

IRS: TIGTA UPDATE

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

FEBRUARY 26, 2015

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IRS: TIGTA UPDATE

Thursday, February 26, 2015

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, DC.

The Committee met, pursuant to notice, at 7:40 p.m., in room 2154, Rayburn House Office Building, Hon. Jason Chaffetz (chairman of the Committee) presiding.

Present: Representatives Chaffetz, Mica, Jordan, Walberg, Amash, DesJarlais, Gowdy, Farenthold, Massie, Meadows, DeSantis, Mulvaney, Buck, Walker, Hice, Carter, Grothman, Hurd, Palmer, Cummings, Maloney, Lynch, Connolly, Cartwright, Duckworth, Kelly, Lawrence, Lieu, Plaskett, DeSaulnier, Boyle, and Lujan Grisham.

Chairman CHAFFETZ. The Committee on Oversight and Government Reform will come to order.

Without objection, the chair is authorized to declare a recess at any time.

The Internal Revenue Service, the IRS—perhaps no other agency, no other institution in our government causes more fear, more concern, more distress, or outright panic at the mere mention of their name than the IRS.

Entanglement with the IRS is never good. Most Americans work hard, pay their taxes, and just want to live a life free of harassment. And most of the IRS employees are good, decent, hard-working, patriotic people doing a tough job working for the government and are honest in their dealings, but, unfortunately, not all of them.

Nearly 2 years ago, the Treasury Inspector General for Tax Administration, often referred to as “TIGTA,” did an audit that confirmed what many on this committee had feared and heard: The IRS was targeting and delaying the applications for 501(c)(4) status of conservative nonprofit organizations because of their political beliefs.

The IRS was on the lookout for applications that focused on the national debt, “criticized how the country was run,” or that sought to educate the public on how to, “make America a better place to live.”

These were conservatives trying to play by the rules, but some in the IRS didn’t want them in the game. They didn’t even want them to have a voice.

When it was first revealed that the IRS was targeting Americans and suppressing their First Amendment rights because of their political beliefs, President Obama said this, “If, in fact, IRS personnel

engaged in the kind of practices that have been reported on and were intentionally targeting conservative groups, then that is outrageous and there is no place for it. And they have to be held fully accountable, because the IRS, as an independent agency, requires absolute integrity, and the people have to have confidence that they are applying the laws in a nonpartisan way.”

I agree with the President. He was absolutely and totally right.

But, sometime right before the Super Bowl rolled around, before any of the investigations were complete, the President concluded there was, “not even a smidgen of corruption.” I have no idea how the President came to such a definitive conclusion without all the facts, but he obviously sent a signal as to how he would like this to be concluded.

On the one hand, the President has come to a conclusion, and, on the other hand, there’s an ongoing investigation by the Inspector General and the Department of Justice.

But Congress has a role. As the new chairman of the Committee, I thought it would be appropriate to get an update on the investigation from the Inspector General. I want us to focus on the facts, wherever they may lead us.

And, thus far, the IRS, and specifically its commissioner, has given us a lot of different answers to some fairly simple questions.

The Oversight Committee subpoenaed the IRS in August 2013 seeking emails from Lois Lerner as well as others involved in the targeting. Months later, we did not have all the Lois Lerner emails. In an Oversight hearing on March 26, 2014, Commissioner Koskinen testified under oath that he had all the emails and he would produce all the emails.

Yet, on June 13, 2014, the IRS sent a letter to the Senate Finance stating a multiyear tranche of Lois Lerner’s emails had been destroyed. A June 13, 2014, letter sent to Senate Finance said, “IRS confirmed the backup tapes from 2011 no longer exist because they’ve been recycled pursuant to the IRS normal policy.”

June 20, 2014, before Ways and Means, Chairman Camp said, “Your letter describes the Lois Lerner emails as being unrecoverable,” Commissioner Koskinen: “Correct.”

February 11, 2015, in an Oversight hearing, Mr. DeSantis of Florida says, “You made the effort. You were not cavalier about this. You made the effort to find what the Committee wanted.” Mr. Koskinen: “Yes.”

The IRS Commissioner has said they went to, “great lengths” and made extraordinary efforts to recover the emails. This is but a small sampling of the Commissioner’s definitive and precise Statements about the missing emails. Yet I believe what we will hear this evening is far different than we were led to believe.

To the men and women in the Inspector General office, we cannot thank you enough for your hard work, the long days that you’re working to get the information to the American public and for this committee.

We look ultimately to reading the final report, but it is appropriate to give an update today, and so we appreciate you being here.

With that, I will yield back and recognize the gentleman from Maryland, the ranking member, Mr. Cummings.

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

I want to take a moment to commend you for the way the Committee has been running since you became chairman. You have shown tremendous respect for our side, and I really appreciate that. And that goes not only for you but your staff, and I appreciate everything that they've done to work with us. Everyone notices the more collegial and collaborative atmosphere on our committee, and that is due to your efforts and the tone you have set.

Mr. Chairman, there are certainly issues we're going to disagree on, and today's hearing is one of those issues. But we take your words to heart, and we will disagree without being disagreeable.

With respect to today's hearing, I believe it is premature. Two days ago, Mr. Camus, who will be testifying in a few moments with the Inspector General, told our staff, said their investigation is not finished, that their report is not done, and that they will not be able to fully answer many of the questions Members have at this time.

He provided our staffs with some information about the status of their efforts to recover additional emails from Ms. Lerner, but he cautioned us not to discuss those details publicly while their investigation's still ongoing. Based on this request, it seems that the best course of action would be to have the Inspector General come back when his report is complete so that we can discuss it fully.

Nevertheless, since we are here, I will make just three points.

First, according to the Inspector General's previous work, the emails that were lost when Ms. Lerner's hard drive crashed were from before Ms. Lerner discovered that inappropriate criteria was being used by IRS employees in Cincinnati. Ms. Lerner's computer crashed on June 13, 2011, but she was not informed until June 29, 2011, that IRS employees were using inappropriate criteria to screen tax-exempt applicants.

That is according to a report issued by the Inspector General in May 2013, more than a year and a half ago. According to the same report, after Ms. Lerner discovered what was going on, she, "immediately directed that the criteria be changed."

Second, the Inspector General has identified no evidence to us that the White House directed this activity. Despite many claims by Republicans, there is simply no evidence after nearly 2 years of investigating to support this wholly unsubstantiated conspiracy theory.

Third, the Inspector General has identified no evidence to us that Ms. Lerner intentionally crashed her computer. To the contrary, all of the evidence we have obtained, including contemporaneous emails sent at the time, indicates that her computer crashed due to technological problems. And nothing we have learned since the Inspector General issued his previous report contradicts these findings.

