at is there a way to get out of the late
1399 | 20th century and into just the early part of the 21st
1400 | century, because we should have an email system that is, as I
1401 | say, much more searchable and a system that is a system of
1402 | record.

1403 | Mr. MEEHAN. Thank you, Mr. Chairman.

1404 | Mr. JORDAN. Well, I thank the gentleman. I think his
1405 | question cuts right to the chase. She was on notice that
1406 | there was a problem and suddenly her computer crashes. But
1407 | it is worse than that. The IRS has identified 82 custodians
1408 | of information that are relevant to the investigation, and
1409 | now we know from Mr. Cain's testimony last week up to 20 may
1410 | have had computer hard drive crashes. So this is way beyond
1411 | the 3 to 5 percent that the commissioner keeps citing; this
1412 | is approaching 25 percent of the relevant people that they

1413 | have identified have had computer problems and may not be
1414 | able to get us the documents. I appreciate the gentleman's
1415 | questioning.

1416 | We recognize the gentlelady from Illinois for her time.

1417 | Ms. KELLY. Thank you, Mr. Chair.

1418 | Good morning, Commissioner.

1419 | Mr. KOSKINEN. Good morning.

1420 | Ms. KELLY. On July 7th, 2014, you testified that since
1421 | you were confirmed in December 2013, the IRS has ``probably
1422 | provided 300,000 to 400,000 documents to Congress.'' To
1423 | date, how many pages of documents has the IRS produced to
1424 | Congress in furtherance of the ongoing investigation about
1425 | the IRS's review of tax-exempt applications?

1426 | Mr. KOSKINEN. As I testified earlier, we have produced
1427 | 960,000 pages to the tax writing committees; redacted
1428 | documents we have produced 700,000 pages to this committee.

1429 | Ms. KELLY. I would imagine amassing a document
1430 | production of this magnitude takes an extraordinary amount of
1431 | time and money, as you talked about the money.

1432 | Mr. KOSKINEN. Yes. It has been a significant
1433 | distraction. We spent, as I noted, at last count, \$18
1434 | million responding. We continue to produce documents. We
1435 | hope shortly to be able to complete the production of
1436 | redacted Lois Lerner emails to this committee. But in an
1437 | area of declining resources, most of it is done in our Office

1438 | of Chief Counsel. There are 500 fewer people in the chief
1439 | counsel's office now than there were four years ago, so it
1440 | has been a significant strain on our chief counsel's office.

1441 | Ms. KELLY. And how many employees have been involved in
1442 | this process and how many hours have been logged in to comply
1443 | with all of these requests, to comply with Congress?

1444 | Mr. KOSKINEN. We have had over 250 employees at various
1445 | times involved, we have had over 100,000 or 120,000 hours of
1446 | efforts devoted to it, and we continue to work on the
1447 | production of those documents.

1448 | Ms. KELLY. I understand that current agency staff, many
1449 | of whom have other job responsibilities, have been tasked
1450 | with complying with congressional document requests. Is that
1451 | correct?

1452 | Mr. KOSKINEN. That is correct. Our IT department has
1453 | been asked for information. We have witnesses that are being
1454 | interviewed as we go. As I have noted, the entire issue
1455 | about the (c)(4) investigation and the (c)(4) operations
1456 | involved about 800 employees in the entire exempt
1457 | organization; only a portion of them work on this. That
1458 | means we have 89,000 other hardworking, dedicated IRS
1459 | employees working on matters of importance to the Government
1460 | and to taxpayers.

1461 | Ms. KELLY. The individuals working on this, they have
1462 | had to put their, I would imagine, current workload aside.

1463 Mr. KOSKINEN. Yes. And particularly lawyers is a
1464 problem for us because they have obligations to represent the
1465 agency in tax cases. They have an obligation to continue to
1466 work with Treasury on the development of rules and
1467 regulations and procedures, so it is a constraint.

1468 Ms. KELLY. Thomas Cain, the IRS Deputy Associate Chief
1469 Counsel for Administration and Procurement, was interviewed
1470 by committee staff on July 17, 2014. He said that the IRS
1471 currently exists "with an increased workload and a reduced
1472 staff from where we were several years ago. We have taken
1473 these people from their day jobs. They have no replacements
1474 for them because there are no replacements, so we have pulled
1475 together people from all parts of the organization to
1476 contribute to the project, again, on a full-time basis. But
1477 there is no one to backfill the work that continues to exist
1478 and pile up, and that is particularly critical when you are
1479 dealing with people in the field that ordinarily are trying
1480 cases that have deadlines. So that type of staffing
1481 commitment and resource commitment has been a drain on the
1482 entire Office of the Chief Counsel."

1483 Commissioner, would you agree with Mr. Cain's assessment
1484 of investigations impact on your agency's workload?

1485 Mr. KOSKINEN. I would.

1486 Ms. KELLY. Mr. Cain was also asked about the impact that
1487 Chairman Issa's subpoena for his testimony had on the morale

1488 | of his team. He said that his employees have been working
1489 | tirelessly to help the IRS comply with Congress who are
1490 | ``visibly impacted in a very negative way.'' Commissioner, I
1491 | would like to give you an opportunity to address any concerns
1492 | you may have about the impact the various congressional
1493 | investigations are having on your agency's morale and ability
1494 | to perform its core functions.

1495 | Mr. KOSKINEN. Well, as Mr. Cain apparently noted, we
1496 | have a large number of people who have day jobs who have been
1497 | in part or totally devoted to this who have been trying to be
1498 | responsive. When they then are subject to depositions and
1499 | recorded interviews, it sends, these are all career people, a
1500 | deleterious effect on morale because they thought they were
1501 | actually doing what they were asked to do, they were trying
1502 | to provide information. Most of them have never had a
1503 | deposition of theirs taken; they haven't spent six, eight
1504 | hours under cross-examination. So for everybody else who is
1505 | working on this project, they are now looking over their
1506 | shoulder, worrying about, well, am I going to get called up
1507 | next; and all they have been doing is producing documents.

1508 | Ms. KELLY. Okay, thank you. Thank you for your time.

1509 | Mr. CUMMINGS. Would the gentlelady yield?

1510 | Ms. KELLY. Yes, I will.

1511 | Mr. CUMMINGS. I was sitting here listening to some
1512 | questions that the chairman asked you, and I got convinced

1513 | that you are damned if you do and you are damned if you
1514 | don't, and this is what I am talking about. The IG,
1515 | appointed by a Republican, asked you not to engage in, I
1516 | don't want to take words out of your mouth, but what did the
1517 | IG ask you not to do?

1518 | Mr. KOSKINEN. Not to do any further investigations or
1519 | interviews or discussions with employees about anything
1520 | having to do with the hard drive crash, any other hard drive
1521 | crashes while they did their investigation.

1522 | Mr. CUMMINGS. And the chairman went on to say that he
1523 | didn't tell you that this committee was under the same
1524 | restrictions. That is accurate, right? He didn't tell you,
1525 | the IG didn't say to you, what I am telling you about your
1526 | restrictions does not have anything to do with the committee.
1527 | You understand my question?

1528 | Mr. KOSKINEN. Yes.

1529 | Mr. CUMMINGS. I am going back to what the chairman said
1530 | because I am trying to figure out how do you obey the law and
1531 | obey the wishes of the IG.

1532 | Mr. KOSKINEN. No, the question was, and I answered it,
1533 | was that the IG didn't tell you that he was telling the
1534 | committee, giving any instruction to the committee. The only
1535 | conversation I know he had with the committee was when he
1536 | told me about the existence of the backup tapes and asked us
1537 | not to do any further questioning about that. He said he had

1538 | provided that information to the investigative committees and
1539 | had asked them to treat it confidentially while his
1540 | investigation was going on.

1541 | Mr. CUMMINGS. So if something came up now where we
1542 | contacted you and said we want to meet with X person in the
1543 | IRS because we think, that is, this committee thinks that
1544 | that person has something relevant to our investigation, is
1545 | there any way you would treat that differently now than you
1546 | would have if you had never had the conversation with the IG?
1547 | You follow what I am saying?

1548 | Mr. KOSKINEN. No. Actually, we have tried to be
1549 | responsive as best we can to the wide range of requests we
1550 | have. We have six investigations and a number of requests
1551 | coming in, and requests for interviews. While we have tried
1552 | with more success in some areas than others to try to figure
1553 | out what the priorities are so that we can do it in the right
1554 | order, which is at my hearing in March we agreed the next
1555 | priority after we completed the determination issue was to
1556 | provide all the Lois Lerner emails we had, and we had a long
1557 | discussion back and forth and committed that would be our
1558 | next priority, and we are getting close to completing that.

1559 | Mr. CUMMINGS. I guess what I am getting at is that I
1560 | assume you wouldn't have a discussion, based upon what the IG
1561 | told you, you wouldn't have a discussion with an employee of
1562 | the IRS now because the IG told you not to do.

1563 Mr. KOSKINEN. That is correct. So when we have had
1564 witnesses coming to testify and give depositions here and
1565 Ways and Means, we have not talked to them beforehand, they
1566 have simply come up. Again, we don't feel that we want to do
1567 anything that would interfere with the IG's investigation or
1568 this committee's investigation, so people have come up and,
1569 to the extent they have been interviewed, they have done that
1570 on their own, without any conversations with me.

1571 Mr. CUMMINGS. Now, the gentlelady just asked you about
1572 morale at the IRS. The IRS is a kind of tough position
1573 because nobody seems to like the IRS.

1574 Mr. KOSKINEN. That is right.

1575 Mr. CUMMINGS. On the other hand, if you don't get
1576 revenue, you have a problem. We have a problem as a Nation.

1577 Mr. KOSKINEN. Right.

1578 Mr. CUMMINGS. But when you think about the reduction in
1579 employees, and based upon what Mr. Cain said that the
1580 gentlelady just read, it seems like something has to give,
1581 and I am just curious as to what is giving. You follow what
1582 I am saying? In other words, if you have, based upon what
1583 Mr. Cain said, you are pulling people from different areas to
1584 do certain things, you said that some of them have quit
1585 responsibilities and deadlines. The point is something has
1586 got to give, something.

1587 Mr. KOSKINEN. Right.

1588 Mr. CUMMINGS. Can you tell us what we are losing?

1589 Mr. KOSKINEN. Well, what has to give is obviously we
1590 have 10,000 fewer employees than we had four years ago; we
1591 have 500 fewer in the Office of Chief Counsel. So what
1592 happens is people either have to spend a lot longer working.
1593 At some point you run out of things you can do. We have done
1594 our best and taken people from around the agency,
1595 particularly around Chief Counsel, and put them on the
1596 production effort. To do that means that the work that they
1597 otherwise would have done doesn't get done because we have no
1598 capacity to add more people, to hire more people. We are
1599 only replacing one in every five people who leave the agency,
1600 so we continue to shrink rather than expand.

1601 So we haven't complained about it, we basically simply
1602 produce documents as fast as we can. We have explained that
1603 our biggest problem and obstacle is that we have this sort of
1604 arcane, archaic system where you have to search each hard
1605 drive to pull out data to actually get it into a search
1606 machine, which we would like to change going forward. But it
1607 does mean that, particularly in the Office of Chief Counsel,
1608 you put them under more stress, it makes it much more
1609 difficult with the other ongoing day jobs they have.

1610 My concern, more importantly, though, is over the course
1611 of certainly the three and a half years I am left, we will
1612 have other issues, and as we ask people to do productions and

1613 | just respond to congressional inquiries, if they become
1614 | subjects of depositions and cross-examinations, it is going
1615 | to be harder to get people to decide they want to leave their
1616 | day job and help us respond to Congress. So that is our only
1617 | broader concern. But, again, we think it is appropriate and
1618 | we are happy to cooperate with the committee as best we can.

1619 | Mr. CUMMINGS. Thank you.

1620 | Mr. JORDAN. I would just make one point. The witness
1621 | testified that they don't talk about this issue and prepare
1622 | and discuss and prep for it. That is just not accurate. We
1623 | interviewed Mr. Oursler yesterday, and he told us
1624 | specifically that when Steve Manning came and briefed the
1625 | Ways and Means Committee, there was prep sessions done for
1626 | Mr. Manning to get ready to come in front of Congress. So to
1627 | portray it as you are not talking about this issue as you
1628 | bring people before Congress is just not accurate.

1629 | And regarding the morale issue, if the IRS would have
1630 | been willing to let Tom Cain come and be interviewed, we
1631 | wouldn't have had to issue the subpoena. One thing that
1632 | impacts morale is when you get a subpoena. I get that. But
1633 | that is your cause. You caused the subpoena, Mr. Koskinen,
1634 | we didn't. We tried for weeks to get Mr. Cain to come and be
1635 | interviewed, and you guys said, no, can't do it, so we had to
1636 | issue the subpoena; and we got all kinds of information that
1637 | contradicts testimony you have given in front of Congress.

1638 So that is the issue. If we are talking about morale,
1639 you could have helped morale of the very employees you
1640 represent if you had let him be interviewed by us without a
1641 subpoena.

1642 Mr. KOSKINEN. We actually agree. Subpoenas sound
1643 different, but when they come for an interview, it is still
1644 under oath and it is still a transcribed interview and it
1645 looks just like a deposition, and that is, for people who
1646 have never done it before, of concern; they get nervous.

1647 Mr. JORDAN. And my point is by you making it so we had
1648 to subpoena, that only adds to the anxiety of the employee.
1649 So that is your creation on your employees, not ours.

1650 Mr. KOSKINEN. And that is why we were delighted to work
1651 out with you a schedule where there won't be subpoenas, but
1652 people will still come--

1653 Mr. JORDAN. We appreciate that. But it took a subpoena
1654 to get that rolling.

1655 The gentleman from South Carolina is--oh, I am sorry.

1656 Mr. CUMMINGS. I just asked you for a--because we have a
1657 tendency to ask questions and not let him answer. I want to
1658 understand this, and I think it is for the benefit of the
1659 entire committee. Why did Mr. Cain have to be subpoenaed?
1660 Why is that?

1661 Mr. JORDAN. Because we tried--

1662 Mr. CUMMINGS. No, no, no, I didn't ask you. I asked

1663 | him.

1664 | Mr. JORDAN. Oh. I didn't know who you were asking.

1665 | Mr. CUMMINGS. No, I am asking him.

1666 | Mr. JORDAN. That is fine. He can answer.

1667 | Mr. CUMMINGS. Thank you.

1668 | Mr. KOSKINEN. We were in the process of discussing

1669 | production of witnesses. We, as I say, were concerned about

1670 | interfering with the IG's investigation, and while we were

1671 | doing that, as the chairman said, then Mr. Cain got a

1672 | subpoena, which did, A, allow him to appear without any

1673 | further ado and did allow us to basically have a conversation

1674 | about setting up a production schedule of witnesses. So the

1675 | chairman is right, we were in the process of trying to do

1676 | this, but I would say we take some responsibility for the

1677 | fact that you had to do a subpoena. I would agree with that.

1678 | Mr. JORDAN. You take all of it. We asked. Mr. Cain

1679 | told during his deposition, because he had to be subpoenaed,

1680 | he told committee staff that he wasn't even notified by you,

1681 | Mr. Koskinen, or Ms. Duvall or whoever, that we had requested

1682 | an interview. He didn't even know that. All he knew was he

1683 | got the subpoena. So you didn't even tell him that we were

1684 | trying to interview him. That is what he told us in the

1685 | deposition last Thursday. So it is all on you. You are the

1686 | reason we had to subpoena the individual to get his

1687 | testimony.