We have also learned nothing since that time to contradict the account of the self-described, "conservative Republican," screening group manager in Cincinnati, who was interviewed by this committee on June 6, 2013. He stated that he and his employees were motivated only by a desire to efficiently group a large number of similar cases rather than by any political bias.

Let me conclude by putting some additional facts on the record.

Today's hearing is the 21st hearing our committee has held on these issues. This is the fourth time the Inspector General has testified before us on this subject. The Commissioner of the IRS, Mr. Koskinen, has testified before us six times on these topics, not counting many additional appearances before other committees.

This committee has conducted more than 50 transcribed witness interviews on these issues. The IRS has produced more than 1 million pages of documents on this topic. At its peak, the IRS had more than 250 employees responding to these inquiries, and they dedicated more than 150,000 hours of work effort to address our concerns.

At the end of last year, the IRS reported spending approximately \$20 million responding to congressional inquiries. Twenty million dollars is an enormous amount of money. That total does not include the amounts we've spent here on this committee. It does not include the amounts numerous other committees have been spent.

And so I conclude by saying it does not include the amounts other agencies have spent, including Department of Justice, the Federal Elections Commission, or the Securities and Exchange Commission. And it does not include the amounts the Inspector General has spent and continues to spend to this day.

Going forward, it is my sincere hope that we will work in a bipartisan manner on hearings that further our shared goals of benefiting the American people.

And, with that, I yield back.

Chairman CHAFFETZ. Thank you.

I'll hold the record open for 5 legislative days for any Member who would like to submit a written Statement.

We'll now recognize our panel of witnesses. We're pleased to welcome the Honorable J. Russell George, Inspector General at the Treasury Inspector General for Tax Administration; and Mr. Tim Camus, Deputy Inspector General for Investigations with the Treasury Inspector General for Tax Administration.

We welcome you both.

Pursuant to committee rules, all witnesses will be sworn before they testify. If will please rise about raise your right hands.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Thank you. You may be seated.

Let the record reflect that all witnesses answered in the affirmative.

We understand you may have one Statement, as opposed to two 5-minutes, so we'll be very generous on your time. Feel free to take as much time as you need to make this—understanding that there will be one opening Statement.

Mr. GEORGE. Well, actually, I have a very brief opening Statement and then will defer to Mr. Camus.

Chairman CHAFFETZ. Very good. Please proceed.

WITNESS STATEMENTS**STATEMENT OF THE HON. J. RUSSELL GEORGE**

Mr. GEORGE. Chairman Chaffetz, Ranking Member Cummings, members of the Committee, at the Committee's request, we're here to discuss the progress of our efforts to recover former IRS Exempt Organizations Unit Director Lois Lerner's missing emails.

With me, again, is Deputy Inspector General for Investigations Tim Camus, who is leading TIGTA's efforts into this matter, which was requested by the Senate Finance Committee.

Our objective this evening is to provide you with as much information as possible on the progress of our email recovery efforts without compromising the integrity of our ongoing investigation into the circumstances surrounding the IRS's losses of data and hard-drive crashes.

Tonight's testimony is a snapshot of what we know today. Given an email recovery undertaking such as this, it is important to note that the facts and status may frequently change as we perform further analysis of data and conduct additional interviews.

As a result, I ask that you understand that our testimony this evening is a progress report. We have not reached any conclusions, and the information we provide today may, in fact, change before we complete our ongoing investigation.

And, with that, I will now turn to Mr. Camus to provide a detailed discussion on the progress of our search for the missing emails.

Chairman CHAFFETZ. Thank you.
Mr. Camus?

STATEMENT OF TIMOTHY P. CAMUS

Mr. CAMUS. Chairman Chaffetz, Ranking Member Cummings, and members of the full committee, I've been requested to come here today to provide an update on my agency's efforts thus far in attempting to recover the missing emails of former IRS employee Lois Lerner.

On June 13, 2014, in a letter to the Senate Finance Committee, the IRS reported that, as it was completing its document production for Congress concerning allegations that the IRS targeted certain 501(c)(4) applicants, the IRS realized that the production of the emails of Lois Lerner, the former Director of IRS Exempt Organizations Division, had gaps in the email production.

The IRS reported that, in its attempt to find missing emails, they realized that in June 2011 Ms. Lerner's IRS laptop computer suffered a hard-drive crash, and, therefore, some of her emails could not be recovered.

The following Monday, on June 16, 2014, TIGTA initiated an investigation into the circumstances surrounding the missing emails and the hard-drive crash.

One week later, on June 23, 2014, TIGTA received a letter from then-Chairman Ron Wyden and then-Ranking Member Orrin Hatch of the Senate Finance Committee that requested TIGTA to formally investigate the matter, including to, "perform its own analysis of whether any data can be salvaged and produced to the Committee."

The circumstances surrounding the loss of data, the hard-drive crash, and the manner in which IRS handled its electronic media are still under investigation. However, we have periodically updated certain committees of Congress, including this committee, concerning our progress in recovering emails. But we have not discussed the investigation itself.

There are two parts of our mission here. One part is attempting to recover the emails, and the second part is to investigate the circumstances surrounding the missing email.

Until the investigation is completed, the facts and circumstances as we understand them can and have changed on a daily basis. To avoid speculating and reaching conclusions that later turn out to be false, as investigators, we avoid drawing any conclusions until all of the facts are in. I owe it to the American people to ensure that we continue to thoroughly and impartially investigate this matter, gathering all of the facts and evidence in order to get to the truth.

That said, at this time, I cannot provide any information on the investigation surrounding the IRS's loss of the data and hard-drive crash, as that could negatively impact our ability to complete the investigation as well as raise questions into the integrity of our investigative process. But, at this time, I will provide a progress report on our efforts to recover missing emails.

The IRS manages its email for its 91,000 employees by routing the email through Microsoft Exchange Servers that are backed up periodically using backup tapes. These Microsoft Exchange Servers, also referred to as email servers, are comprised of hundreds of hard drives that are placed into server racks.

Up until May 2011, the email server that handled Lois Lerner's email traffic was located in New Carrollton, Maryland, Federal Building. During 2011, the IRS migrated from the email server at New Carrollton to a new email server located at the IRS's Martinsburg, West Virginia, Computing Center.

After the IRS migrated its email system to Martinsburg, the IRS turned off the email server at New Carrollton. However, the server was left in place, possibly as a precautionary measure should the new email servers at Martinsburg fail. IRS employees reported that the New Carrollton email server hard drives were later removed from the server, erased, and destroyed.

On June 30, 2014, TIGTA demanded that the IRS provide all backup tapes used to back up Ms. Lerner's IRS email account—specifically, all backup tapes used for emails during the time period of January 1, 2008, through December 31, 2011. These date ranges were selected to ensure that we obtained any overlap emails or accounted for midyear equipment changes.