1688 Mr. CUMMINGS. But he eventually came voluntarily, is
1689 that right?

1690 Mr. JORDAN. Yes. After he hired private counsel after
1691 we went his subpoena.

1692 Mr. CUMMINGS. All right.

1693 Mr. JORDAN. The gentleman from South Carolina is
1694 recognized.

1695 Mr. GOWDY. Thank you, Mr. Chairman.

1696 It is good to see you again, commissioner. I want to
1697 read a quote to you from June of 2014. I want you to tell me
1698 if you know who said it, okay? "We confirmed the backup
1699 tapes from 2011 no longer existed because they had been
1700 recycled pursuant to the IRS normal policy." Do you know
1701 who said that?

1702 Mr. KOSKINEN. Sounds like me.

1703 Mr. GOWDY. It is you. Can you tell us who we is in that
1704 quote?

1705 Mr. KOSKINEN. The we is the IRS. I tend to take
1706 responsibility for the agency and talk about it. I was
1707 advised, when the draft report was submitted to me, that
1708 people had talked to everyone in the agency to ensure that in
1709 the course of our several months of looking for backup
1710 tapes--

1711 Mr. GOWDY. So we is the royal we, just speaking on
1712 behalf of the entire IRS. How about the word confirmed?

1713 | What does the word confirmed mean to you, that you confirmed
1714 | the backup tapes no longer exist?

1715 | Mr. KOSKINEN. Confirmed. When I read that, I asked the
1716 | question, was told--

1717 | Mr. GOWDY. By whom?

1718 | Mr. KOSKINEN. I don't remember who; we had four or five
1719 | people who were working on the report. And was told, and I
1720 | gather Mr. Cain said in his testimony, that that was accurate
1721 | as of June 13th.

1722 | Mr. GOWDY. What does the word confirmed mean to you?

1723 | Mr. KOSKINEN. Confirmed means that somebody went back
1724 | and looked and made sure that in fact any backup tapes that
1725 | had existed had been recycled.

1726 | Mr. GOWDY. Are you still confirmed?

1727 | Mr. KOSKINEN. At this point, I have no basis for not
1728 | being confirmed. I do understand the IG advised me that they
1729 | were looking at tapes. I have not been advised as to whether
1730 | any of those tapes--

1731 | Mr. GOWDY. Well, confirmed is a pretty strong word,
1732 | commissioner. Are you still confirmed that no backup tapes
1733 | exist?

1734 | Mr. KOSKINEN. Well, at this point, I know the IG is
1735 | looking and he hasn't found anything, so as far as I know.

1736 | Mr. GOWDY. I am glad you mentioned the IG. And I find
1737 | this confounding, I find it vexing, that once the IG is

1738 | involved, nobody else can do anything. That is not supported
1739 | by the law. Can there be a criminal investigation while
1740 | there is an IG investigation?

1741 | Mr. KOSKINEN. There can be all sorts of investigations.
1742 | What I was talking about was the IG.

1743 | Mr. GOWDY. Right. And there could be a congressional
1744 | investigation while there is an ongoing IG investigation
1745 | also, correct?

1746 | Mr. KOSKINEN. Of course.

1747 | Mr. GOWDY. And there can be an IRS investigation. If
1748 | there were sexual harassment or discrimination in the
1749 | workplace, are you telling this committee that you would wait
1750 | until the IG investigated it before you would stop some
1751 | insidious practice?

1752 | Mr. KOSKINEN. We would take whatever action was
1753 | necessary.

1754 | Mr. GOWDY. Precisely. You would not wait until an IG
1755 | concluded his or her investigation.

1756 | Mr. KOSKINEN. Can I answer that question?

1757 | Mr. GOWDY. Sure.

1758 | Mr. KOSKINEN. Our policy, and it has been my
1759 | understanding when I chaired the Council of Inspectors
1760 | General across the Government, that if the IG starts an
1761 | investigation, the agency will not themselves run a competing
1762 | investigation to try to get there first. Basically, the IG

1763 | advises us what the investigations are. When they advise us
1764 | about those investigations, we allow them to proceed. If
1765 | there are--

1766 | Mr. GOWDY. Let me give you possibly an alternative view,
1767 | commissioner, which is that people cite ongoing IG
1768 | investigations when it suits them to not cooperate, and they
1769 | don't cite ongoing IG investigations when it doesn't suit
1770 | them.

1771 | Mr. KOSKINEN. That is not my policy.

1772 | Mr. GOWDY. Well, you can certainly understand how a
1773 | cynic might view it that way, right? Because there is
1774 | nothing about an ongoing IG investigation that would keep you
1775 | from doing your job. Just like there is nothing about an
1776 | ongoing IG investigation that keeps the Department of Justice
1777 | from a criminal investigation or a committee of Congress from
1778 | a congressional investigation. There is nothing talismanic
1779 | about an IG investigation.

1780 | Mr. KOSKINEN. In this particular case, as a general
1781 | matter, my policy has always been if the IG is doing an
1782 | investigation wherever I am, we won't interfere with that
1783 | investigation; we want it to be independent.

1784 | Mr. GOWDY. Words have consequences, Mr. Koskinen. Nobody
1785 | is asking you to interfere. You can have a dual
1786 | investigation without interfering, can't you?

1787 | Mr. KOSKINEN. I think it is very difficult.

1788 Mr. GOWDY. So you are saying that if there is an
1789 allegation of sexual harassment or racial discrimination
1790 within the IRS, you would not look into that until the IG had
1791 completed his or her investigation? Is that what you are
1792 telling me?

1793 Mr. KOSKINEN. I am not telling you that. I am telling
1794 you, as a general matter, that is not what the IG would be
1795 investigating. As a general matter, those claims would come
1796 to personnel; they would be immediately investigated by our
1797 legal department.

1798 Mr. GOWDY. Well, the IG doesn't have criminal
1799 jurisdiction; the IG doesn't have jurisdiction over
1800 legislative policy; the IG doesn't have jurisdiction over
1801 appropriations. All three of those are very important areas.
1802 So those should be ongoing even while an IG is doing his or
1803 her investigation, correct?

1804 Mr. KOSKINEN. Actually, the IG does do criminal
1805 investigations.

1806 Mr. GOWDY. No, sir, they refer to an entity that
1807 actually has the power to indict, which does not include the
1808 IG.

1809 Mr. KOSKINEN. They actually, my understanding, mark our
1810 criminal investigations--

1811 Mr. GOWDY. It might be the same people who gave you the
1812 understanding that you were confirmed that the tapes don't

1813 exist, so my advice is to be very careful who you take your
1814 advice from. And I am going to say this in conclusion, Mr.
1815 Koskinen. I really could not believe the colloquy that you
1816 had with one of our colleagues about the morale at the IRS.
1817 It takes a lot to stun me, but that stunned me. Here's a
1818 piece of advice I would give. If the folks like Lois Lerner
1819 and others would have spent more time working on the backlog,
1820 more time working on their caseload, and less time targeting
1821 groups and less time trying to overturn Supreme Court
1822 decisions they didn't agree with, maybe morale would be
1823 better and maybe their backlogs would be lessened.

1824 Mr. ISSA. Would the gentleman yield?

1825 Mr. GOWDY. I would be thrilled to.

1826 Mr. ISSA. Commissioner, I just want to maybe summarize
1827 what the gentleman was asking you with a question. Do you
1828 have full faith and trust that your IG is doing a thorough
1829 investigation at the same level as would be done if you were
1830 doing it as the commissioner?

1831 Mr. KOSKINEN. I do. I said earlier I have a lot of
1832 confidence in the inspector general. They have far more
1833 capacity in some of these areas; they have 15 people working
1834 on this. I am very comfortable and confident that they are
1835 doing a thorough job, and I have told them we will do
1836 whatever we can to--

1837 Mr. ISSA. So at least as to your own investigation, you

1838 consider the IG's investigation to be your investigation.

1839 Mr. KOSKINEN. I do not. We do not control the IG; he is
1840 very independent. He is doing an independent investigation
1841 of all of this. I am satisfied that when he gets done we
1842 will have an independent review and investigation of what
1843 went on.

1844 Mr. ISSA. Thank you.

1845 Mr. JORDAN. The gentleman from Virginia is--

1846 Mr. MEADOWS. Will the gentleman from Virginia yield for
1847 just one follow-up question?

1848 Mr. JORDAN. You will get time added if the gentleman--it
1849 is his call, but if you yield, I will give you some
1850 additional time. I have been very generous.

1851 Mr. CONNOLLY. I thank the chair. Of course I would be
1852 glad to yield.

1853 Mr. MEADOWS. I thank the gentleman from Virginia.

1854 I want to follow up on the gentleman from South
1855 Carolina's point, because what you are just saying is that
1856 your belief is that it is wrong for you to do an
1857 investigation at the same time as an IG is doing an
1858 investigation, is that correct?

1859 Mr. KOSKINEN. As a general matter, if we were doing an
1860 investigation, it would interfere with his investigation.

1861 Mr. MEADOWS. So what you are saying is that your
1862 predecessors who did exactly that in 2012 were wrong, because

1863 | when the IG started it, they did their own--under sworn
1864 | testimony, they did their own investigations. So what they
1865 | did was not right.

1866 | Mr. KOSKINEN. Everybody has their own policies. I don't
1867 | know what they did or didn't do.

1868 | Mr. MEADOWS. But in your opinion that would not be
1869 | right.

1870 | Mr. KOSKINEN. If the IG--

1871 | Mr. MEADOWS. I just want to show the hypocritical point
1872 | there that it is not consistent with what IRS has already
1873 | done.

1874 | Mr. KOSKINEN. My point only was it is consistent with
1875 | how I have behaved in the past and how I will behave in the
1876 | future. My view is that the IG is an important independent
1877 | source of investigations. Whenever the IG is doing an
1878 | investigation, I think it is important to cooperate with it
1879 | and not interfere with it.

1880 | Mr. MEADOWS. All right, I thank the gentleman from
1881 | Virginia for yielding.

1882 | Mr. JORDAN. Great question.

1883 | Mr. MEADOWS. I ask unanimous consent that all his time
1884 | be--

1885 | Mr. JORDAN. He has it.

1886 | Mr. CONNOLLY. I thank my friend from North Carolina and
1887 | I thank the chairman.

1888 | Welcome back, Mr. Koskinen.

1889 | Mr. KOSKINEN. Always a pleasure to be here.

1890 | Mr. CONNOLLY. I can tell. It must be a thrill and the
1891 | highlight of your week. And I guess we are going to do this
1892 | as long as we are in session.

1893 | By the way, just sort of a sidebar, I wish my friend
1894 | from South Carolina was still here, because his concern for
1895 | morale at the IRS is really touching. And, gosh, if we were
1896 | really that serious about it, maybe we wouldn't have slashed
1897 | eight hundred and something million dollars from your budget
1898 | in the last four years and recommended another \$350 million
1899 | this year. But that is a different matter.

1900 | Mr. KOSKINEN. Actually, you actually recommended another
1901 | billion on top of the \$350 million. So at this point we are
1902 | a billion 350 under water.

1903 | Mr. CONNOLLY. A billion 350. But the morale, we will
1904 | keep on flogging people until the morale is improved. That
1905 | seems to be the philosophy of some of my friends on the other
1906 | side of the aisle.

1907 | At any rate, I am glad we are talking about the IG,
1908 | because I am amazed that J. Russell George, the TIGTA, would
1909 | have thought it wise or prudent to completely omit from the
1910 | May 14th final audit report any mention of a critical, and I
1911 | think astonishing, analysis that was conducted by TIGTA's own
1912 | head of investigations the weeks leading up to the release of

1913 | the May 14th report.

1914 | Mr. Chairman, without objection, I would like to enter
1915 | into the record the conclusion of TIGTA's Deputy Inspector
1916 | for Investigations, Tim Camus, which was sent in a May 3rd,
1917 | 2013 email to TIGTA's Acting Principal Deputy IG Michael
1918 | Phillips, Acting Deputy Inspector General for Audit Michael
1919 | McKinney, Chief Counsel Michael McCarthy, Assistant IG for
1920 | Exempt Organizations Gregory Kurtz, and two TIGTA employees
1921 | whose names have been fully redacted. It is just a
1922 | one-pager.

1923 | Mr. JORDAN. Without objection.

1924 | Mr. CONNOLLY. I thank the chair.

1925 | [The information follows:]

1926 | ***** COMMITTEE INSERT *****

1927 Mr. CONNOLLY. This astounding email from TIGTA's chief
1928 investigator concluded that after obtaining and reviewing
1929 5500 IRS emails from identified staff members of the Exempt
1930 Organizations Division in Cincinnati, that in addition to
1931 there being no email directing staff to target Tea Party or
1932 other political organizations and no conspiracy or effort to
1933 hide emails about such a directive, according to Mr. Camus,
1934 ''Review of these emails revealed that there was a lot of
1935 discussion between the employees on how to process the Tea
1936 Party and other political applications. There was a
1937 be-on-the-lookout list specifically naming those groups.''

1938 However, the emails indicated the organizations needed
1939 to be pulled because the IRS employees were not sure how to
1940 process them, not because they wanted to stall or hinder the
1941 application. There was no indication that pulling these
1942 selected applications was politically motivated. The email
1943 traffic indicated there were unclear processing directions
1944 and the group wanted to make sure they had guidance in
1945 processing the applications, so they pulled them. ''This
1946 is,'' he says, ''a very important nuance.''

1947 Would you agree with that finding, Mr. Koskinen?

1948 Mr. KOSKINEN. It sounds right to me.

1949 Mr. CONNOLLY. Have you any idea why the inspector
1950 general would not include such a critical finding after all
1951 of the strum and drum, and after the press compliantly giving

1952 | the headline to my friends on the other side of the aisle
1953 | every single time, Tea Party targeted, here is a critical
1954 | piece of information, maybe even a smoking gun if we are
1955 | looking for exoneration, from the head of investigations in
1956 | TIGTA's own office. Why would that not be included in the
1957 | May 14th final audit report?

1958 | Mr. KOSKINEN. I have no idea.

1959 | Mr. CONNOLLY. Is it worthy of your time to ask that
1960 | question, respecting the independence, of course, of the two
1961 | offices?

1962 | Mr. KOSKINEN. I would not ask the IG that question. He
1963 | has done his report; he has done his investigation. When
1964 | they do investigations, they have any number of them going
1965 | on. When they do the reports, we agree most of the time,
1966 | sometimes disagree with recommendations, sometimes disagree
1967 | with the process, but we do that in the orderly course of
1968 | responding to their report. Thereafter, we don't go back and
1969 | question them.

1970 | Mr. CONNOLLY. But, Mr. Koskinen, here you are for the
1971 | third time before this committee, and probably not the last,
1972 | and your reputation and that of your organization has been
1973 | called into question with a charge that has unfortunately not
1974 | been critically examined as often as I would like by the
1975 | media, despite our efforts on this side of the aisle. Here
1976 | is the head of investigations in your organization under

1977 | TIGTA that says otherwise, that directly challenges the
1978 | propounded thought that only Tea Party and conservative
1979 | groups were challenged, and it was deliberate and it was
1980 | targeted. He says otherwise and the TIGTA doesn't put it in
1981 | his final audit report.

1982 | By the way, an inspector general who has been questioned
1983 | by a number of us up here, and we have formal requested an
1984 | investigation of his conduct before the Council of IGS, so he
1985 | is under a cloud myself. And I have heard my friend, the
1986 | chairman, Mr. Jordan, question other employees of the IRS
1987 | because of their political giving, while Mr. George was a
1988 | Republican staff member on this committee, he has given
1989 | political contributions to Republican candidates, he is a
1990 | Bush appointee, and he met solely with the Republican side of
1991 | the aisle in getting ready for his audit. That raises
1992 | serious questions. If it is sauce for the goose, it is sauce
1993 | for the gander about his independence. But this is a
1994 | critical piece of information, it seems to me, and I can't
1995 | imagine you could be copacetic with its elimination from an
1996 | audit report that is a pretty critical audit report for your
1997 | organization and, indeed, for your leadership.

1998 | Mr. KOSKINEN. Well, it is an interesting piece of
1999 | information that obviously is useful for people to review.
2000 | As I have said, I do have confidence in Mr. George that he is
2001 | independent. He actually is the Treasury Department

2002 | inspector for IRS, and we have supported him the past and he
2003 | is doing an independent review of all of this, and I look
2004 | forward to his response and findings about what happened with
2005 | regard to the hard drive crash.

2006 | Mr. CONNOLLY. Well, how about his response to why he
2007 | didn't include this important missive from his head of
2008 | investigations in the final audit report of May 14th?

2009 | Mr. KOSKINEN. That is a question that I am probably not
2010 | going to ask him.

2011 | Mr. CONNOLLY. I yield back, Mr. Chairman.

2012 | Mr. JORDAN. I would just ask the gentleman which way do
2013 | we want it. Do we want to say this committee can't get
2014 | access to witnesses because there is an ongoing inspector
2015 | general's investigation and at the same time we are waiting
2016 | for the inspector general to do his good work and at the same
2017 | time criticize the work he did before where he identified the
2018 | targeting of conservative groups? It seems to me you can't
2019 | have it both ways.

2020 | Mr. CONNOLLY. Well, Mr. Chairman, there are a number of
2021 | us who have been raised and been quite consistent in raising
2022 | questions about the objectivity and professionalism, frankly,
2023 | of Mr. George. Mr. Cartwright and I have both filed a
2024 | complaint, formal complaint, and I would be glad to share it
2025 | with the chairman because--

2026 | Mr. JORDAN. With all due respect, then you should be

2027 | advocating we get access to the witnesses and not wait until
2028 | the inspector general has them first.

2029 | Mr. CONNOLLY. Well, actually, maybe a new inspector
2030 | general is really the answer.

2031 | Mr. JORDAN. Well, relative to this idea that somehow it
2032 | was just mismanagement, 80 percent of the applicants in the
2033 | backlog were filed by conservative groups, less than 7
2034 | percent were filed by liberal groups. According to the Ways
2035 | and Means Committee, the IRS approved every single group with
2036 | the word progressive in its name. USA Today reported the IRS
2037 | did not approve a single tax-exempt application filed by a
2038 | Tea Party group from September 2010 to May 2012. During the
2039 | same time they approved dozens of liberal and progressive
2040 | groups. The idea that was just how--if it was mismanagement,
2041 | it was mismanagement in a targeted way, because none of the
2042 | treatment to conservative groups was given in the same way to
2043 | progressive groups.

2044 | Mr. CONNOLLY. Mr. Chairman, I have a memo from Gregory
2045 | Kutz saying targeted is actually not accurate. I also have
2046 | materials that were presented to IRS for training that have
2047 | elephants and donkeys, they have Tea Party, they have
2048 | Patriots, they have progressive--

2049 | Mr. JORDAN. 298 cases in the IRS backlog. Only three
2050 | had the word progressive; four used the word progress and
2051 | none used the word occupy. No progressive group was denied

2052 | its (c)(4) status. Hundreds of Tea Party conservative groups
2053 | were in fact denied. Some still waiting. Some still
2054 | waiting, just for the record.

2055 | Mr. CONNOLLY. Well, I guess you and I could argue that
2056 | all day, Mr. Chairman, and we need to get on with this
2057 | hearing and allow Mr. Koskinen to get back to his job.

2058 | Mr. JORDAN. Mr. Koskinen, why June 13th? Why that date?
2059 | Let me ask you this. Why not February 2nd, when you first
2060 | learned there was a big gap in a bunch of emails that looked
2061 | like they were missing? Why not February 4th, when, as Mr.
2062 | Cain testified--and, Mr. Koskinen, you know Mr. Cain. Do you
2063 | know Tom Cain?

2064 | Mr. KOSKINEN. I do know Mr. Cain.

2065 | Mr. JORDAN. Is Mr. Cain a solid lawyer, professional
2066 | good employee at the Internal Revenue Service?

2067 | Mr. KOSKINEN. Certainly is.

2068 | Mr. JORDAN. All right. So why not February 4th, when
2069 | Mr. Cain, who testified just last Thursday, said they knew
2070 | her hard drive had crashed? Why not tell us, look, we may
2071 | have a problem? Why not come and disclose that to someone on
2072 | February 4th? Or how about this? How about mid-February,
2073 | when Mr. Cain said last Thursday that we know, we knew them
2074 | in mid-February that the data on her computer was
2075 | unrecoverable? Why didn't you tell us in mid-February? Or
2076 | how about the hearing we have talked a lot about, Mr.

2077 DeSantis raised in the opening questions, why not at March
2078 26th? Why not disclose on March 26th, when you were in front
2079 of this committee and everyone on both sides of the aisle
2080 asked you about Lois Lerner's emails and you assured us that
2081 you would produce all her emails, and yet you knew, according
2082 to Mr. Cain's testimony, a good professional employer, lawyer
2083 at the IRS, you knew that in mid-February her emails were
2084 unrecoverable?

2085 Mr. KOSKINEN. You should be careful to note that is what
2086 Mr. Cain knew, that is not what I knew.

2087 Mr. JORDAN. Well, that is a problem too. That is
2088 something you should have known. Mr. Cain is a high-ranking
2089 official in charge of documents, and you didn't know?

2090 Mr. KOSKINEN. I did not know. Have testified--

2091 Mr. JORDAN. Do you know Kate Duvall?

2092 Mr. KOSKINEN. Pardon?

2093 Mr. JORDAN. Do you know a person named Kate Duvall?

2094 Mr. KOSKINEN. Kate Duvall I do know.

2095 Mr. JORDAN. And what is Kate Duvall's responsibilities,
2096 what is her title at the Internal Revenue Service?

2097 Mr. KOSKINEN. She is counselor to the commissioner.

2098 Mr. JORDAN. So she is counselor to you.

2099 Mr. KOSKINEN. Yes.

2100 Mr. JORDAN. She is your lawyer.

2101 Mr. KOSKINEN. Yes.

2102 Mr. JORDAN. She knew in mid-February, according to Mr.
2103 Cain's testimony, and she didn't tell you?

2104 Mr. KOSKINEN. What she told me, and I have testified at
2105 some length at at least a couple hearings on this, and I am
2106 happy to stand by that testimony. If you want to go over it
2107 again, basically, what I have told you is in mid to late
2108 February I knew that we had taken the Lois Lerner emails that
2109 had been produced and instead of looking at them from search
2110 terms--

2111 Mr. JORDAN. That is not the point. Tom Cain said they
2112 were unrecoverable.

2113 Mr. KOSKINEN. I did not--

2114 Mr. JORDAN. And he said he told Kate Duvall. Did she
2115 tell you that they were unrecoverable?

2116 Mr. KOSKINEN. She did not tell me they were
2117 unrecoverable.

2118 Mr. JORDAN. Well, that is a problem.

2119 Why not tell us April 4th, when Ms. Duvall briefs this
2120 committee, both Republicans and Democrat staff members, and
2121 the briefing was about how we would deal with how the IRS was
2122 going to deal with committee requests for producing Lois
2123 Lerner's emails, they didn't know they were lost at the time?
2124 Why didn't you tell us April 4th? Ms. Duvall could have told
2125 the committee at that time.

2126 Mr. KOSKINEN. I have testified at some length in the

2127 | past, and earlier today, that--

2128 | Mr. JORDAN. Well, here is the key question. Let me jump
2129 | in here a second. Why not mid-April, when you knew? In
2130 | fact, let's put up the slide. This is a question we had
2131 | earlier in one of our hearings. Why not, when you knew, what
2132 | date did you learn you could not get all of her email? I
2133 | learned that in April. Why not April?

2134 | Mr. KOSKINEN. As I testified then, and I have testified
2135 | on numerous occasions, my judgment was, A, we needed to find
2136 | out what emails we did have; we needed to put them together
2137 | in a full report, which we did, and--

2138 | Mr. JORDAN. Why not any time in April? Someone at the
2139 | IRS told someone at Treasury, who then told someone at the
2140 | White House, according to press reports. So if it was good
2141 | enough to pass on to Treasury and the White House, why not
2142 | tell us sometime in April?

2143 | Mr. KOSKINEN. Because I thought that at that point we
2144 | did not have the full information as to what was involved,
2145 | how many emails there were--

2146 | Mr. JORDAN. You learned in April they were
2147 | unrecoverable. Your chief lawyer in charge of document
2148 | production knew in mid-February they were unrecoverable.
2149 | Kate Duvall knew in mid-February they were unrecoverable.
2150 | And you wait until June 13th.

2151 | Mr. KOSKINEN. Right.

2152 | Mr. JORDAN. Why June 13th?

2153 | Mr. KOSKINEN. First of all, I would note all of those
2154 | emails that determine whether they were--that she had a hard
2155 | drive crash or not, what she had tried to do, our emails were
2156 | provided to this committee, and the tax writers knew. As
2157 | early as the fall she had had a hard drive crash. The
2158 | materials were produced. The materials about the email
2159 | chain, about her trying to restore her hard drive were
2160 | produced to the tax writers in April and to this committee in
2161 | May. So there was no secret that we were hiding. We were
2162 | processing through--

2163 | Mr. JORDAN. No, no, no. You were giving us emails, but
2164 | you didn't tell us there were emails you couldn't give us.
2165 | That is my question. Why didn't you tell us the IRS had
2166 | destroyed emails that belonged to Lois Lerner? Why didn't
2167 | you tell us that?

2168 | Mr. KOSKINEN. It is not clear--first of all, emails from
2169 | Ms. Lerner may or may not have been lost; they were not destroyed
2170 | as a conscious effort by the IRS to destroy them.

2171 | Mr. JORDAN. The tapes were recycled and--

2172 | Mr. KOSKINEN. Right. Backup--

2173 | Mr. JORDAN. When backup tapes are destroyed and they are
2174 | recycled, so at some point they are destroyed. Why didn't
2175 | you tell us you could not produce those emails, that they
2176 | were lost, in April?

2177 Mr. KOSKINEN. This hearing is noted to be an update on
2178 what we are doing. I have given you, on at least two
2179 different occasions--

2180 Mr. JORDAN. Okay, then answer the question. Why June
2181 13th? Why not June 12th? Why not June 10th? Why not May
2182 10th? If you couldn't do it in April, why did you have to
2183 wait two more months?

2184 Mr. KOSKINEN. We are going to be here a long time if you
2185 want to repeat all of the questions I have answered in the 11
2186 and a half hours of hearings before.

2187 Mr. JORDAN. Do you know what I think?

2188 Mr. KOSKINEN. But let me just answer this question. But
2189 I have answered it before and I am happy to answer it again,
2190 but it is in the testimony I have given before that you have
2191 read closely. We were producing Lois Lerner emails. Our
2192 strategy and thoughts were and I thought the most efficient
2193 way to proceed was to complete the production so we would
2194 know how many Lois Lerner emails we had from her account, how
2195 many Lois Lerner emails we had been able to retrieve from
2196 other accounts so you would have a full idea what the
2197 universe was. I had hoped that we would be able to find out
2198 how many other problems we had with custodians, and we would
2199 produce all of that as a report to the committees and a
2200 public report that would explain what our email process is,
2201 why it is so complicated, what we had determined about Lois

2202 Lerner's emails and her crashes, and what the emails would
2203 have been able to recover, and it would be a full report.

2204 June 13th was a Friday. I should have known Friday the
2205 13th was going to be an interesting day. We had been asked
2206 by the Finance Committee, which was considering trying to
2207 come to closure on their report, whether we would give them
2208 an update on our March letter in which we advised the tax
2209 writing committees that we had completed the production of
2210 all of the information we had about the determination
2211 process, which was the start of the investigation. That was
2212 the IG was focused on, as you have just discussed. We said
2213 we would do that.

2214 They then called and we were going forward, we didn't
2215 know when. They then called and said they would like that
2216 report no later than that Friday because they were going to
2217 have a meeting the following week. So we pulled the document
2218 together at that point. We had not completed, as I noted
2219 earlier, the review of how many custodians were involved with
2220 hard drive crashes and what the impacts were. We had no idea
2221 if you lost a hard drive, one of the custodians, and in fact
2222 one of the custodian hard drive crashes was in February of
2223 this year, not very relevant.

2224 So to meet the Friday deadline we actually produced that
2225 document and shared it with everybody on Friday, June 13th,
2226 and it was to meet a request from the Finance Committee,

2227 | which was having a meeting the next week and wanted to
2228 | consider whether they had enough information to do a report.

2229 | Mr. JORDAN. So your testimony is the Senate Finance
2230 | Committee drove the timing of when you disclosed that you had
2231 | lost Lois Lerner emails.

2232 | Mr. KOSKINEN. Yes, because we were actually going to
2233 | produce that report--

2234 | Mr. JORDAN. I think it is something different, I just
2235 | do. Obviously, you are going to disagree, but I think you
2236 | were never going to tell us. You have to remember what
2237 | happened here. Judicial Watch does a FOIA request and they
2238 | learn on April 18th of this year that the IRS and the
2239 | Department of Justice had been working on possible ways to
2240 | bring false claims action against Tea Party groups, and there
2241 | was an email from that FOIA request, Richard Pilger, a lawyer
2242 | at the Justice Department, and Ms. Lerner had an exchange in
2243 | 2013 after a Senate hearing. We saw that email. We said,
2244 | you know what, we are going to talk to Mr. Pilger, the lawyer
2245 | at the Justice Department, who was meeting with Ms. Lerner
2246 | just days before the TIGTA report went public, in May of
2247 | 2013.

2248 | So on May 6 we interview Mr. Pilger and we learn, in Mr.
2249 | Pilger's opening statement in that deposition, we learn this:
2250 | he said--I am reading straight from Mr. Pilger's statement:
2251 | Turning to my contacts with Ms. Lerner, in the fall of

2252 | 2010--shocked us. We didn't know that they were meeting
2253 | clear back in 2010, that the Justice Department was meeting
2254 | with the IRS clear back in 2010. In the fall of 2010, at the
2255 | direction of the chief of the Public Integrity Section at the
2256 | Justice Department, Jack Smith, I contacted the Internal
2257 | Revenue Service. When I contacted them, they directed me to
2258 | Lois Lerner, who met once at the Public Integrity Section
2259 | offices for about an hour with some of her staff, my chief,
2260 | Jack Smith, other personnel from my section, and the FBI.

2261 | So now we learn in 2010 the Justice Department, with the
2262 | FBI, is meeting with Lois Lerner, and so we said, you know
2263 | what, we better subpoena documents from the Justice
2264 | Department. And we said to the Justice Department we want
2265 | any communications with Lois Lerner that you have had. And
2266 | we get this slide. We get this email. Let's put this up, if
2267 | we can. We get this communication from Lois Lerner and
2268 | Richard Pilger.

2269 | Now, Mr. Koskinen, did you give us this email, do you
2270 | know?

2271 | Mr. KOSKINEN. I don't know.

2272 | Mr. JORDAN. Well, I can tell you you didn't. We got it
2273 | from the Justice Department. And after we got this from the
2274 | Justice Department, we contacted you all on June 9th and we
2275 | said, hey, how come we didn't get this email from you? There
2276 | is no 6103 issue with this email. We were concerned. This

2277 | is an email from clear back in 2010. So we contact you, Mr.
2278 | Koskinen, in a letter and we said, you know, we are wondering
2279 | why the IRS hasn't sent us this email from four years ago.
2280 | And then, suddenly, four days later you tell the Finance
2281 | Committee, the Congress, more importantly, the American
2282 | people, you know what, we lost Lois Lerner emails. We have
2283 | lost a bunch of Lois from that time period.

2284 | My theory is this, Mr. Koskinen: You guys weren't ever
2285 | going to tell us until we caught you. And we caught you
2286 | because Judicial Watch did a FOIA request; they found out
2287 | there was this collaboration going on between the Justice
2288 | Department and the IRS. We took that email, we interviewed
2289 | Mr. Pilger. Mr. Pilger told us he met with Lois Lerner in
2290 | 2010. We then subpoenaed Justice. They complied with our
2291 | subpoena, gave us the email. We contact you and say why
2292 | didn't you give it to us, and then you knew you were caught.