As a result of this demand, on July 1, 2014, the IRS identified the 744 backup tapes that met this criterion, and TIGTA took possession of all of the identified 744 backup tapes.

With regard to 9 of the 744 backup tapes, based on how they were configured in the backup machine, the IRS was unable to determine the dates they were used. Because of this, IRS technicians believed it was possible that these nine tapes had been untouched for years and, thus, could contain clear data relevant to the investigation.

Because TIGTA did not have the unique and necessary hardware, these nine tapes were provided to the Federal Bureau of Investigation in order to determine if the tapes contained any data and, if they did, to retrieve it. After the FBI analyzed the nine tapes and validated their equipment by reviewing other random backup tapes, they reported their equipment was functioning properly and they reported the nine tapes were, in fact, blank.

TIGTA then provided those same nine tapes to a recognized industry leader on electronic data recovery, and they confirmed the nine tapes were, in fact, blank.

After confirming these initial 9 tapes were blank and fearing that the remaining 735 tapes were overwritten, TIGTA interviewed the IRS email expert and identified the specific backup tapes that would have contained the earliest copies of Lois Lerner's email box.

The backup tapes consisted of five sets of tapes. These five backup sets were created sequential weeks from November 20, 2012, through December 25 of 2012. The five backup sets were expected to produce a total of five separate copies of Lois Lerner's email boxes or one copy for each week of the backup.

We hand-carried three of the five sets of these backup tapes to the industry expert for data recovery and extraction, and, after their examination and extraction of data, they provided TIGTA with the Exchange data base files from this set of tapes.

On November 13 of 2014, TIGTA searched the data base files and identified the first Lois Lerner email box. This email box contained Lois Lerner emails that date back as far as 2001. The result of this effort validated that the tapes have not been overwritten, and they contained emails that are relevant to the requested time-range search for emails.

TIGTA then processed the remaining five backup sets for a—the relevant requested—I'm sorry. TIGTA then processed the remaining sets of backup tapes in the same manner, later finding that each of the five backup sets contained one Lois Lerner email box, for a total of five email boxes, exactly as expected.

At the conclusion of this process, TIGTA identified 79,840 Lois Lerner emails, of which almost 60 percent were duplicates. Removing the duplicates resulted in 32,774 Lois Lerner unique emails.

It is critically important to note that these 32,774 emails need to be compared with the emails and documents the IRS has already produced to Congress in order to determine if there are any newly identified emails. Currently, we are finalizing the procurement of the software to accomplish this match.

As I noted earlier in my testimony, the IRS email system routes email messages through email servers that are comprised of hundreds of hard drives. I just completed my testimony about the status of our examination of the backup tapes associated with the email system, and now I want to discuss the status of the hard drives that were in the email server in May 2011, 1 month prior to when Lois Lerner's laptop hard drive crashed.

On July 11 of 2014, TIGTA discovered that the hard drives from the decommissioned New Carrollton email server were not destroyed as previously reported by the IRS. On the same day, TIGTA secured the 760 hard drives that are believed to be part of the old New Carrollton email server.

TIGTA conducted a preliminary examination of the limited selection of hard drives, and we determined that, based on the information that could be seen from these hard drives, these drives are more than likely the email server drives that processed Lois Lerner's emails in 2011 and prior.

It is important to note that the email servers process and keep copies of email traffic on hundreds of drives that are specifically positioned in server racks. The IRS did not retain a copy of the layout indicating where each of the specific hard drives was positioned in the racks. Without understanding the exact order in which the hard drives were placed in the server racks, finding any complete and relevant emails would be very difficult and labor-intensive, if not impossible. In addition, if any of the hard drives are damaged, it could potentially be impossible to recover any useable emails.

We recently determined that we were unable to do anything further with the hard drives, and we have initiated the process to contract for an initial feasibility analysis of the 760 hard drives by a recognized industry expert in electronic data recovery.

Less than 2 weeks ago, we also learned that there may have been backup tapes older than the original 744 backup tapes we obtained in July 2014. We have taken possession of an additional 424 tapes, and we are in the early stages of understanding if they have been erased and if any of these older tapes contain emails or data of interest to the investigation.

In summary, to date, we have found 32,774 unique emails that were backed up from Lois Lerner's email box. We are in the process of comparing these emails to what the IRS has already produced to Congress to determine if we did, in fact, recover any new emails. We also are in the process of having the email server hard drives analyzed to determine if there are any readable emails that can be recovered from these hard drives. And, finally, we are continuing to determine if there are any other sources that may contain Lois Lerner emails.

As I noted earlier, this is an ongoing investigation, and I have provided the information that I believe will not hinder our ability to continue our investigation, while simultaneously providing the Congress with the progress on the email search.

Thank you.

Chairman CHAFFETZ. Thank you.

[Prepared Statement of Mr. Camus follows:]

TESTIMONY
OF
TIMOTHY P. CAMUS
DEPUTY INSPECTOR GENERAL FOR INVESTIGATIONS
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
"Recovery of e-mails of former IRS employee Lois Lerner"

February 26, 2015

Chairman Chaffetz, Ranking Member Cummings, and members of the full committee, I've been requested to come here today to provide an update on my agency's efforts thus far in attempting to recover the missing e-mails of former IRS employee Lois Lerner.

On June 13, 2014, in a letter to the Senate Finance Committee, the IRS reported that as it was completing its document production for Congress concerning allegations that the IRS targeted certain 501c (4) applicants, the IRS realized that the production of the e-mails of Lois Lerner, the former director of the IRS Exempt Organizations division, had gaps in the e-mail production. The IRS reported that in its attempts to find missing e-mails, they realized that in June 2011, Lerner's IRS laptop computer suffered a hard drive crash, and therefore some of her e-mails could not be recovered.

The following Monday, on June 16, 2014, TIGTA initiated an investigation into the circumstances surrounding the missing e-mails and the hard drive crash. One week later, on June 23, 2014, TIGTA received a letter from then Chairman Ron Wyden and then Ranking Member Orrin Hatch of the Senate Finance Committee, that requested TIGTA to formally investigate the matter including "perform its own analysis of whether any data can be salvaged and produced to the committee."

The circumstances surrounding the loss of data, the hard drive crash and the manner in which the IRS handled its electronic media, are still under investigation; however, we have periodically updated certain Committees of Congress, including this Committee, concerning our progress in recovering the e-mails, but we have not discussed the investigation itself.