2293 | You didn't tell us this, but you knew, we didn't give it
2294 | to you 'cause we don't got it. Now we have to tell the whole
2295 | world we lost them. And what better time to do it than
2296 | Friday, June 13th, saying we are complying with some Senate
2297 | concern, said it in a letter, put it on page 7 of the third
2298 | addendum, and say, you know what, we may have a problem with
2299 | Lois Lerner emails? That is what I think.

2300 | Mr. KOSKINEN. Good. If you find--

2301 | Mr. JORDAN. I think all kinds of people logically going

2302 | through this would say, you know what, that is what prompted
2303 | these guys. Four days after they get a letter from this
2304 | committee saying why didn't you send us these emails, you
2305 | just say, well, we better come clean. Plus, you have already
2306 | told us you knew clear back in April that you lost them. So
2307 | you wait two months and then you say, wow, we better do it
2308 | June 13th, just four days after they figured out Justice and
2309 | the IRS were working together in 2010, and they got an email
2310 | that indicates that and we can't produce it.

2311 | Mr. KOSKINEN. When you find any direct evidence to
2312 | support that assertion, I would be happy to see it. If you
2313 | think that this organization, in four days, could produce
2314 | that report, you don't understand how large organizations
2315 | function. You could ask anybody who worked on that report;
2316 | there is a whole series of people. That report was under
2317 | production for a long time since--

2318 | Mr. JORDAN. I am not saying it wasn't. I am saying
2319 | including the statement we lost Lois Lerner emails was put in
2320 | that report.

2321 | Mr. KOSKINEN. It was in that report and it was in that
2322 | report--

2323 | Mr. JORDAN. And one thing I have learned in these
2324 | investigations, it is always important to look at the time
2325 | line.

2326 | Mr. KOSKINEN. Look at the time line--

2327 Mr. JORDAN. Look at the time line. You knew in April;
2328 you didn't tell us until June 13th. What events happened
2329 between April, when you knew, and June 13th? One key event
2330 was the FOIA request from Judicial Watch, finding this
2331 collaboration between the IRS and the Justice Department, us
2332 getting that email because we subpoenaed the Justice
2333 Department; they give it to us, it is in the relevant time
2334 frame, 2010 to 2012, when you lost Lois Lerner emails, and
2335 suddenly you say, you know what, they got it. We have to
2336 come clean.

2337 Mr. CUMMINGS. Mr. Chairman?

2338 Mr. JORDAN. And then you do the letter on June 13th.

2339 Mr. KOSKINEN. Can I respond? That is a very serious
2340 charge.

2341 Mr. JORDAN. Sure.

2342 Mr. KOSKINEN. There were a whole set of serious staff
2343 people in the Senate Finance Committee who will dispute your
2344 assertion. And if you find any direct evidence of this to
2345 anybody who worked on that report, in terms of the timing of
2346 it, the fact that we were otherwise not going to deliver it,
2347 I will be not only surprised, I will be astounded, because
2348 there is no such evidence. And it seems to me, and I have
2349 been very patient about all of this, but before you make that
2350 kind of charge and claim, you ought to have better evidence
2351 than a single email dated June 9th.

2352 Mr. CUMMINGS. Mr. Chairman?

2353 Mr. JORDAN. We have a few other emails from that
2354 exchange.

2355 Mr. KOSKINEN. That is fine.

2356 Mr. CUMMINGS. Would the chairman yield for one moment?

2357 Mr. JORDAN. I would be happy to yield.

2358 Mr. CUMMINGS. I know a lot has been said about what
2359 Thomas Cain said. Well, last week Thomas Cain told our
2360 staffs that the IRS always intended to alert us about Ms.
2361 Lerner's lost emails. So I know you have all these theories.
2362 Unfortunately, our committee has been going when we put out
2363 these headlines and then we go chasing facts that never
2364 exist.

2365 Mr. JORDAN. All I am saying--

2366 Mr. CUMMINGS. But I am just saying include everything
2367 when you are asking your questions.

2368 Mr. JORDAN. Great point. All I am saying is this. They
2369 get a letter from us on June 9th, where they know we now have
2370 this email from the Justice Department that they can't
2371 produce, and four days later they tell the world we have lost
2372 Lois Lerner emails, when they knew that, according to Mr.
2373 Koskinen's testimony in questioning from me, that he knew in
2374 April they couldn't get Ms. Lerner's emails. So they waited
2375 two months. And then when they decided to tell us, it was
2376 four days after, on a Friday, four days after we knew there

2377 | were emails we were getting from Justice that we weren't
2378 | getting from the Internal Revenue Service.

2379 | Now, all I am saying is that timing is pretty suspect,
2380 | particularly in light of the fact all the other things we
2381 | have heard from the IRS. One computer crash. No, it was
2382 | seven. No, it was eight. Now may be up to 20. We can
2383 | confirm that there are no backup tapes that are available.
2384 | Oh, we can't confirm that, now there may be one available.
2385 | In light of everything we have heard from the IRS, when you
2386 | start looking at the time line, it looks pretty suspect.

2387 | Mr. CUMMINGS. Well, Mr. Chairman--

2388 | Mr. JORDAN. And all I am saying is I am not sure they
2389 | were going to tell us.

2390 | Mr. KOSKINEN. You didn't say I am not--I am sorry--

2391 | Mr. CUMMINGS. Would the chairman yield?

2392 | Mr. JORDAN. I would be happy to yield.

2393 | Mr. CUMMINGS. Mr. Chairman, this has been very
2394 | interesting because one member on your side, the gentleman, I
2395 | don't know his name, said that the man was under
2396 | investigation. I was in that entire hearing and he never
2397 | said that. By the way, the Justice Department never said
2398 | that. Then you, Mr. Chairman, of course, have made some
2399 | strong accusations, and when you make these kind of
2400 | accusations, I would appreciate it if you would just give the
2401 | witness an opportunity to answer, because these are the kind

2402 | of allegations that tarnish one's reputation, and you have
2403 | come up with this theory, and I am not saying your theory
2404 | is--your theory is what it is, but he ought to be able to
2405 | answer, please. That is all I am saying.

2406 | Mr. JORDAN. Appreciate the ranking member.

2407 | Mr. KOSKINEN. As I said, I haven't seen Mr. Cain's
2408 | testimony, but it doesn't surprise me that he would say that
2409 | we had been producing this report for some time and clearly
2410 | planned on making it public. You can talk to people. We
2411 | would be happy to give you those contacts, the people we
2412 | talked to at Finance who were in fact did have a meeting the
2413 | following week, had asked us for an update that we did
2414 | provide. They asked for it no later than that Friday.

2415 | I am confident and I am very confident that no one
2416 | working on this report had any idea about it other than that
2417 | we were going to produce it and provide all of the
2418 | information to the public. I think any other assumption is
2419 | not based on facts.

2420 | Mr. JORDAN. Well, are you willing to make those
2421 | witnesses available or are you going to make us subpoena them
2422 | so they can come here under oath and testify that, yes, in
2423 | fact, from mid-April, when the commissioner knew that Lois
2424 | Lerner emails were lost, we were planning on telling the
2425 | Congress as soon as we got all the information? They will
2426 | come and testify to that or will they come and testify, you

2427 | know what, after the June 9th letter we decided we better put
2428 | in the information that we lost Lois Lerner emails?

2429 | Mr. KOSKINEN. I don't think you will find anyone will
2430 | make that latter testimony.

2431 | Mr. JORDAN. But my question to you is are you willing to
2432 | have those people come testify. Tell us who they are, who
2433 | the people who worked on this report.

2434 | Mr. KOSKINEN. We will be happy to talk with you. You
2435 | have already talked to some of them and you have others on
2436 | your schedule.

2437 | Mr. JORDAN. All right.

2438 | The gentleman from Nevada is recognized, Mr. Horsford.

2439 | Mr. HORSFORD. Thank you, Mr. Chairman.

2440 | You know, I do share concerns by some of my colleagues
2441 | on the other side about why the IRS delayed in providing
2442 | Congress with notification regarding the unrecoverable
2443 | emails, because it raises questions. I don't share in the
2444 | chairman's or other members' conspiracy and rush to judgment
2445 | about any motives as to why there was a delay, and I feel,
2446 | again, as I have said in previous meetings, that we fail to
2447 | get all the facts in order to then make a proper decision. I
2448 | am not a defender of the IRS or any other Federal agency. I
2449 | have said from the beginning that I believe that there was
2450 | wrongdoing, but the chairman and others want to conclude or
2451 | make conclusions about that wrongdoing without justification

2452 | or evidence to support their assertion.

2453 | Now, Mr. Chairman, you just read into the record some
2454 | comments by Mr. Pilger that I had asked to be entered into
2455 | the record the full transcripts, so I am going to ask again
2456 | for unanimous consent that the transcribed interview opening
2457 | statements of DOJ officials Richard Pilger and Jack Smith be
2458 | allowed to be entered into the record, particularly since you
2459 | just handpicked certain statements, and I am requesting the
2460 | full transcript be entered. Will the chairman please provide
2461 | that courtesy for this to be entered into the record under
2462 | unanimous consent?

2463 | Mr. JORDAN. If the gentleman would yield for just a
2464 | second. I read from the opening statement that Mr.--

2465 | Mr. HORSFORD. That is what this is, the transcribed--

2466 | Mr. JORDAN. If you are just asking for the opening
2467 | statement, not the full questions from Democrat staff,
2468 | Republican staff, but just the opening statement from Mr.
2469 | Pilger and Mr. Smith, we would be happy to do that.

2470 | Mr. HORSFORD. Thank you.

2471 | Mr. JORDAN. All right.

2472 | [The information follows:]

2473 | ***** COMMITTEE INSERT *****

2474 Mr. HORSFORD. I also want to follow up to some of the
2475 claims that have been made by my Republican colleagues and
2476 give you an opportunity to respond. It has now been stated
2477 twice today that Mr. Cain testified during his July 17th
2478 interview that in mid-February 2014 the IRS realized that
2479 Lois Lerner's emails would not be recoverable. I want to
2480 clarify here, because I don't want Mr. Cain's statements to
2481 be taken out of context. It is true that Mr. Cain told us
2482 that he had discovered that Ms. Lerner's hard drive had
2483 crashed and that the contents of the hard drive were
2484 unrecoverable.

2485 However, that does not mean that Mr. Cain said that he
2486 thought, in February of 2014, that the IRS would never be
2487 able to produce those emails to Congress. In fact, Mr. Cain
2488 was asked, "And as of March 2014, you were not aware that
2489 the IRS would be unable to recover all of Ms. Lerner's
2490 documents," and he answered, "That is correct." He
2491 further explained, as you have, that the IRS was engaged in
2492 an extensive process to find Ms. Lerner's emails from other
2493 sources at the IRS; and, in fact, those efforts were
2494 successful and yielded the production of an additional 24,000
2495 Lois Lerner emails. Is that correct, Mr. Koskinen?

2496 Mr. KOSKINEN. That is correct.

2497 Mr. HORSFORD. Mr. Cain also explained that the IRS's
2498 goal with respect to the document productions to Congress was

2499 | to fully comply with those requests as expeditiously as
2500 | possible. He stated with respect to fulfilling that goal,
2501 | ''I have tried my best, and everyone that I work with have
2502 | tried their best.'' Commissioner Koskinen, do you share that
2503 | belief that every effort was made to provide this committee
2504 | and others with those emails that were you able to recover?

2505 | Mr. KOSKINEN. I do.

2506 | Mr. HORSFORD. And beyond the issue of failing to notify
2507 | us in a timely manner, then the question becomes what can be
2508 | made of why that time line was delayed.

2509 | Mr. KOSKINEN. Right. And as I have said, first of all,
2510 | all of the emails in question had been provided in the normal
2511 | course to this committee and the other investigators, so
2512 | there was no attempt to not produce information that showed
2513 | that in fact there had been a problem with Lois Lerner's hard
2514 | drive. In fact, none of us at the IRS or investigators noted
2515 | that in the fall productions there were emails from Lois
2516 | Lerner saying she had problems with her hard drive and had
2517 | lost emails.

2518 | But everybody then was looking at subject matter. But
2519 | it is not as if any of these emails were withheld or not
2520 | produced in a regular manner. So that as we were working in
2521 | April and May pulling all the information together, trying to
2522 | determine how many emails we actually had, we were producing
2523 | emails as a regular matter, and the emails that were the

2524 | basis of our June 13 report had all been provided previously
2525 | to all of the investigators.

2526 | Mr. HORSFORD. Thank you.

2527 | Mr. DESANTIS. [Presiding] The gentleman's time has
2528 | expired.

2529 | The chair now recognizes the chairman of the committee,
2530 | Mr. Issa.

2531 | Mr. ISSA. Thank you.

2532 | Commissioner, I really wish we had your IT guys here
2533 | instead, because it is inherently a little hard when we are
2534 | asking you so many questions that are not related directly to
2535 | your past experience. But I appreciate your continuing to
2536 | volunteer to come up. Hopefully, as we interview some of
2537 | your IT professionals and others involved, it will make it
2538 | easier to direct questions.

2539 | But a lot has been done to talk about this, a drive this
2540 | large that apparently went so bad that not a single piece of
2541 | information could be saved, and you have asked us to believe
2542 | that your very special experts couldn't save one piece of
2543 | data from this drive, or one just like it, correct?

2544 | Mr. KOSKINEN. That is what I was advised, yes. And that
2545 | is what the email strain that we produced and I testified
2546 | about at previous hearings says.

2547 | Mr. ISSA. The American people don't believe that. You
2548 | realize that the idea that we can recover the last 17 or 18

2549 seconds from Challenger exploding above our atmosphere,
2550 falling to the sea and being left under the sea for a year
2551 that we could recover the voice from that makes people wonder
2552 why a product that simply came in and out of the office with
2553 Lois Lerner every day, suddenly, not one piece of data could
2554 be recovered. It doesn't surprise you the American people
2555 just have a hard time believing that, does it?

2556 Mr. KOSKINEN. Well, I don't know whether the American
2557 people broadly believe that, but I do understand that when
2558 our Criminal Investigation Division, which our experts at
2559 extracting information say they could not recover any emails,
2560 that seems probative on the one hand, but on the other hand I
2561 could understand people saying, well, if you kept trying--

2562 Mr. ISSA. But do you think it is reasonable for us to
2563 check with your Criminal Investigation people, interview
2564 people involved to see if that passes the reality check, in
2565 spite of what the American people may think or the doubts
2566 they may have? Do you think it is fair for us to check into
2567 that?

2568 Mr. KOSKINEN. Yes. In fact, those interviews are being
2569 scheduled. Some of them, I gather from the press release I
2570 saw from Ways and Means, that some of those IT people have
2571 already been interviewed.

2572 Mr. ISSA. So it is fair for us to do an interview and to
2573 investigate on our own in order to bring the credibility that

2574 | we bring as if, you will, a doubting Thomas, to the process.

2575 | You would agree with that?

2576 | Mr. KOSKINEN. Yes. I have never had any concern or
2577 | objection to the oversight. As I said, I spent four years in
2578 | the Senate that Senator Ribicoff was on, the Government
2579 | Operations Oversight, chaired that committee. I am a big
2580 | believer in congressional oversight.

2581 | Mr. ISSA. And I appreciate that you are. One of the
2582 | things that we discovered that was not made available to us
2583 | early on was the existence of what is called OCS, this chat
2584 | capability that exists within the IRS's network, is that
2585 | right?

2586 | Mr. KOSKINEN. That is correct. I spent some time
2587 | testifying a couple weeks ago about that.

2588 | Mr. ISSA. Right. And you wrote me back a letter when I
2589 | asked about it, and in the letter it said, basically, that no
2590 | records were kept because it was the equivalent of visits or
2591 | phone calls. Do you remember that in the letter?

2592 | Mr. KOSKINEN. Yes.

2593 | Mr. ISSA. Now, would it surprise you to know that we
2594 | disagree with you? That in fact it is the opinion of this
2595 | committee that the Federal Records Act, unless you can train
2596 | and guarantee that no policy decisions, none of the kinds of
2597 | activities we are discovering in email could be done on OCS,
2598 | that in fact you should turn on that switch and you should

2599 | collect and you should retain OCS chat unless you can assure
2600 | us that it is not doing the equivalent. And I will be brief,
2601 | but I will explain something to you.

2602 | Years ago, when I was a subcommittee chairman and
2603 | President Bush was in office, we investigated the Mineral
2604 | Management Service, and what we discovered there was that
2605 | they had systematically signed leases that were simply wrong
2606 | and cost the American people billions of dollars; and we
2607 | could find not a shred of evidence in emails to show the
2608 | absurdity of how this came to pass. So after we deposed
2609 | people repeatedly, we finally discovered that they all
2610 | admitted that only the cover sheet was brought to them, that
2611 | they signed or initialed, and they never read the leases; so
2612 | that one mistake was passed through multiple signatures.

2613 | But, more importantly, as we went through the process,
2614 | what we discovered was, at Mineral Management Service, a
2615 | now-defunct and disgraced organization to a certain extent
2616 | after the BP disaster, they had a policy of what they called
2617 | talking over the transom. Lawyers made no memos for the
2618 | record. Lawyers went out of their way to have no paper trail
2619 | of things they did in their consultation.

2620 | I will tell you today that has to end; that the American
2621 | people expect that the Federal Records Act, the Presidential
2622 | Records Act is not something to be avoided, and you should
2623 | not be trying or allowing the bypassing of future oversight

2624 | that you said rightfully so, with your experience, you
2625 | believe in.

2626 | Maintaining data so that it can be analyzed by your
2627 | inspector general, who is conducting your primary
2628 | investigation, you have full confidence in, activities going
2629 | on in Ways and Means, which are slightly different than ours,
2630 | our activities, or anything in the Senate are hampered by
2631 | policies of any part of Government that allow the use of
2632 | something that clearly bypasses future oversight.

2633 | So I hope today that in addition to your willingness to
2634 | cooperate and help us in getting to the answers I mentioned
2635 | on this, that you will recognize that your letter is not
2636 | acceptable; that email is a substitute not just for the
2637 | old-fashioned letter, but it is a substitute for a visit, it
2638 | is a substitute for a phone call; and that, in fact, the
2639 | reason that those are important is that the phone call and
2640 | the visit, in the old days you would have done a memo for the
2641 | record if in fact you wanted to do your job. That isn't
2642 | being done. Emails and these chats are extremely important.

2643 | And I would like to have a second round at some time,
2644 | but I would yield back at this time.

2645 | Mr. CARTWRIGHT. Mr. Chairman, I have a point of
2646 | information. Yesterday Chairman Issa informed committee
2647 | members that he will be holding yet another hearing on this
2648 | topic next Wednesday. We have the notice. Could the

2649 chairman please inform us who will be testifying at that
2650 hearing on Wednesday?

2651 Mr. ISSA. Pursuant to the rules, we will inform at the
2652 appropriate time. But at this time they haven't sent
2653 anything out and I appreciate your inquiry.

2654 Mr. CARTWRIGHT. So you don't know or you won't tell us?

2655 Mr. DESANTIS. I think we will--

2656 Mr. ISSA. Regular order, please.

2657 Mr. DESANTIS. We will do regular order and the chair, at
2658 this point, will now recognize the gentleman from Michigan,
2659 Mr. Bentivolio, for five minutes.

2660 Mr. BENTIVOLIO. Thank you very much, Mr. Chairman.

2661 Commissioner, if any of my constituents were not as
2662 forthcoming as the IRS, there would be a presumption of
2663 guilt, they would be fined and/or have their wages garnished,
2664 and/or liens laid on their home and/or savings accounts
2665 seized.

2666 When I go back to the district, I had the opportunity to
2667 talk to many IRS former employees at the IRS, now retired,
2668 and I asked them what they thought of what was going on at
2669 the IRS, and I heard despicable behavior every step of the
2670 way. The IRS no longer credible.

2671 I think at this point, Mr. Chairman, I would like to
2672 yield back.

2673 Mr. ISSA. Would the gentleman yield?

2674 Mr. BENTIVOLIO. Yield to the gentleman from California.

2675 Mr. ISSA. Thank you. I appreciate that. In regular
2676 order, this is helpful not to need a second round.

2677 Commissioner, there has been approximately a year of
2678 production of emails. In your earlier hearing I remember
2679 that it might take two years, sort of an estimate. But let
2680 me ask you a question. Have you reviewed the time line when
2681 this committee issued lawful demands for Lois Lerner's
2682 emails? Have you reviewed the time line of who did what and
2683 when?

2684 Mr. KOSKINEN. No.

2685 Mr. ISSA. Would you be prepared to deliver to us a time
2686 line, meaning calendars, activities of individuals who were
2687 charged with going out and finding those emails, what they
2688 did, and when they did it?

2689 Mr. KOSKINEN. As I say, we have approximately 250 people
2690 doing that work.

2691 Mr. ISSA. Well, no. Actually, you have had people
2692 redacting and you have had people legal reviewing. I am only
2693 talking about who went and got the information, the emails,
2694 who accumulated them, the gathering.

2695 Mr. KOSKINEN. Yes. That is not just one or two people,
2696 that is a set of people. But we would be happy to provide
2697 you the information in any form that would be usable.

2698 Mr. ISSA. Well, here is the inquiry I will ask you

2699 | today. And, again, we appreciate your coming, but you are
2700 | not the IT guy, you are not any of the 200 people, per se.
2701 | It is clear, now, from this side of the dais, that we issued
2702 | requests and subpoenas. Two things were to occur: one, at
2703 | the moment we issued our first letter, it required that you
2704 | preserve information. There is a question about whether that
2705 | was preserved, because in order to preserve it you would have
2706 | to go look for it. So the tapes that now your own people
2707 | have admitted they are not sure whether they exist or not,
2708 | they have undercut your claim that you are very comfortable
2709 | that they were gone at the end of six months, that means that
2710 | nobody went out to say where are the tapes, what are the
2711 | tapes, are there any.

2712 | Additionally, in order to not know that Lois Lerner had
2713 | this gap, either you weren't looking extensively all at once
2714 | or, and this is one of my concerns, people just didn't want
2715 | to admit that they weren't going out and looking for emails
2716 | by essentially what we expected, was to do a key word search
2717 | on a server and deliver the data.

2718 | Remember that for months, even before you came onboard,
2719 | we were being told, well, here are some key words and we want
2720 | to serve on these key words; and the IRS was adding key words
2721 | that allowed them to deliver the false narrative that
2722 | progressives were being targeted. They were adding
2723 | self-serving words and they were searching them.

2724 This committee had a reasonable expectation that you
2725 were searching the entire database, you were searching not
2726 six months worth of emails, not 6,000 emails or less that had
2727 been preserved, but you were searching the historic emails.
2728 Not until recently, the last six weeks, did we understand
2729 that if that was how you were getting all of your
2730 information, you were knowingly looking at a small fraction
2731 of the historic two-or three-year email selections.

2732 We now understand no more than 6,000 emails, only six
2733 months of record, so it is now appropriate for us to
2734 understand your employees' search techniques, what they did,
2735 because at some point they must have started searching, okay,
2736 who has PSTs? Send us your PSTs. Or did they, and this is
2737 why we have to ask directly, did they send out one of these
2738 do you have any information relevant and please send it to
2739 us. Because the key word search would imply that in fact they
2740 were accumulating all these PSTs, these downloaded local
2741 files and then searching them.

2742 If in fact that process didn't begin in earnest in the
2743 first week or month, if in fact your predecessor was
2744 delivering selected data from what was basically the last six
2745 months of things still preserved, we need to know that,
2746 because it does appear as though, in this long investigation,
2747 there has been either an absence of a willingness to disclose
2748 problems or an absence of real fact-finding, getting these

2749 | emails quickly, or deliberate obstruction.

2750 | We don't know which and we would like to know, as I said
2751 | in the beginning of this, who went looking for what when.
2752 | Not interested in who read them, not interested in who edited
2753 | them, who redacted them or who released them. And that
2754 | information would be equally valuable whether it was pursuant
2755 | to the House or Senate's request or to Ways and Means or this
2756 | committee's request.

2757 | But giving us that gives us a time line of who was
2758 | involved in going and looking so we know who knew that in
2759 | fact something like Lois Lerner's email on her personal hard
2760 | drive was of any relevance, because this committee didn't
2761 | know that there was a lack of a central database for the
2762 | first almost year of this investigation.

2763 | I thank the chairman and yield back.

2764 | Mr. DESANTIS. The gentleman yields back.

2765 | The chair now recognizes the gentlelady from Wyoming for
2766 | five minutes.

2767 | Mrs. LUMMIS. Thank you, Mr. Chairman.

2768 | I have no doubt, Mr. Koskinen, that morale at the IRS is
2769 | low. I want to tell you about morale in Wyoming. The people
2770 | of Wyoming, who I work for, all feel targeted. They think
2771 | the IRS is out to get them. They are lower than a snake's
2772 | belly about the IRS because they know that Lois Lerner was
2773 | brought into the IRS from the Federal Elections Commission,

2774 | where she had a history of political targeting, political
2775 | bias. They know that she was tapped to enforce the largest
2776 | tax increase in history, Obamacare, after, after she targeted
2777 | conservative groups while overseeing 501(c)(4)s, tax-exempt
2778 | organizations. They saw her come to this committee and say I
2779 | have broken no laws and then take the 5th. They know that we
2780 | subsequently found out that she did break a law, that she
2781 | provided confidential taxpayer information to another Federal
2782 | agency, which is against the law.

2783 | And they know that so far she has gotten away with that,
2784 | that the Justice Department isn't doing anything about it and
2785 | that she got away scot-free. They know that when they get
2786 | letters from the IRS, that they are being targeted. I have a
2787 | constituent who got a letter and an investigation from the
2788 | IRS that has cost her \$50,000 just to close her estate,
2789 | because they keep asking her what make and model is your bed.

2790 | Your bed? They think her bed is some expensive antique.
2791 | Incidentally, she is a very active member of the Republican
2792 | party. She feels targeted.

2793 | Morale is low in Wyoming because our government has
2794 | turned against us. So this is a legitimate investigation. I
2795 | hope it continues at length. I hope it goes on until we get
2796 | to the truth, because the people w work for feel like the
2797 | Government is getting away with their tax dollars that they
2798 | don't know; they feel like the Government is denying them

2799 | tax-exempt status that they deserve; they feel like they
2800 | can't trust the IRS. That is why this investigation. That
2801 | is why you are here and asked the same questions over and
2802 | over. I am sure it is frustrating. We are frustrated too,
2803 | but it is because our constituents are mortified and scared,
2804 | and are going to take matters into their own hands, because
2805 | they don't feel we have the ability to do it ourselves.

2806 | So, with no apologies for the morale at the IRS and no
2807 | apologies for how many times we are asking you the same
2808 | questions over and over, Mr. Chairman, I thank you for your
2809 | attendance.

2810 | I do yield back the balance of my time.

2811 | Mr. ISSA. Would the gentlelady yield?

2812 | Mrs. LUMMIS. I will.

2813 | Mr. ISSA. Some people just don't have enough questions
2814 | for you, commissioner.

2815 | I mentioned the time line and my interest in that. Let
2816 | me just ask you one other question, which is when you look at
2817 | this investigation and you look at the fact that a Federal
2818 | judge is now ordering you to show certain things, you look at
2819 | your IG's investigation, you look at our investigation, are
2820 | you aware and do you recognize the three separate channels
2821 | are perceived and in reality are very different as to what
2822 | your responsibilities are and how you approach them?

2823 | Mr. KOSKINEN. My response to all of them is the same; if

2824 | people have, from any branch of Government, questions, we
2825 | have an obligation to respond to them in response to--

2826 | Mr. ISSA. I appreciate that, but the IG does in fact
2827 | work under you; he has limited authority.

2828 | Mr. KOSKINEN. Absolutely not.

2829 | Mr. ISSA. I understand his independence, but in fact--

2830 | Mr. KOSKINEN. He is the Treasury Department IG. We have
2831 | no control, influence over him. He doesn't work in the IRS.

2832 | Mr. ISSA. But in fact he has testified that when he
2833 | wants information, he has to ask for it and he may not always
2834 | get it, that in fact there is a process and sometimes it is
2835 | very frustrating for him to get information. Even though you
2836 | say he is independent, he doesn't have the authority to
2837 | demand things and automatically get them, isn't that true?

2838 | Mr. KOSKINEN. I have never had, in my time here or other
2839 | places, an experience with an IG not able to get the
2840 | information he needs, and I am committed, as Mr. George
2841 | knows, that whatever information he wants in any
2842 | investigation, he is welcome to have.

2843 | Mr. ISSA. Well, we will certainly hold you to that.

2844 | Thank yo.

2845 | Mr. KOSKINEN. I am happy to be.

2846 | Mr. ISSA. Yield back.

2847 | Mr. DESANTIS. Thank the chairman.

2848 | For the other members who do want to do a second round,

2849 | we will do that, so I will kick it off and recognize myself.

2850 | I just want to reiterate people mentioned the morale,
2851 | and, granted, a lot of the things that happened were before
2852 | you were there, but I do think it is worth mentioning that
2853 | there are a lot of taxpayers who have had their morale hit.
2854 | When they see some of the conference spending that has gone
2855 | on, \$50,000 for a Star Trek parity video and other lavish
2856 | expenses on their dime, and, again, that was before you were
2857 | there, but that really irks a lot of folks and certainly our
2858 | constituents. And I think the same goes for the targeting.
2859 | When people feel like they were being targeted or in fact
2860 | were targeted simply from exercising their constitutional
2861 | rights, I think that hurts their morale too. So I just think
2862 | it is important that we mention that.

2863 | Now, a lot has been going on about when you knew there
2864 | was a problem, why you delayed telling Congress, and I think
2865 | it is the case that the standard that would be applied to an
2866 | official such as yourself is not simply what you actually
2867 | knew, but what you should have known. In other words, you
2868 | can't bury your head in the sand and not be apprised of what
2869 | people in your organization know. So I think that is going
2870 | to be a question. Clearly there were people at the senior
2871 | leadership level at the IRS early February, mid-February, who
2872 | knew that the problems were more substantial than what you
2873 | indicated to us that you personally knew, so the question is

2874 going to be why did you not know more.

2875 And I think that goes into what I and some other folks
2876 have raised. And I know my friend Mr. Cartwright disputed
2877 the notion that this is being investigated by the Justice
2878 Department. And just so we are clear, because I don't want
2879 to be lobbying charges that aren't true, here is the
2880 transcript from last week's hearing with James Cole, DOJ
2881 Deputy AG.

2882 Chairman Jordan: The fact that the commissioner,
2883 meaning you, at the Internal Revenue Service delayed telling
2884 Congress, the American people, the FBI, and the Justice
2885 Department is a matter that you are going to investigate?

2886 Mr. Cole replied, We are going to look into what the
2887 circumstances were around that, yes.

2888 So we are concerned about it and the DOJ seems also be
2889 concerned about it, and I think that that is important to
2890 know.

2891 Let me ask you this. You mentioned that you have seen
2892 the Ways and Means press release about their conducting
2893 interviews with different IRS technical witnesses about what
2894 in fact happened to the hard drive, so they told Ways and
2895 Means that the hard drive was scratched and that data was
2896 likely recoverable from it; and, of course, the IRS, just
2897 last week in Federal court, has filed a declaration saying,
2898 consistent with what I think you have testified to, that the

2899 | hard drive was destroyed and in fact no data was recoverable
2900 | for it.