There are two parts of my mission here. One part is attempting to recover the e-mails and second part is to investigate the circumstances surrounding the missing e-mail. Until the investigation is completed, the facts and circumstances as we understand them can and have changed on a daily basis. To avoid speculating and reaching

conclusions that later turn out to be false, as investigators we must avoid drawing any conclusions until all of the facts are in. I owe it to the American people to ensure that we continue to thoroughly and impartially investigate this matter gathering all of the facts and evidence in order to get to the truth. That said, at this time I cannot provide any information on the investigation surrounding the IRS's loss of data and hard drive crashes as that could negatively impact our ability to complete the investigation as well as raise questions into the integrity of the investigative process, but at this time I will provide a progress report on our efforts to recover missing e-mails.

The IRS manages its e-mail for its 91,000 employees by routing the e-mails through Microsoft Exchange Servers that are backed up periodically by using backup tapes. These Microsoft Exchange Servers, also referred to as e-mail servers, are comprised of hundreds of hard drives that are placed into server racks. Up until May 2011, the e-mail server that handled Lois Lerner's e-mail traffic was located at the New Carrollton, Maryland Federal Building. During 2011, the IRS migrated from the e-mail server at the New Carrollton to a new e-mail server located at the IRS' Martinsburg, West Virginia Computing Center. After the IRS migrated its e-mail system to Martinsburg, the IRS turned off the e-mail server at New Carrollton; however, it was left in place, possibly as a precautionary measure should the new e-mail server at Martinsburg fail. IRS employees reported that the New Carrollton e-mail server hard drives were removed from the server, erased, and destroyed.

On June 30, 2014, TIGTA demanded that the IRS provide all backup tapes used to backup Lerner's IRS e-mail account, specifically all backup tapes used for e-mails during the time period of Jan 1, 2008 through Dec 31, 2011. These date ranges were selected to ensure that we obtained any overlap e-mails or accounted for mid-year equipment changes. As a result of this demand, on July 1, 2014, the IRS identified the 744 backup tapes that met this criterion and TIGTA took possession of all of the identified 744 backup tapes.

With regard to nine of the 744 backup tapes, based on how they were configured in the backup machine, the IRS was unable determine the dates they were used. Because of this, IRS technicians believed it was possible the nine tapes had been untouched for years and thus could contain clear data relevant to the investigation. Because TIGTA did not have the unique necessary hardware, these nine tapes were provided to the Federal Bureau of Investigation in order to determine if the tapes contained any data and if they did, to retrieve it. After the FBI analyzed the nine tapes and validated their equipment by reviewing other random backup tapes, they reported their equipment was functioning properly and they reported the nine tapes were blank. TIGTA then provided those same nine tapes to a recognized industry leader on electronic data recovery, and they confirmed the nine tapes were in fact blank.

After confirming the initial nine tapes were blank, and fearing that the remaining 735 tapes were overwritten, TIGTA interviewed the IRS e-mail expert and identified the specific backup tapes that would have contained the earliest copies of Lois Lerner's e-mail box. The backup tapes consisted of five sets of tapes. These five backup sets were created in sequential weeks from November 20, 2012 through December 25,

2012. The five backup sets were expected to produce a total of five separate copies of Lois Lerner's e-mail boxes, or one copy for each week of the backup.

We hand carried three of the five sets of these backup tapes to the industry expert for data recovery and extraction and after their examination and extraction of data, they provided TIGTA with Exchange Database files from this set of tapes. On November 13, 2014, TIGTA searched the database files and identified the first Lois Lerner e-mail box. This mailbox contained Lois Lerner e-mails that date back as far as 2001. The result of this effort validated that the tapes have not been over written and that they contained e-mails that are relevant to the requested time range search for e-mails. TIGTA then processed the remaining sets of backup tapes in the same manner later finding that each of the five backup sets contained one Lerner e-mail box, for a total of five mailboxes, exactly as expected. At the conclusion of the process, TIGTA identified 79,840 Lois Lerner e-mails of which almost 60 percent were duplicates. Removing the duplicates resulted in 32,774 Lois Lerner unique e-mails. It is critically important to note that these 32,774 e-mails need to be compared with the e-mails and documents the IRS has already produced to Congress in order to determine if there are any newly identified e-mails. Currently, we are finalizing the procurement of software to accomplish this match.

As I noted earlier in my testimony, the IRS e-mail system routes e-mail messages through e-mail servers that comprised of hundreds of hard drives. I just completed testimony about the status of our examination of backup tapes associated with the e-mail system, and now I want to discuss the status of the hard drives that were in the e-mail server in May 2011, one month prior to when Lois Lerner's laptop hard drive crashed.

On July 11, 2014, TIGTA discovered that the hard drives from the decommissioned New Carrollton e-mail server were not destroyed as previously reported by the IRS. On the same day, TIGTA secured the 760 hard drives that are believed to be part of the old New Carrollton e-mail server. TIGTA conducted a preliminary examination of a limited selection of the hard drives and determined that based on information that could be seen from these hard drives, these drives are more than likely from the e-mail server that processed Lois Lerner's e-mails in 2011 and prior. It is important to note that the e-mail servers process and keep copies of e-mail traffic on the hundreds of drives that are specifically positioned in server racks. The IRS did not retain a record of the layout indicating where each of the specific hard drives was positioned in the racks. Without understanding the exact order in which the hard drives were placed in the server racks, finding any complete and relevant e-mails would be very difficult and labor intensive, if not impossible. In addition, if any of the hard drives are damaged, it could potentially be impossible to recover any usable e-mails. We recently determined that we are unable to do anything further with the hard drives and we have initiated the process to contract for an initial feasibility analysis of the 760 hard drives by the recognized industry expert in electronic data recovery.

Less than two weeks ago we also learned that there may have been backup tapes older than the original 744 backup tapes we obtained in July 2014. We have taken possession of an additional 424 tapes and we are in the early stages of understanding if

they have been erased and if any of these older tapes contain e-mails or data of interest to the investigation.

In summary, to date we have found 32,774 unique e-mails that were backed up from Lois Lerner's e-mail box. We are in the process of comparing these e-mails to what the IRS has already produced to Congress to determine if we did in fact recover any new e-mails. We are also in the process of having the e-mail server hard drives analyzed to determine if there are any readable e-mails that can be recovered from these hard drives. And finally, we are continuing to determine if there are any other sources that may contain Lois Lerner e-mails.

As I noted earlier, this is an ongoing investigation and I have provided the information that I believe will not hinder our ability to continue our investigation while simultaneously providing the Congress with the progress on the e-mail search.

Thank you.

Chairman CHAFFETZ. I'll now recognize myself for 5 minutes.

Mr. Camus, from the time you started to try to find the tapes that contained the emails, how long did it actually take you to find them?