2901 | So my question is what is an American to think when they
2902 | see some witnesses telling a congressional committee
2903 | scratched, may be recoverable, but yet the IRS is
2904 | representing in Federal court that it was destroyed and
2905 | completely unrecoverable?

2906 | Mr. KOSKINEN. I wasn't there and I haven't talked to
2907 | those people, and I don't know what that interview
2908 | yesterday--

2909 | Mr. DESANTIS. But they were the technical people, would
2910 | be the ones that we would most want to talk to about that,
2911 | correct?

2912 | Mr. KOSKINEN. All I know is the emails that actually I
2913 | have testified at a couple previous hearings about show that
2914 | there were efforts made by Ms. Lerner and the IT department
2915 | to restore the hard drive. It went to the Criminal
2916 | Investigation Division, and they are experts and they said
2917 | they were not able to retrieve information from that hard
2918 | drive. That is all I know and that is what the emails
2919 | contemporaneously at the time showed and said, was that they
2920 | had tried, the experts in the IRS had tried; they were unable
2921 | to recover any information.

2922 | Mr. DESANTIS. Okay. And I read the pleadings and I take
2923 | that point, but we are getting conflicting information, it

2924 | seems, in the Congress at this point, so I think it is going
2925 | to be important that that be resolved, because clearly you
2926 | can't be telling the court one thing and then having people
2927 | in the organization who are on the ground and maybe had
2928 | intimate knowledge telling the Congress the other thing.

2929 | I am almost out of time, but just very quickly,
2930 | switching gears a little bit. The D.C. Circuit issued an
2931 | opinion about the IRS's regulation as respects to Obamacare
2932 | subsidies, taxes, and mandates in the States that have
2933 | exchanges not run by a State, but run by the Federal
2934 | Government. Given that right now there is a circuit split,
2935 | where you have the 4th Circuit saying that basically it was
2936 | either a close call or a scrivener's error, you have the D.C.
2937 | Circuit saying actually the IRS didn't have the authority to
2938 | issue that ruling, are you going to rescind that rule until
2939 | this can be resolved by the Supreme Court, or what is the
2940 | IRS's position in light of the Halbig case?

2941 | Mr. KOSKINEN. The rule about the granting of advanced
2942 | premium tax credit all is run by HHS. Our regulation said
2943 | that, in fact, it was appropriate and acceptable to go
2944 | through the Federal marketplace. We have no plans, until the
2945 | issue is resolved in court, to rescind or change that rule or
2946 | change that preparation for the next filing season.

2947 | Mr. DESANTIS. And is it your position, as the IRS, that
2948 | you have construed that to be that there may have been a

2949 | drafting error on the statute, but the intent of Congress was
2950 | that the subsidy should go, and is that why the IRS has taken
2951 | the position that they have taken?

2952 | Mr. KOSKINEN. I am fully supportive of the Justice
2953 | Department opinion, which was upheld in the 4th Circuit, not
2954 | upheld in the D.C. Circuit. I don't have a different view of
2955 | the legality; I think the Justice Department puts it very
2956 | well that they think the statute is enforceable and the
2957 | regulations are appropriate.

2958 | Mr. DESANTIS. Okay, I am out of time, and I will now
2959 | yield to the ranking member of the full committee, Mr.
2960 | Cummings.

2961 | Mr. CUMMINGS. Thank you very much, Mr. Chairman.

2962 | On July 9th you appeared before the Subcommittee on
2963 | Government Operations for a hearing entitled Solutions to
2964 | Close the \$106 Billion Improper Payments Gap. Even though it
2965 | was clearly not the stated purpose of the hearing, Republican
2966 | members of the committee asked you a number of questions
2967 | regarding the committee's investigation into the IRS
2968 | treatment of applications for tax-exempt status.

2969 | At the hearing, Chairman Issa also released emails from
2970 | Lois Lerner regarding the IRS instant messaging system,
2971 | called OCS, that he claims proved that Ms. Lerner
2972 | ``intentionally sought to hide information from Congress.``
2973 | Despite your testimony that you were unfamiliar with the

2974 system and would be happy to look into its use, Republican
2975 members repeatedly questioned you about the specifics of OCS.

2976 Commissioner, now that you have learned of the system,
2977 can you describe what OCS is?

2978 Mr. KOSKINEN. Yes. I actually provided a letter to the
2979 committee that Chairman Issa referenced earlier. What I have
2980 been advised is OCS is a system that exists in Microsoft
2981 systems and it basically allows people around the Country,
2982 its primary use is to have a teleconference and you can put
2983 the same information up on the screen and everybody looks at
2984 it at the same time, and it is a way to have a
2985 telecommunications gathering in a meeting.

2986 It allows you also to, in effect, have an instant
2987 messaging capacity for those who use it--not everybody uses
2988 it; I don't use it because I didn't know it existed--that
2989 much like your cell phone, somebody, if they see you are
2990 online, can send you a text message and it is like calling
2991 you on the phone. So like all text messages, it is a
2992 sometimes faster and more efficient way to communicate than
2993 picking up the phone and calling someone.

2994 Mr. CUMMINGS. Despite the fact that the email exchange
2995 occurred on April 9th, 2013, nearly two years after Ms.
2996 Lerner's computer crashed, and more than one year after the
2997 inspector general's audit began, Chairman Issa declared that
2998 the email exchange was a ``smoking gun.'' On July 11th, the

2999 | IRS sent a letter to the committee explaining that OCS
3000 | messages ``are substitutes for telephone calls and in-person
3001 | meetings'' and ``the IRS does not currently preserve
3002 | communications sent and received through OCS.'' Is that
3003 | accurate?

3004 | Mr. KOSKINEN. That is accurate.

3005 | Mr. CUMMINGS. The IRS further explained that the Federal
3006 | Records Act ``does not require recording or retention of
3007 | telephone calls or meetings as a substitute for telephone
3008 | calls and in-person meetings that would not normally be
3009 | recorded. Communications sent through OCS are not considered
3010 | records subject to Federal records or other retention
3011 | requirements.''

3012 | I ask unanimous consent that the letter be entered into
3013 | the record, Mr. Chairman.

3014 | Mr. DESANTIS. Without objection.

3015 | [The information follows:]

3016 | ***** COMMITTEE INSERT *****

3017 Mr. CUMMINGS. Commissioner Koskinen, does the Federal
3018 Records Act require retention of the OCS messages?

3019 Mr. KOSKINEN. It is my understanding it does not. In
3020 fact, it is my understanding that now our review, our
3021 record-keeping process and in 2011 we got a score of 93 and
3022 in 2012 got a score of 99. But we are meeting with NARA. We
3023 have reached out to them to try to work with them to ensure,
3024 A, that we are complying with the Act now and if there are
3025 ways we can improve our official records-keeping, we are very
3026 anxious to do that. As I say, ultimately we hope some day to
3027 be able to afford to have, in effect, an email system that is
3028 a system of record.

3029 Mr. CUMMINGS. Are you aware of any evidence that Lois
3030 Lerner used the OCS system to intentionally hide information
3031 from Congress or the inspector general?

3032 Mr. KOSKINEN. I am not. As note, we produced 43,000
3033 emails from her account, so she obviously used email
3034 significantly.

3035 Mr. CUMMINGS. To the best of your knowledge, has any IRS
3036 employee used the OCS system to intentionally hide
3037 communications from Congress or the inspector general?

3038 Mr. KOSKINEN. I have no knowledge of any such activity.

3039 Mr. CUMMINGS. Once again, your testimony is corroborated
3040 by the results of the committee's investigation. After
3041 receiving hundreds of thousands of pages of documents and

3042 interviewing dozens of IRS employees, the committee has not
3043 identified any evidence supporting the chairman's allegation
3044 that Ms. Lerner or any other IRS employee used the OCS system
3045 to intentionally hide information from Congress.

3046 I want to thank you, Mr. Koskinen, for your testimony.
3047 I have 14 seconds left. Is there anything else you wanted to
3048 tell us?

3049 Mr. KOSKINEN. No. I would just add to the congresswoman
3050 from Wyoming, talking about she works for taxpayers, my view
3051 is we all work for taxpayers. I, as the head of the agency,
3052 am basically employed by the American people. We have
3053 important responsibilities to be careful stewards of the
3054 money we spend; it is ultimately money that comes from the
3055 American people.

3056 And we have an obligation to ensure that everyone is
3057 treated fairly and the same, and to the extent that there are
3058 people who have lost trust and confidence in the IRS to do
3059 that, one of our major challenges is to restore that trust.
3060 Whenever we are going to continue and audit people, as I have
3061 said in the past. Some of them will be Democrats, some will
3062 be Republican, some may not belong to a party, some may have
3063 voted for one person or another, some may be active in
3064 politics; and what they need to be confident of is when they
3065 hear from the IRS, it is not because of any of that, it is
3066 all irrelevant.

3067 When they hear from us, it is because of some question
3068 in their tax return. And if somebody else had that same
3069 question, they would be heard from us as well. But we have
3070 an obligation and a commitment to treat everybody fairly and
3071 evenly across the board. I have met with over 11,000 IRS
3072 employees across the Country, and I have never seen a more
3073 dedicated workforce dedicated to the mission to the IRS, to
3074 providing taxpayer service to enforcing the Internal Revenue
3075 Code, and I am delighted to be part of that workforce.

3076 Mr. CUMMINGS. Thank you, Mr. Chairman.

3077 Mr. DESANTIS. Before I recognize the chairman of the
3078 subcommittee, I just will, with respect to Lois Lerner's
3079 emails in terms of OCS, when she initially wrote the email to
3080 Maria Hooks saying she had a question about OCS, she said she
3081 was cautioning folks about email and that we have had several
3082 occasions where Congress has asked for emails and there have
3083 been an electronic search for responsive emails, so we need
3084 to be cautious about what we say in emails. Someone asked if
3085 OCS conversations were also searchable. I didn't know, but
3086 told them I would get back to them.

3087 So I just think it is important the context, when she
3088 was asking about OCS, was to try to evade congressional
3089 oversight.

3090 With that, I will recognize the chairman of the
3091 subcommittee, Mr. Jordan.

3092 Mr. JORDAN. I thank the chairman.

3093 Let me go to the Helbig decision, Mr. Koskinen. Does
3094 the IRS have an obligation to now tell taxpayers the tax
3095 credit may in fact not be available?

3096 Mr. KOSKINEN. I think we have an obligation to keep
3097 taxpayers informed about all aspects of the Affordable Care
3098 Act, all aspects of the Internal Revenue Code. We have a
3099 program of public information to advise taxpayers now, if
3100 they are getting premium tax credits, before these decisions.

3101 If their information changes, they should go back and make
3102 sure the credit is correct. To the extent that we go
3103 forward--

3104 Mr. JORDAN. Are you going to educate taxpayers on the
3105 potential ramifications of the Halbig decision?

3106 Mr. KOSKINEN. We actually will put out information
3107 regarding it. As I say, right now, at this point, two courts
3108 have come to different conclusions, so we don't intent to
3109 make any different changes. Therefore, I think our advice,
3110 although it is not totally in my control because it is a
3111 policy issue of how to deal with it and we are just tax
3112 administration, but my general assumption is people will and
3113 should continue to operate as they have thus far until we get
3114 to a final court decision. And the courts have not indicated
3115 that anyone should do anything differently.

3116 Mr. Jordan. Let me go to the Ways and Means statement

3117 | yesterday, their press statement. One of the things they say
3118 | in the lead paragraph, it says, in-house professionals at the
3119 | IRS recommended the agency seek outside assistance in
3120 | recovering the data. Are you going to do that, or have you
3121 | done that already, outside professionals to recover data lost
3122 | or that may be recoverable on the scratched hard drive or the
3123 | tape that now in fact may be available? Is that something
3124 | the IRS is going to do?

3125 | Mr. KOSKINEN. As you know, my understanding is that that
3126 | hard drive is the normal process. Once the Criminal
3127 | Investigation Division determined they could not restore any
3128 | information from it, that hard drive was recycled and no
3129 | longer exists.

3130 | Mr. JORDAN. When that took place, when you were trying
3131 | to get to the data, did you in fact go get outside assistance
3132 | in trying to recover the data?

3133 | Mr. KOSKINEN. I was not around at that time, but I am
3134 | not aware of any attempt to go outside the IRS.

3135 | Mr. JORDAN. So even though in-house professional says,
3136 | you know what, this might be a little above our pay scale, we
3137 | should go get the outside tech experts, the super wiz kids
3138 | who can do this stuff, we should bring them in, to your
3139 | knowledge, that was not done?

3140 | Mr. KOSKINEN. To my knowledge, I don't know even about
3141 | that statement. I haven't seen his transcript as to

3142 | whether--I was not aware that that recommendation has been
3143 | made, but I have no information indicating that that was
3144 | done, i.e., that outside experts were sought. All I have
3145 | seen is the emails that I actually have testified about in
3146 | which Criminal Investigation Division reported they could not
3147 | restore the hard drive. But I have no information that the
3148 | IRS at that time did anything else.

3149 | Mr. JORDAN. They did not. I just want to be clear. It
3150 | is your understanding that there was not outside
3151 | professionals who were brought in to try to recover the data.

3152 | Mr. KOSKINEN. That is right. I have no indication that
3153 | was done, and it is my assumption by the emails that I saw
3154 | when I testified that when the Criminal Investigation
3155 | Division--

3156 | Mr. JORDAN. So no outside experts were brought in, even
3157 | though in-house experts recommended they be brought in.

3158 | Mr. KOSKINEN. I had no information about the in-house
3159 | recommendation.

3160 | Mr. JORDAN. I am going by what the Ways and Means
3161 | Committee is reporting, that they said in-house professionals
3162 | said in fact we should go get some outside experts. This is
3163 | beyond our scope; we need someone else to come get this
3164 | because this is such important information. And you are
3165 | saying you don't think that was done.

3166 | Mr. KOSKINEN. I don't think it was done. But I haven't

3167 | seen the full context of what that gentleman said, either.

3168 | Mr. JORDAN. Okay. You don't think it was done and you
3169 | don't know if it was asked for. They are reporting that it
3170 | was asked for and it wasn't done.

3171 | Mr. KOSKINEN. It wasn't done. Right.

3172 | Mr. JORDAN. Which is a problem. Which is a big problem,
3173 | when your tech experts say we need outside tech experts to
3174 | come in and get the data, no, no, no, we don't want to do
3175 | that, it is unrecoverable. As reported by what you have said
3176 | in testimony and what has been filed with the court that it
3177 | was unrecoverable.

3178 | Mr. KOSKINEN. You have to remember this was three years
3179 | ago, and there were no investigations ongoing at that time.
3180 | In fact, the IRS had already taken extraordinary attempts
3181 | even to go to the CID people--

3182 | Mr. JORDAN. But that is the point. If it is three years
3183 | ago, that is why they said we need the outside experts. That
3184 | is why they wanted the help. And you are saying it didn't
3185 | happen.

3186 | Mr. KOSKINEN. Right.

3187 | Mr. JORDAN. Which is a concern.

3188 | Let me just do one other question, if I could.

3189 | So, according to your testimony, a month ago the Ways
3190 | and Means Committee said the IRS, in February, identified
3191 | documents that indicated Ms. Lerner had experienced computer

3192 failure in 2011, consistent with Mr. Cain. You knew in
3193 February there was a problem, February 2nd, February 4th you
3194 knew there was a big problem, according to Mr. Cain's
3195 testimony. In mid-February you knew it was unrecoverable.
3196 Your testimony says in mid-March 2014, this review, we
3197 learned the data stored on her computer hard drive was
3198 determined to be unrecoverable. So Mr. Cain says he knew in
3199 February; you knew in mid-March.

3200 Mr. KOSKINEN. That is right. I actually knew--

3201 Mr. JORDAN. But you were kept abreast--

3202 Mr. KOSKINEN. I actually knew in mid-April, and that is
3203 a misstatement on my part. If you read my testimony before
3204 this committee in the now three hearings I have had--

3205 Mr. JORDAN. This is your written testimony in Ways and
3206 Means. This is not accurate?

3207 Mr. KOSKINEN. My written testimony?

3208 Mr. JORDAN. This is your opening statement, what you
3209 said to the Ways and Means Committee. The IRS, in February,
3210 identified documents that indicated Ms. Lerner experienced a
3211 computer failure in 2011. Mid-March review, 2014, the data
3212 stored on her computer hard drive was determined to be
3213 unrecoverable.

3214 Mr. KOSKINEN. No, I am sorry, that is correct. That was
3215 what the IRS knew--

3216 Mr. JORDAN. So here is my question.

3217 Mr. KOSKINEN. Yes.

3218 Mr. JORDAN. Mr. Cain says on February 4th he knew. You
3219 indicate in your testimony mid-February we knew there were
3220 big problems, and you indicated in mid-March we knew it was
3221 unrecoverable. You knew, even though your key staff people,
3222 Mr. Cain and Ms. Duvall, knew in mid-February. You testified
3223 February 5th to the House Ways and Means Committee, February
3224 26th to the House Appropriations Committee on Financial
3225 Services, March 26th to this full committee, and April 8th to
3226 the Senate Finance Committee.

3227 In those hearings you were asked about Ms. Lerner and
3228 email and different things. You had four different
3229 opportunities in front of Congress. So I am wondering, in
3230 the back of your mind, were you wondering, when you answered
3231 these questions, that we are going to produce all of Lois
3232 Lerner emails, when we are going to comply, in the back of
3233 your mind, were you thinking maybe I should let these guys in
3234 on the little kind of important fact that, you know what, we
3235 have already determined that her hard drive is unrecoverable?

3236 Was that ever in the back of your mind when you were
3237 answering questions from members of Congress in four
3238 different committees over the time period when you have
3239 already learned significant facts. Even though in your mind,
3240 according to your testimony, you didn't fully know that we
3241 had lost them all for good, even though you sort of knew that

3242 | it was pretty darn likely you had lost them all for good, in
3243 | the back of your mind, did you think, you know what, maybe I
3244 | should fully disclose what the real status is of Ms. Lerner's
3245 | emails?

3246 | Mr. KOSKINEN. No. As I have testified several times in
3247 | the past--

3248 | Mr. JORDAN. That didn't enter your mind at all?

3249 | Mr. KOSKINEN. I didn't know that there were emails lost.
3250 | I personally didn't know, and that is what I was testifying
3251 | about, until the middle of April. When I testified, and I
3252 | have said this before in several hearings, when I testified
3253 | on March 26th, I did not know that her emails were not
3254 | recoverable.

3255 | Mr. JORDAN. But this is your testimony right here. I am
3256 | reading. This is John Koskinen testimony.

3257 | Mr. KOSKINEN. Right.

3258 | Mr. JORDAN. In the mid-March 2014 time frame, we learned
3259 | the data stored on her computer hard drive was determined to
3260 | be unrecoverable. So that is certainly before the March 26th
3261 | hearing and the April 8th hearing in front of the Senate
3262 | Finance Committee. So you had two opportunities where you
3263 | already know it is unrecoverable. That means you are not
3264 | going to get what is there.

3265 | Mr. KOSKINEN. No, I am sorry. I take, and I go to the
3266 | point earlier, I take responsibility for the agency. When I

3267 | said, in that, trying to report to people what we knew, that
3268 | is what the IRS knew. When you ask me specifically what did
3269 | I know, I knew and didn't know until April. If you told me
3270 | now that Tom Cain said he knew in February, I would
3271 | henceforth say we, as the IRS, knew in February. I myself,
3272 | personally, did not know.

3273 | When I testify, I tell you what I know.

3274 | Mr. JORDAN. This goes right to the chairman's point.
3275 | When our chief counsel knows in February, mid-February, that
3276 | it is unrecoverable, you can't come in front of Congress and
3277 | say I didn't know, that is why I didn't answer. Your chief
3278 | counsel knows. You should have known.

3279 | Mr. KOSKINEN. I should have known.

3280 | Mr. JORDAN. And you should have disclosed that, and you
3281 | didn't.

3282 | Mr. KOSKINEN. I didn't know and I, therefore, couldn't
3283 | disclose. And you are exactly right. I have not hidden
3284 | behind the fact that somehow this is somebody else's
3285 | responsibility. I am perfectly prepared to take full
3286 | responsibility for exactly what we did with the production of
3287 | the information to the Congress.

3288 | Mr. JORDAN. But you didn't tell us that in your
3289 | testimony. You didn't tell us, on March 26th, when you
3290 | answered, you didn't tell us that. It would have been nice
3291 | if we had known at that point. Kate Duvall and Tom Cain

3292 | already knew it was unrecoverable, but somehow they didn't
3293 | tell you because you would have to disclose that when asked
3294 | about it in Congress, was that why they didn't tell you?

3295 | Mr. KOSKINEN. I have no idea. This was an iterative
3296 | process. At that point we were spending most of our time
3297 | trying to produce all of the information for the
3298 | determination process, which we were able to do by the middle
3299 | of March.

3300 | Mr. JORDAN. This is what no one can figure out.
3301 | Something this important, Lois Lerner, the lady who sat in
3302 | your chair and took the Fifth, the central figure in this
3303 | investigation, you lose her emails; your chief counsel knows
3304 | in February, the lawyer in charge of document production
3305 | knows in February, and they don't tell you, and you can come
3306 | in front of Congress four times and not disclose that. And
3307 | then when you do learn in April, you can wait until June
3308 | 13th. That is what the American people are like, no wonder
3309 | there is some morale concern and no wonder there is a
3310 | distrust. That is unbelievable.

3311 | Mr. KOSKINEN. Well, can I just add one point?

3312 | Mr. JORDAN. We didn't know, your chief counsel knew.

3313 | Mr. KOSKINEN. You are going to talk to the chief
3314 | counsel, and she will tell you what she knew or didn't know.

3315 | Mr. JORDAN. We already talked to Tom Cain, and he told
3316 | us she knew.

3317 Mr. KOSKINEN. Right. He knew that, if you go back
3318 through there, that the hard drive had a significant problem.
3319 We did not know what emails we had. We, in fact, discovered
3320 and found 24,000 additional emails from Lois Lerner to other
3321 people--

3322 Mr. JORDAN. I appreciate the chairman's indulgence.

3323 All I am saying is this, when Tom Cain, the lawyer in
3324 charge of document production, the professional who you said
3325 does good work at the IRS, when he says unrecoverable, and
3326 they knew that in mid-February, and you come to Congress
3327 three times after they knew that, both he and your chief
3328 counselor, and you don't disclose that, you should have known
3329 that and you should have told us. And then when you do find
3330 out, you wait two more months. Come on. Come on, we are
3331 supposed to buy that?

3332 I yield back.

3333 Mr. DESANTIS. I thank the chairman.

3334 I would point out, before I recognize my friend from
3335 Pennsylvania, here we are in, say, February, March, saying
3336 you didn't know how many Lerner emails were out there; and,
3337 granted, you were not commissioner during this whole time,
3338 but we have been asking for these things for over a year now.

3339 A subpoena was sent in August, reissued under your watch, so
3340 the IRS dragged its feet on that.

3341 And I realize a lot of that is not necessarily on your

3342 watch, but don't tell me nine, ten months after we request
3343 this stuff and five or six months after a subpoena is issued,
3344 that somehow you just don't know how many emails you have.
3345 That should have been something that should have been
3346 ascertainable.

3347 Thank you for the indulgence, and I will recognize Mr.
3348 Cartwright.

3349 Mr. CARTWRIGHT. Thank you, Mr. Chair pro tem.

3350 Speaking of things that would be nice to know and things
3351 not disclosed, Mr. Koskinen, I asked the chairman of this
3352 full committee who the witnesses are supposed to be next
3353 Wednesday from the IRS. He declined to tell me. He declined
3354 to tell me whether he even knew who the witnesses next week
3355 will be. But I didn't ask you, Mr. Koskinen. This is your
3356 department. Do you know? Have you been informed by anybody
3357 on this committee who the witnesses sought for next week's
3358 hearing will be?

3359 Mr. KOSKINEN. Until I came to this committee meeting, I
3360 had no idea that the committee was going to hold yet another
3361 hearing next week.

3362 Mr. CARTWRIGHT. And would you agree with me that those
3363 are among the things that would be nice to know?

3364 Mr. KOSKINEN. It is always nice to know in advance when
3365 we are supposed to show up for a hearing. I don't know
3366 whether I am expected to show up again next Wednesday.

3367 Mr. CARTWRIGHT. Well, neither do I.

3368 Well, let's delve into the IRS forensic lab together,
3369 shall we? There were comments today about scratches on hard
3370 drives, and that is not my area of expertise, and I dare say
3371 it is not yours either.

3372 Mr. KOSKINEN. Right.

3373 Mr. CARTWRIGHT. But we did have John Minsek, an analyst
3374 from the IRS Criminal Investigations Unit, meet with Ways and
3375 Means staff on Monday. He told them he did not find anything
3376 suspicious about how a scratch got on Ms. Lerner's hard
3377 drive. The analyst, Mr. Minsek, said that he tried to recover
3378 Ms. Lerner's documents on two occasions, first with a normal
3379 tool set and then, using more advanced tools, he still
3380 couldn't recover any data.

3381 Mr. Commissioner, contemporaneous emails confirm that
3382 the IRS Criminal Investigations Unit could not recover her
3383 documents. Am I correct in that?

3384 Mr. KOSKINEN. That is correct.

3385 Mr. CARTWRIGHT. And the CI analyst, Mr. Minsek, then
3386 told Ways and Means Committee staff that he gave his
3387 colleague in the IRS IT shop the name of a third-party vendor
3388 that he used on rare occasions to recover information, but
3389 IRS IT staff had already consulted with outside experts at
3390 HP.

3391 Mr. Koskinen, do you know if IRS officials consulted

3392 | with IT experts a second time in 2011 to recover Ms. Lerner's
3393 | emails?

3394 | Mr. KOSKINEN. I do not know.

3395 | Mr. CARTWRIGHT. Okay.

3396 | All right, finally, I want to touch on something that
3397 | the gentlelady from Wyoming mentioned. She just said that
3398 | her constituents are going to take matters into their own
3399 | hands. And I say this because about an hour ago somebody
3400 | walked into the Cannon House Office Building with a handgun,
3401 | according to Chad Pergram, our friend from Fox News locally.

3402 | Knowing that there are over 4,000 staffers and interns
3403 | at risk here on the House side of the Capitol, and recalling
3404 | the horrible Gabby Giffords tragedy and the loss of staffer
3405 | Gabriel Zimmerman, I would ask that members refrain from
3406 | making statements that could even possibly be misconstrued by
3407 | the public as an invitation to do anything like that. It is
3408 | obvious that Representative Lummis meant no such thing, but I
3409 | think it behooves all of us to be very careful about the way
3410 | we phrase things, because there are people out there ready
3411 | and able to misconstrue things.

3412 | With that, Mr. Chairman, I yield back.

3413 | Mr. DESANTIS. The gentleman yields back.

3414 | The chair now recognizes the gentleman from Georgia, Mr.
3415 | Collins.

3416 | Mr. COLLINS. Thank you, Mr. Chair, I appreciate it.

3417 | Mr. Koskinen, here we go again. I told the story last
3418 | time, and it was the story of my young son, who, to some
3419 | media reports, became famous, I guess, or infamous, however
3420 | you want to describe it, on the stories that he used to tell,
3421 | and I recounted this time line, and I wish I could sit here
3422 | today and see you again and say that what was not plausible
3423 | then has now gotten a little bit plausible. It actually just
3424 | seems to not have gotten any more plausible. People ask why
3425 | are we continuing to do this? Because it just looks like
3426 | there is something new comes out all the time. One request
3427 | will say this, then another request.

3428 | It was asked earlier--I had to leave and come back, and
3429 | it was said how much paperwork that you have put to the
3430 | committee and how many hours are being worked on. To restore
3431 | trust in a relationship, whether it is between two people or
3432 | whether it is between Government and the people that they
3433 | serve, it should really be of no limit to restore that trust,
3434 | especially with the IRS.

3435 | So, frankly, to tell me that you gave a million
3436 | documents and that your hours you are spending, because of
3437 | the issues that have been raised and the lack of trust on
3438 | both sides, I have Democrats and Republicans in my district
3439 | who are appalled at this; and they want it solved, they want
3440 | the real answers and they want to continue, and they don't
3441 | want to continue reading every week in the paper that

3442 something new has come up. I think that is an issue of trust
3443 that has to be maintained here; and, frankly, the
3444 plausibility story is just, again, getting to the level of
3445 unbelievable in a lot of ways.

3446 But I do have some questions, because we have talked a
3447 lot about the Lois Lerner emails, but in addition to those
3448 the committee has also asked for other emails, and I want to
3449 talk to you about those for just a second and see the status
3450 of those, is that okay?

3451 Mr. KOSKINEN. Sure.

3452 Mr. COLLINS. Okay.

3453 Holly Paz, emails responsive to the committee's request
3454 from August 2nd, 2013 to February 14th, 2014. Have you
3455 gathered all of those emails?

3456 Mr. KOSKINEN. We have provided all of the emails with
3457 regard to the determination process. And, again, pursuant to
3458 what I thought were the agreed upon search terms, but
3459 apparently not totally agreed with the investigative
3460 committees, that we would select 83 custodians who were the
3461 ones most likely to be involved and that we would search--

3462 Mr. COLLINS. Are those the same 83 that a quarter of
3463 their hard drives crashed?

3464 Mr. KOSKINEN. It is not clear a quarter. At this point,
3465 nobody knows what that answer is.

3466 Mr. COLLINS. Oh, so we could have more that have

3467 | crashed.

3468 | Mr. KOSKINEN. We could have more, we could have less. I
3469 | don't know until we find out.

3470 | Mr. COLLINS. I mean, does that just not boggle mind that
3471 | of a small number, one about a quarter, and we can argue
3472 | about a quarter, not a quarter, I am not a mathematician,
3473 | neither are you, but that there may be others in that subset
3474 | that deals with the areas we are asking for?

3475 | Mr. KOSKINEN. Yes. And that is a perfect example as to
3476 | why it would be very helpful, had we been able to complete
3477 | the investigation of what happened to the custodians, we
3478 | could tell you. The reason I actually decided we would
3479 | continue to find out how many Lois Lerner emails we had was
3480 | because if we hadn't been able to do that, people would be
3481 | talking about--

3482 | Mr. COLLINS. Let's not change the question. I asked
3483 | about Holly Paz. We can get away from Lerner. I asked about
3484 | Holly.

3485 | Mr. KOSKINEN. No, no, but my point is that to the extent
3486 | we can provide the full story, your point, then it is a lot
3487 | easier to know and you can disagree about it. But it is a
3488 | lot better to know what the total picture is. So when you
3489 | get the custodians, because the IG is now doing that, we
3490 | don't know what the answer is, so it may be 10, it may be 20,
3491 | it may be 5, it may be 25. I don't know, and at this point

3492 | we aren't able to investigate that, and we are hoping the IG,
3493 | when he completes his investigation, would include, will
3494 | conclude with the custodians as well.

3495 | Mr. COLLINS. Well, that is another source of contention.

3496 | Mr. KOSKINEN. That is the problem. Anyway, it is part
3497 | of the problem we are doing this in dribs and drabs--

3498 | Mr. COLLINS. I understand.

3499 | Mr. KOSKINEN.--and every day having a press release
3500 | about some aspect of some interview.