Mr. CAMUS. We started the process when we opened the investigation. We obtained the backup tapes June 30. And by November 13, I believe it was, was the first time we saw Lois Lerner emails.

Chairman CHAFFETZ. But from the time you sought to go find the emails to—the tapes to the time you actually got to the place in West Virginia, how long did that take?

Mr. CAMUS. Literally about 2 weeks.

Chairman CHAFFETZ. So, despite everything that the IRS said, from the time you started to the time you found them was about 2 weeks.

Mr. CAMUS. Correct.

Chairman CHAFFETZ. When you showed up and talked to the IT people and said, well, what's happened here, what did they tell you?

Mr. CAMUS. They cooperated and answered our questions fully.

Chairman CHAFFETZ. Had anybody ever asked them for the tapes?

Mr. CAMUS. No.

Chairman CHAFFETZ. So we send a subpoena, we send letters, we have hearings, we hear all kinds of excuses from the IRS: They can't have them, they're recycled, they've been destroyed, they're not available, we can't find—I mean, every excuse you can have under the sun.

You start; you find them in 2 weeks. And then when you go talk to the IT people who are there in charge of them, they told you that they were never even asked for them. Is that correct?

Mr. CAMUS. That's correct.

Chairman CHAFFETZ. Are there potentially even more tapes?

Mr. CAMUS. Well, we believe there may be additional tapes that we just learned of 2 weeks ago.

Chairman CHAFFETZ. Are you investigating any potential criminal activity?

Mr. CAMUS. The entire matter continues to be under active investigation, yes, sir.

Chairman CHAFFETZ. For potential criminal activity?

Mr. CAMUS. Yes.

Chairman CHAFFETZ. The IRS first knew that there were problems with the emails back in February 2014, didn't they?

Mr. CAMUS. I believe that's—that's correct.

Chairman CHAFFETZ. By April 2014, they had concluded that they had a problem on their hands. But it wasn't until June 2014 that TIGTA actually became aware that there were problems, correct?

Mr. CAMUS. That is right.

Chairman CHAFFETZ. And I guess that's part of what my colleagues need to understand here, is that the IRS knew that there were problems back in February 2014, but it wasn't until June 2014 that they actually started to let Congress and TIGTA know, despite what the IRS Commissioner told us. He told us we were given full cooperation.

Mr. Koskinen said, "We confirmed the backup tapes from 2011 no longer existed because they have been recycled." Is that true or false?

Mr. CAMUS. We're looking at two populations of tapes. So there was some confusion for them. When we asked for the initial set of tapes with the date ranges, they provided the 744 tapes. We believe those were the tapes. We found a new population of tapes literally 2 weeks ago. We believe those were the 2011 tapes.

Chairman CHAFFETZ. Chairman Camp asked at one point, "Your letter describes the Lois Lerner emails as being unrecoverable." Commissioner Koskinen responds, "Correct."

The Lois Lerner emails are ultimately recoverable, aren't they? At least a portion of them.

Mr. CAMUS. We recovered quite a number of emails, but until we compare those to what's already been produced, we don't know if they're new emails.

Chairman CHAFFETZ. I've got to tell you, I—we have been patient. We have asked. We have issued subpoenas. We have held hearings, the Ways and Means, Senate Finance, House Oversight and Government Reform.

It's just shocking to me that you start, 2 weeks later you're able to find the emails, you go and talk to the people who are in charge of this, and nobody even asked them for the tapes?

I've got to tell you, I really do appreciate the great work that you are doing on this.

You know, the ranking member, I've got the greatest respect for him. And he cited some statistics that I believe were given to him by the IRS—250 employees and thousands of hours and all this. But the one thing that we're trying to get to, and nobody even asked them for it. Didn't even ask.

I'll yield back.

I recognize the ranking member.

Mr. CUMMINGS. Go to Mr. Connolly.

Chairman CHAFFETZ. Oh, my apologies.

We're going to recognize the gentleman from Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. I thank the chair, and I thank the ranking member.

And, boy, can I relate to your frustration, Mr. Chairman, asking for a document and not being given it. Why, Mr. Cartwright and I have asked for a simple document from Mr. George himself.

Mr. George, on February 5, 2014, we filed a complaint against you with the Integrity Committee of the Council of IGs raising serious concerns over the troubling activities of your office under your leadership: publishing incomplete and misleading findings, engaging in partisan activities, meeting solely with Republicans on this committee, excluding Democrats, and allowing it to determine the scope of your audit.

On September 17, I requested a copy of your response to the contents raised in our letter—September 17, 5 months ago. The next day, your counsel assured our staff in an email you would respond to the request. To this date, you have not responded to the request.

I really sympathize with the chairman's frustration of not getting documents. We didn't subpoena you, but your office assured us

we'd get a copy. Where is the copy of your response to our complaint before the Integrity Committee of CIGIE?

Mr. GEORGE. As you know, sir, the Integrity Committee of the CIGIE is operated—is led by the Federal Bureau of Investigations. And it is my understanding that you or your staff have reached out to the FBI requesting the materials that you cited. My understanding is the FBI refused to provide you with that information because that is their policy. And that's my understanding, sir.

But——

Mr. CONNOLLY. Actually——

Mr. GEORGE [continuing]. As of today, sir, I have not received a written request from you or from this committee requesting that I waive my Privacy Act rights——

Mr. CONNOLLY. Let me make two points to that, Mr. George.

First of all, with respect to your privacy rights, let me quote from the Integrity Committee of CIGIE with respect to privacy. "We are not presently aware of a restriction imposed by the Privacy Act to provide one's own response."

Second, your staff indicated by email you would be responsive 5 months ago.

Now, if you need a written request from Mr. Cartwright and myself, I've asked my staff to present it to you right now.

Mr. GEORGE. Well——

Mr. CONNOLLY. Here is a written request that we are asking for a simple document, your response to our complaint before CIGIE——

Chairman CHAFFETZ. The gentleman will share that document with the chair, please.

Mr. CONNOLLY. Happy to do so, Mr. Chairman.

Chairman CHAFFETZ. Do that now, please.

Mr. CONNOLLY. But, I mean, we can't have it both ways in this committee. We can't be complaining about the fact that IRS, having provided tens of thousands of documents, hasn't provided every little thing we want—fine—and we're willing to subpoena, and we're willing to waive Fifth Amendment rights and everything else, when the TIGTA himself has not provided a copy, a simple document, your response to our complaint. We think we're entitled to it.

You want a written request? You've got it, Mr. George.

Mr. GEORGE. And I would just note, I'll take this under advisement with my counsel, but I should point out that the FBI conducted its review of the Integrity Committee, and it exonerated myself and my organization.

Mr. CONNOLLY. We know nothing about an exoneration.