3501 | Mr. COLLINS. Thank you for saying drips and drabs,
3502 | because that is what this investigation seems like it has
3503 | been every since we started it, and especially even from your
3504 | comments and others, that every day we get drips and drabs
3505 | and drips and drabs, and the people are tired of it, this
3506 | Congress is tired of it. And this is the problem we have
3507 | because I am going to assume from your question--I am an
3508 | attorney as well--that that is a no. After all you said, you
3509 | have not gathered all her emails, or you don't know if you
3510 | have gathered all her emails.

3511 | Mr. KOSKINEN. No, no, exactly right. I didn't mean to
3512 | be evasive. We provided all of the emails that were
3513 | determined to be relevant to the determination process. We
3514 | have not yet provided all of her emails because our first
3515 | priority, agreed with this committee in March, was we would
3516 | find all of Lois Lerner's emails.

3517 Mr. COLLINS. So, no. So the question on William
3518 Wilkins, same question, yes or no?

3519 Mr. KOSKINEN. Same answer. You got all of his emails
3520 that are responsive to the investigation that started all of
3521 this.

3522 Mr. COLLINS. Okay, but no to all. Jonathan Davis, same
3523 question.

3524 Mr. KOSKINEN. Again, you got all of his--

3525 Mr. COLLINS. No. I mean, because all is all. I mean,
3526 we had this conversation three months ago.

3527 Mr. KOSKINEN. That is right. And as I said in March, we
3528 are happy to keep working with you to figure out what your
3529 next priority is. Obviously, thanks to the system, we can't
3530 produce it all at once. We have actually produced a lot of
3531 stuff, and it takes us a long time. Part of the background
3532 on the June 13th public report was to try to explain why,
3533 with our system, it takes so long to produce this stuff. We
3534 should not have to spend \$18 million. We should have a
3535 better system. There is no doubt about that.

3536 Mr. COLLINS. I don't disagree. The question I have,
3537 though, is we need them all, in the sense of the
3538 clarification issue here, and we have just got that.

3539 I do have one quick--I want to go back to something that
3540 was asked a lot earlier and it was, I believe, from my friend
3541 from South Carolina. He said we confirmed, and you said I

3542 | don't now who told me. And I have sat through this will be
3543 | my third, I guess, with you listening, and there has been a
3544 | lot of meetings in which you were told information, but you
3545 | don't remember who was in the meeting or you don't know who
3546 | told you that, and it hit me as I was sitting here. Maybe
3547 | there were multiple people in the room and you are not sure
3548 | who said it first or who told you first, so I am going to ask
3549 | it differently. I don't want to know who told you first or
3550 | last. I am not being specific in that nature. I want to
3551 | know who was in the room when you were told that we have
3552 | confirmed all that. And sure you are a very bright
3553 | individual. You would know at least who was in the room.

3554 | Mr. KOSKINEN. I have 12 meetings a day, on average.

3555 | Mr. COLLINS. I do as well. I know most of the ones in
3556 | the meeting, especially when it is senior staff on something
3557 | of this nature.

3558 | Mr. KOSKINEN. And those meetings average probably 8 to
3559 | 10 people, so I cannot tell you about any meeting who was
3560 | actually in the room. But I can tell you who was likely in
3561 | the room, and that is the people who have been working on the
3562 | production with your staff. Obviously, my counselor was in
3563 | the room, probably my chief of staff was in the room. But I
3564 | can't tell you, and I don't recall because it wasn't
3565 | significant at the time, who else was in the room. We were
3566 | reviewing the document.

3567 | Mr. COLLINS. It wasn't significant at the time that you
3568 | may have lost emails? That was not a significant meeting?

3569 | Mr. KOSKINEN. The issue here was whether we could
3570 | confirm, your question was whether we could confirm.

3571 | Mr. COLLINS. Confirm. But you are dealing with a bigger
3572 | issue. I said is that not significant?

3573 | Mr. KOSKINEN. This entire issue was significant, but I
3574 | am actually running an agency that has to deal with filing
3575 | seasons; we have overseas voluntary disclosure programs; we
3576 | have voluntary tax return programs we have been putting out;
3577 | we have been simplifying for small charitable organizations--

3578 | Mr. COLLINS. And, look, I understand that and that is a
3579 | great diversion to what we are asking right here. I get that
3580 | the IRS has other issues, but I also get that the American
3581 | people, even over years of making fun and doing everything
3582 | else that unfortunately the IRS has had in the past. It is
3583 | not now just the fact that they don't like the IRS because
3584 | they have to send their money in.

3585 | They are now at an issue both party line irregardless,
3586 | they are not sure about the IRS because they don't trust the
3587 | IRS anymore. And when that is an issue, everything should be
3588 | focused on that. And this is the question that makes it just
3589 | completely implausible and we keep getting dribs and drabs.
3590 | I appreciate what you said on dribs and drabs, because that
3591 | is the problem we have right now.

3592 Mr. DESANTIS. The gentleman's time has expired.

3593 Mr. COLLINS. I will yield back.

3594 Mr. KOSKINEN. Can I just make one point clear, and that
3595 is nobody has a greater interest of getting you all the
3596 information you need and getting closure on this than I do
3597 and the people at the IRS. If we could conclude one of these
3598 six investigations, find out what the determination of facts
3599 are and the recommendations are, we are delighted to take
3600 those recommendations. We have accepted all of the inspector
3601 general's recommendations. The last thing in the world that
3602 benefits us is to have this go on any longer than necessary.
3603 So whatever we can do, as fast as we can produce documents.
3604 The relevance of the 960,000 pages isn't, gee, isn't that a
3605 big amount. It takes a lot of time to get all that done in
3606 our system.

3607 Mr. COLLINS. The one thing we will agree upon is getting
3608 to the end of this is the end result so that we can move and
3609 the people can restore the trust in a Government agency in
3610 which they need to have trust that they don't have now.

3611 With that, I yield back.

3612 Mr. DESANTIS. The gentleman's time has expired.

3613 I am going to recognize the gentleman from California
3614 for five minutes.

3615 Mr. KOSKINEN. This is round four?

3616 Mr. ISSA. No, no. When people yielded me time under our

3617 | arcane rules, that doesn't count.

3618 | Mr. KOSKINEN. Okay.

3619 | Mr. ISSA. But I will be brief.

3620 | Commissioner, we have a history, and I want to make sure
3621 | I get the history straight today, because it does matter for
3622 | this committee. You constantly talk about this agreement and
3623 | discovery and so on. Were you aware that we considered that
3624 | the IRS was stonewalling us and giving us information we
3625 | didn't want and giving it to us in an order we didn't like it
3626 | in the months of May, June, and July of 2013?

3627 | Mr. KOSKINEN. I was not aware of that.

3628 | Mr. ISSA. Well, we have a number of letters basically
3629 | showing our dissatisfaction, including what we now know to be
3630 | erroneous information, misleading information that would
3631 | imply that progressive were being targeted, the false
3632 | narrative that continues to be used at times.

3633 | On May 22nd, 2013, Lois Lerner took the Fifth. Shortly
3634 | after that she became a person of extreme interest for this
3635 | committee because in fact she had made statements outside of
3636 | her assertion of the Fifth that she broke no rules, she broke
3637 | no regulations. She additionally authenticated earlier
3638 | testimony in statements again. After she took the Fifth, she
3639 | then went back on the record. So under oath she made a
3640 | number of statements.

3641 | As we began investigating, we became very aware that

3642 | Lois Lerner was an active participant in Washington of
3643 | targeting conservatives. In addition, in evaluating her
3644 | history, we became very aware that she did not like
3645 | conservatives and she had that sort of predisposition. Plus,
3646 | her public speeches made it very clear that on behalf of the
3647 | President ``they want us to fix this`` and certainly the
3648 | President had been the outgoing spokesperson again Citizens
3649 | United, that we had every reason to focus our investigation
3650 | on her as the hub in a hub and spoke system of deliberately
3651 | targeting conservatives for their values.

3652 | Therefore, I issued, if the ranking member were here, he
3653 | would call it unilateral, but pursuant to the committee rules
3654 | I issued a subpoena and made it very clear that our first
3655 | priority was to have all of Lois Lerner's emails, and that
3656 | that was the priority. Were you aware of that?

3657 | Mr. KOSKINEN. I am aware of that subpoena, yes.

3658 | Mr. ISSA. And you were aware that that was our goal?

3659 | Mr. KOSKINEN. You have eight items on that subpoena, and
3660 | that is at the top of the list.

3661 | Mr. ISSA. Very good. Therefore, when we interviewed
3662 | Thomas Cain and we asked him, so is it fair to say this
3663 | subpoena had no--and this was the subpoena of August
3664 | 2nd--this subpoena had no impact on the process that you were
3665 | following or the documents that you were reviewing. That was
3666 | our question. His answer: It didn't impact our production

3667 | process, that is correct. Question: Did it have any impact
3668 | on which documents were chosen to review? Answer: No.

3669 | Additionally throughout that transcribed interview, what
3670 | we discovered was that you all met, had a discussion, if you
3671 | will, and decided that you were not going to prioritize any
3672 | aspect of delivery of Lois Lerner's documents, even though
3673 | she had taken the Fifth before this committee, even though
3674 | she clearly had public statements and she had been a person
3675 | who had already unlawfully leaked, by planting a question,
3676 | the outcome of an IRS TIGTA investigation. All of that is
3677 | undeniable.

3678 | Why in the world should the American people believe that
3679 | you are cooperating with us when I issue a subpoena, our
3680 | committee makes it clear in multiple letters that these are
3681 | our priorities, and now we have sworn testimony or testimony
3682 | under penalty of perjury that you didn't make any changes,
3683 | you basically continued business as usual, which was
3684 | delivering us based on you call it mutually agreed, but they
3685 | were your criteria, primarily, as to search terms, and never
3686 | disclosed to us that those search terms were searching but a
3687 | small portion of what should have been the entire database?
3688 | Do you have an answer for that?

3689 | Mr. KOSKINEN. I wasn't there. My understanding is there
3690 | are five other investigations that are now going on and were
3691 | going on then, that there were a wide range of requests for

3692 | documents from the Senate Finance Committee, Ways and Means,
3693 | Permanent Subcommittee.

3694 | Mr. ISSA. Did any of them issue binding subpoenas?

3695 | Mr. KOSKINEN. And I don't think anyone else had a
3696 | binding subpoena. My understanding, and I wasn't there, was
3697 | that--

3698 | Mr. ISSA. But after February 2014 we issued another
3699 | subpoena. Did anything change then?

3700 | Mr. KOSKINEN. At that point, we were, as I have
3701 | testified before, we began to pull the rest of Lois Lerner's
3702 | emails. We started with the analysis of the emails already
3703 | produced, and that is where it was discovered that there were
3704 | fewer emails in the 2011 period.

3705 | One of the priorities at that time, though, competing
3706 | priorities was to complete the production of the
3707 | determination documents that everybody was interested in.
3708 | There was kind of a, I gather, a process by which, with all
3709 | of the conflicting questions to try to respond to documents
3710 | that met as many of the requests as possible, and most of the
3711 | requests certainly for Finance and, at that time, Ways and
3712 | Means were for documents around the determination process.

3713 | That was completed, and then since that time the full
3714 | court press has been to produce all of Lois Lerner's emails,
3715 | whether in her account or any other account.

3716 | Mr. ISSA. Thank you. Earlier on I asked you for a

3717 | discovery process of who was looking for when throughout a
3718 | time line, and your assistant took it in very copious notes
3719 | there. I want to just add one clarification to that process.
3720 | Obviously, we are interested in what you did during
3721 | subpoenas, but we are getting that. You have delivered some,
3722 | I guess we are looking at an exorbitant number of documents
3723 | that you constantly and many people constantly cite.

3724 | What we don't understand that I think the committee has
3725 | an absolute obligation to understand, is in this process of
3726 | what you looked and where you looked, understanding the
3727 | sources that this has come from, because we are a committee
3728 | of oversight reform, we are a committee that has an
3729 | obligation to see that you spend the American people's money
3730 | properly.

3731 | It appears, from this side of the dais, as though the
3732 | process is very fragmented, that in fact you are looking sort
3733 | of under cookie jars, to use an expression of my youth; that
3734 | you are providing large amounts of data from certain periods
3735 | that based on a six-month backup and a very small server
3736 | capacity wouldn't exist. So that means that they probably
3737 | came from other places. And we need to understand all the
3738 | places they came from, where you went.

3739 | You have sent us, in many cases, hugely redundant
3740 | emails. In other words, the same emails can come from
3741 | multiple places. Understanding that so that we can figure out

3742 | how to prevent it in the future is important, because this is
3743 | not the last time that a Federal judge, an IG, or a
3744 | congressional committee is going to want to know details. I
3745 | think we can all agree to that, just as corporate America
3746 | receives countless subpoenas for document production, so much
3747 | so that they develop software explicitly to do these kinds of
3748 | searches and retention policies for that reason.

3749 | Can we have your agreement that we will receive some
3750 | accounting of how that happens?

3751 | Mr. KOSKINEN. Yes. And we would be glad to talk further
3752 | with your staff to make sure we give you exactly what you
3753 | need. But you are exactly right, we looked in the logical
3754 | places, and I understand we looked under every cookie jar.
3755 | We actually were dedicated to making sure that we found every
3756 | existent Lois Lerner email on her account or anybody else's
3757 | so that we would be able to say these are all the Lois Lerner
3758 | emails we have, and that has led to 67,000.

3759 | Mr. ISSA. And I will make a rather unusual request in
3760 | this case. We are more than happy to have a small group
3761 | briefing meeting, bipartisan meeting, with the individuals
3762 | who have been involved in this so that separate from the
3763 | investigation, which is important and ongoing, the question
3764 | of efficiency, the cost-effect of fragmented data, the
3765 | cost-effect of having, and I have held it up several times,
3766 | individual drives like this that people have, notebooks that

3767 | have been taken offline, all the other things that I suspect
3768 | are one of the reasons this has become so expensive and
3769 | difficult.

3770 | That meeting is not exactly on course with this
3771 | investigation, but it is separately a question from a
3772 | standpoint of the management of the \$82 billion worth of
3773 | funds that Government spends to see if in fact policy changes
3774 | with OMB and others should be instituted and funding
3775 | allocated so that this kind of fragmentation doesn't happen
3776 | in the future.

3777 | So as one person who has worked in private America to
3778 | another, that is something that your briefing can be
3779 | informal, off the record, doesn't have to be definitive, but
3780 | our committee, I think, really has to have an understanding
3781 | so we can be part of policy formation, because what I know
3782 | about how corporate America does it and what I am beginning
3783 | to glean you have to do are very different.

3784 | Mr. KOSKINEN. They are very different. As I have said,
3785 | I asked that question some time ago, that we should not have
3786 | to spend \$18 million and this amount of time responding to
3787 | document and email requests. But I think if we could kind of
3788 | get two birds with one stone, we could, as you say, have that
3789 | briefing that would answer your questions about how did this
3790 | discovery process go and then what are the problems with that
3791 | going forward, because it is my understanding that there has

3792 | been a tremendous amount of effort made to make sure that we
3793 | found every document responsive to the committee. It is a
3794 | lengthy process.

3795 | Again, the June 13th report starts out trying to explain
3796 | to all of the investigators what the process is and why it is
3797 | so anachronistic and so difficult. And I agree with you
3798 | totally, going forward it would certainly help all of us if
3799 | we had a more efficient system for preserving and finding
3800 | documents and emails.

3801 | Mr. ISSA. Thank you, commissioner.

3802 | I yield back.

3803 | Mr. DESANTIS. The gentleman yields back and that
3804 | concludes our hearing today.

3805 | Thank you, Mr. Commissioner, and the hearing is
3806 | adjourned.

3807 | [Whereupon, at 1:20 p.m., the subcommittee was
3808 | adjourned.]

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INTERNAL REVENUE SERVICE

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