And, for the record, Mr. Cartwright and I are going to resubmit the complaint, because the response we got was so bureaucratic and inadequate in one paragraph. And because you were unresponsive, we feel we have to reopen this investigation and ask the new chairman of CIGIE to cooperate with us. And we're going to do that. We're going to pursue that, Mr. George.

We feel you can't—if you're the guardian of IRS documents and you yourself are the subject of an investigation or a complaint and you won't provide one document, whatstanding have you got to advise this committee about how we retrieve or capture documents we're seeking?

Mr. GEORGE. Well, Mr. Connolly, I'm not going to engage in a debate with you here, but there is certain information you're not going to be able to receive access to related to this investigation pursuant to Title 26, Section 6103 of the United States Code.

Mr. CONNOLLY. Yes.

Mr. GEORGE. And so, once the investigation is completed, you will receive a conclusion, the Congress will receive a conclusion. And there are certain committees in Congress that do have access to that information. They will receive the materials. But——

Mr. CONNOLLY. We look forward to it, Mr. George.

Mr. GEORGE. So just as it——

Mr. CONNOLLY. I've been waiting for over 5 months.

Mr. GEORGE. Just as it relates to an investigation of me and my organization, you're not entitled to certain documents.

Mr. CONNOLLY. Oh, really.

Mr. GEORGE. That's correct.

Mr. CONNOLLY. Well, we'll see about that, won't we, Mr. George?

Mr. GEORGE. Your prerogative, sir.

Mr. CONNOLLY. Yes, it is.

I yield back.

Chairman CHAFFETZ. Thank the gentleman.

Recognize the gentleman from Florida, Mr. Mica, for 5 minutes.

Mr. MICA. Thank you, Mr. Chairman, and thank you for following up.

It looks like we've been lied to or at least misled. As recently as February 11, Commissioner Koskinen, the IRS Commissioner, came before us again, and he repeatedly stated that the emails were not recoverable.

Now, they have known for some time that some of these were recoverable. Is that correct, Mr. George?

Mr. GEORGE. I'm going to defer to Mr. Camus for that, sir.

Mr. MICA. Is that true?

Mr. CAMUS. Mr. Mica, I don't know what they knew and when they knew it. The only thing I know is that, as our investigators followed the trail, we were able to determine a number of emails. We have yet to compare them to what's already been produced.

Mr. MICA. Well, the IRS consistently stated from June 2, 2014, when Cate Duval identified the problem, till June 13, 2014, in a letter to the Finance Committee that the agency did everything possible to recover the emails.

But, in the meantime, you started your recovery when? 2014?

Mr. CAMUS. June in 2014, yes, sir.

Mr. MICA. June 2014. Have they been made aware at all that there was some recovery underway?

Mr. CAMUS. They've been provided this similar information to what——

Mr. MICA. They've been provided similar information, and yet, since then, they've been coming to us and most recently said, our experts said we had no way, they were unrecoverable.

That wouldn't be a statement of fact. They knew otherwise, did they not?

Mr. CAMUS. It would appear so.

Mr. MICA. OK.

The other thing, too, is, OK, you've found 32,000. We've been provided 24,000. And I understand we got those from other sources, other employees, not from the tapes.

And you found 32,000, did you say?

Mr. CAMUS. Yes, sir.

Mr. MICA. OK. So that means there's at least 8,000 we more than likely haven't seen. You haven't turned any of those over to us yet, have you?

Mr. CAMUS. No, sir. We still have to match—

Mr. MICA. OK. What is the process of getting those to us? You said you've got a software company to help separate them. What would you estimate the timeframe?

Mr. CAMUS. Well, we're hoping to get the software at any time. Once we do that, we don't anticipate more than a week for the match to occur.

Mr. MICA. So you can get us—so there are about—I mean, this is simple math. There are about 8,000, wouldn't you say, that we probably wouldn't have access, because you've got—or we've got 24, you've got 32.

In addition, you said now you've found 2011 tapes 2 weeks ago. Is that correct?

Mr. CAMUS. Yes, sir.

Mr. MICA. What kind of volume do you think you've got there? What would a tape have? Any idea of the emails? Has that been looked at at all?

Mr. CAMUS. The tapes vary in size due to how much is compacted on them, so it's very difficult to tell. One of the first things we have to determine about the new population of tapes is if they, in fact, have been erased. So it may be possible to—

Mr. MICA. And you've found some tapes have been erased that you cited in your testimony of the ones that you were given in the previous batch?

Mr. CAMUS. There were some blank tapes in the initial batch.

Mr. MICA. Were they erased, or were they blank?

Mr. CAMUS. That is impossible to determine.

Mr. MICA. So we know that there are some tapes that either were blank or made blank, right?

Mr. CAMUS. Correct.

Mr. MICA. Erased.

Mr. CAMUS. Correct.

Mr. MICA. OK. And, again, how long will it take you to process the new tapes to get to us, do you think?

Mr. CAMUS. We just started the process, and we're trying to understand if there's any—if they—if there's any data on them at all. There are 424 of them, and we're going to start with sample sizes.

Mr. MICA. Did you say 424?

Mr. CAMUS. Yes, sir.

Mr. MICA. Holy Moses. Because the other was seven hundred—

Mr. CAMUS. 744.

Mr. MICA. And that produced the 32,774. So there could be a good volume of tapes that have never been seen with—I mean, there are a volume of tapes never seen, but they could contained a volume of emails never been seen. Is that possible?

Mr. CAMUS. It is possible.

Mr. MICA. OK.

Mr. CAMUS. It's important to note that the total number of emails, 39,744, again, that some of them could have already been produced—

Mr. MICA. Yes.

Mr. CAMUS [continuing]. And that some of them are earlier than the timeframe in question.

Mr. MICA. Well, Mr. Chairman, too, what concerns me is witnesses have come before us from IRS and have denied that some of these things existed, denied that they had knowledge. And I think that they have misled or lied to the Committee, and I think that should be taken under advice of counsel.

Yield back.

Chairman CHAFFETZ. Thank the gentleman.

I now recognize the gentlewoman from New York, Ms. Maloney, for 5 minutes.

Mrs. MALONEY. I thank the witnesses and the chairman and the ranking member for calling this hearing.

Mr. Camus, I would like to walk through how you found these additional emails and clarify exactly what they might contain.

Originally, there were reports that there were 80,000 new Lois Lerner emails, but now you're saying that the number is closer to 32,000. So can you explain how the number went from 80,000 to 32,000?

Mr. CAMUS. Yes, ma'am. It went from 80,000 to 32,000 because we removed duplicates.

The five email sets that we have were backups, 1 week after the other. So there was a high number of—60 percent of them were duplicates of each other. So if you took the 80,000 total and you took out the 60 percent that were duplicates, that give us the subset.

Mrs. MALONEY. Duplicates of the 80,000?

Mr. CAMUS. Yes, ma'am.

Mrs. MALONEY. So they're just duplicates of the 80,000.

Mr. CAMUS. Yes.

Mrs. MALONEY. OK. So, to be clear, these 32,000 emails are what remained after your office removed all these duplicates from the batch of 80,000.

Mr. CAMUS. That is correct.

Mrs. MALONEY. Well.

Now, thousands of emails from Mrs. Lerner were already provided to the Committee by the IRS; is that correct?

Mr. CAMUS. Yes.

Mrs. MALONEY. And do you know how many of these 32,000 emails have already been produced to this committee?

Mr. CAMUS. That is a step in the process that we have yet to take, but we plan on taking it as soon as we can get the available software.

Mrs. MALONEY. So is it possible that some of these 32,000 emails have already been provided to the Committee?

Mr. CAMUS. Yes, ma'am.

Mrs. MALONEY. So they could actually already be in your files and they're for everybody to review.

Mr. CAMUS. That is correct.

Mrs. MALONEY. So how long is it going to take to do this matching process to find out if, in fact, there's any new material?

Mr. CAMUS. We are going to do it as soon as we can get our hands on the software.

Mrs. MALONEY. So how long do you think it's going to last?

Mr. CAMUS. We've been anxiously waiting. We ordered the software in December, and we're in negotiations with the vendor to obtain it.

Mrs. MALONEY. And once you get the software, how long is it going to take to—

Mr. CAMUS. We're hoping it will only—it will take a week.

Mrs. MALONEY. A week. OK.

And so, as I understand it from your testimony here today, you are unable to confirm whether there are any, to use your own words, new emails, right?

Mr. CAMUS. That's correct.

Mrs. MALONEY. So what's before us may be material you already have, right?

Mr. CAMUS. That is correct.

Mrs. MALONEY. So may I ask, why are we here?

Mr. GEORGE, why are we at a hearing at 8 o'clock at night on something which may not be any new material at all?

And we're not even talking about content. We've got to decide whether this is something that's already there. You already threw out 60 percent of the 80,000, down to 32,000, because it was exactly the same thing.

So why are we here?

Mr. GEORGE. Is that a rhetorical question, Ms.—

Mrs. MALONEY. No. No, seriously. I mean, what new material do you have?

Mr. GEORGE. Well, it is important to keep Congress informed as to the status of the investigation. And so it was at the request of the chairman that we are before you this evening.

Mrs. MALONEY. So it was not your idea to have a hearing at 8 o'clock at night on material that may already be in your office. And, once you match it, it may be no material—new material at all, right?

Mr. GEORGE. That is correct.

Mrs. MALONEY. Well, I would say that that clearly fits the definition of premature or a waste of time. Would you agree?

Mr. GEORGE. I'm not going to—

Mrs. MALONEY. I know. I know.

But I want to be clear. You cannot even begin to draw any conclusion about the contents or any possible implications that might have on this investigation at this time because you don't even know if you have any new material. Is that correct?

You don't even know if it's any new material. It's just a rerun of what may already just be in your office, like the 60 percent that you threw out of the 80,000 emails.

I want to thank you for testifying today. My time has expired.

Mr. CUMMINGS. Would the gentlelady yield?

Mrs. MALONEY. I would—I yield to the ranking member, but I look forward to you coming back when you have some real material for us.

Mr. GEORGE. Most definitely.

Mr. CUMMINGS. Thank you.

Mr. Camus, exactly, if you can tell us, what's involved in those negotiations for this software? And how soon do you anticipate, based on the rate you're going with your negotiations, that you will have it?

Because I think the Committee—it would benefit the entire committee to have some kind of idea of what kind of timeframe we're talking about.

Mr. CAMUS. There seems to be a dispute with the vendor over certain licensing rights, rights to come in and review how the software is being used, which would mean they could come in and look at the material that we're matching, and that's not acceptable to the Federal Government. So there are those types of negotiations going on right now between our procurement officers and the vendor.

But this is a renowned company that has the software that we need to do the job. It's used forensically. And it's just very unfortunate, in this particular moment, on this particular case, that we're running into this problem at this time.

Chairman CHAFFETZ. Thank you.

I would note to the gentlewoman, the reason we're here is we haven't had an update in a year and a half. And just a little over a week ago, they found more than 400-and-some-odd tapes. They are pursuing a potential criminal investigation. They went to go find the tapes; it took them 15 days. We've had testimony time and time and time again from the IRS that said, we can't find them, they're destroyed, they've been duped over. And they found them in 15 days. That's, in part, why we're here today.

I now recognize—

Mrs. MALONEY. Will be gentleman yield? Will the gentleman yield?

Chairman CHAFFETZ. I'm going to recognize the gentleman from Ohio, Mr. Jordan, for 5 minutes.

Mr. JORDAN. I thank the chairman.

Mr. Camus, we learned from John Koskinen and the IRS that they had lost the backup tapes, or that the backup tapes no longer existed, when we got a letter—well, the letter went to the Senate Finance Committee, but that's when we learned, that's when the American people learned.

When did you learn? When did the IRS tell you that the backup tapes didn't exist?

Mr. CAMUS. The same—the same time as everybody else.

Mr. JORDAN. So you learned like everyone else.

Mr. CAMUS. Yes, I did.

Mr. JORDAN. OK.

And then when did you find the tapes that the IRS said didn't exist?

Mr. CAMUS. We asked for them on June 30, and we had them by July 1.

Mr. JORDAN. This is where the chairman was a few minutes ago.

Mr. CAMUS. Yes.

Mr. JORDAN. So you learned like the whole world, and then, as the chairman said, 15 days later, you find them. How'd you find them?

Mr. CAMUS. We asked for them, and we demanded them.

Mr. JORDAN. But, I mean, how'd you actually get the physical tapes? What did you do?

Mr. CAMUS. Well, we identified the IRS experts that would know where the tapes are. We interviewed them, and we obtained them.

Mr. JORDAN. Did you get in a car and drive to Martinsburg, West Virginia?

Mr. CAMUS. That is correct.

Mr. JORDAN. Yes. You just got in a car, we drove to the place that had the tapes, you said, "Can we see the tapes?" "Here they are." Yes.

And those people, when you got the tapes from them, you said, "Hey, by the way, did the IRS ask you—did they come out and ask you if the tapes were here?" You asked them that question, right? And their answer was?

Mr. CAMUS. No.

Mr. JORDAN. No, they didn't.

So you just did something pretty simple. Where are the tapes? I'm going to get in the car, I'm going to drive, and I'm going to get the tapes.

Now, as the chairman pointed out, for 4 months the IRS knew they lost the tapes—lost them—and didn't tell us and then told the whole world, told you on June 13. And within a few days, you had those tapes.

And there were 770 and—or, excuse me, 744 tapes you got on July 1.

Mr. CAMUS. Correct.

Mr. JORDAN. When you drove to Martinsburg and actually got the tapes.

Mr. CAMUS. That's right.

Mr. JORDAN. OK.

So you have that number—you had a lot of numbers in your testimony, but I want to focus on that number.

And then I want to focus on, were these the only tapes you've actually gotten in your possession? Are these the only tapes you've got?

Mr. CAMUS. No. Two weeks ago, we recovered an additional 424 tapes.

Mr. JORDAN. All right. So that's what you pointed out near the end of your testimony.

So 744 tapes originally. Now, just 2 weeks ago, you obtained 424 more. How'd you find out about these tapes?

Mr. CAMUS. As we were following up on our initial interviews, we realized that we were missing a document. When we obtained that document and reviewed it, we realized that they were an additional population of tapes that had been unaccounted for.

Mr. JORDAN. So, missing a document. Whose document was that, and who should have given you that document?

Mr. CAMUS. It was an IRS document.

Mr. JORDAN. So they withheld a document from you that prevented you from figuring out there were more tapes than these 744. Is that accurate?

Mr. CAMUS. "Withholding the document," I can't characterize that at the time because that's still under investigation.

Mr. JORDAN. They didn't give you a document, and, by not having the document, you couldn't figure out that there were more tapes out there with potentially more Lois Lerner emails on them. Is that correct?

Mr. CAMUS. That would be accurate.

Mr. JORDAN. Yes.

So any concerns about the fact that that document wasn't there? And how did you figure out that the document was missing?

Mr. CAMUS. Just following up, as we are—as we're coming down to the conclusion of our investigation, we make sure we have all the documents. So when we determined that we were short one document, we went and demanded it, and we obtained it. Then we were able to notice that there were a population of tapes that had never been disclosed.

Mr. JORDAN. And where were those tapes? The same place?

Mr. CAMUS. They were also in Martinsburg.

Mr. JORDAN. So you got in the car and drove there again, right?

Mr. CAMUS. Yes, we did.

Mr. JORDAN. You got more tapes.

Mr. CAMUS. We did.

Mr. JORDAN. Amazing. Amazing.

So, now, here's the key. And this is—the chairman, in his opening round of questions.

So when you have the IRS take 4 months to tell you something, and they don't even go to the place—you figured out in 2 weeks, you got in a car, drove there, and got them. The IRS says they don't exist. Right? You can find them in 2 weeks, get access to those tapes, and then you learned that there—so 4 months there, you get them in 2 weeks. And then you learn that they're not giving you the documents that you need to find even more tapes.

So when the chairman asked the important question, is there potentially criminal activity here, your answer was?

Mr. CAMUS. There is potential criminal activity.

Mr. JORDAN. And that's the thing, right? I mean, it sure smells like it.

If the IRS takes 4 months to tell us something as important as, "We lost Lois Lerner's emails," and their excuse is, "We're doing everything we darn well can do to get those," and then when they do make it public to the whole world—they didn't tell you ahead of time. They told you when they told the whole world. And in 2 weeks, you got them. Suddenly, they're, "Oh, wait a minute"—well, 2 weeks to get them.

And then you find out, in addition to that, they're withholding documents that uncover even more tapes. So we're not talking 744 tapes. We're talking over 1,100 tapes that we now have.

And so, of course, this—that's why we're—she's done left. She should have stayed. This is why we're having the hearing. When the American people understand 1,100 tapes that the IRS said, "They're gone, we can't get them," and all you do is get in a car,

drive to Martinsburg, West Virginia, not that far, one State over, and get the tapes, holy cow. Of course—we should have had this hearing 2 weeks ago when you first learned that those 424 tapes were out there.

Chairman CHAFFETZ. Thank the gentleman.

Mr. JORDAN. My time's expired. I yield back.

Chairman CHAFFETZ. Now recognize the gentleman from the Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

And I want to thank Mr. George and Mr. Camus for your help tonight, although I have serious misgivings about doing this hearing halfway through an audit. And I know in your precatory address you talked about that.

And I have to ask both of you, do you typically do a hearing like this halfway through an audit, when you're not complete, when you know that things could change, as you said?

Mr. GEORGE. Congressman, actually, the audit is complete. The initial audit is complete. We've initiated a subsequent audit looking at how other groups were treated—

Mr. LYNCH. I know that, but you also said you've got a lot more work. You've got this matching think you got to do. OK? You have to find out whether these are duplicates or from a period before any of this occurred.

So you've got a lot that you haven't—

Mr. GEORGE. They're two separate—

Mr. LYNCH [continuing]. Determined, and you haven't made any conclusions yet.

Mr. GEORGE. Excuse me, sir. There's two separate tracks. There's the audit track, and then there's an investigations track. And I'll ask Tim to address the investigations track.

Mr. CAMUS. Thank you, sir.

Generally, we don't discuss ongoing investigations. This particular matter and this particular case is of such interest to so many parties, we're trying to limit our discussion to—

Mr. LYNCH. I know what you're trying to do. And I appreciate that. I appreciate that. And I know you're trying mightily to adhere to that standard.

But, in the middle of this, there's allegations out there, repeated allegations, that this is potentially criminal activity. It's also potentially not criminal; is that correct?

Mr. CAMUS. That's correct. We'll—

Mr. LYNCH. Yes. Don't—

Mr. CAMUS [continuing]. Have to conclude our investigation.

Mr. LYNCH. And yet there's allegations that, you know, the IRS is withholding documents. And that's not necessarily true. It could be otherwise, right?

Mr. CAMUS. It's possible.

Mr. LYNCH. Right.

Well, here's—on May 22, Mr. George, you testified before this committee, and you said this, "There are established procedures for conducting an audit. And, once again, this is an audit. And to ensure fairness in this investigation and to ensure that we are completely accurate with the information that we convey to Congress,

we will not report information until the IRS has an opportunity to take a look at it and to ensure that we're not misstating the facts."

Do you remember saying that, sir?

Mr. GEORGE. Vaguely, yes.

Mr. LYNCH. Right.

And then when pressed further, you said this: "Sir, but it would be impractical for us to give you impartial information which may not be accurate. It would be counterproductive, sir, if we were to do that."

That's what you said.

Mr. GEORGE. Again, my understanding is, referring to the audit.

Mr. LYNCH. Well, this says—it says, "Why, in your view, is it counterproductive to publically disclose information regarding on-going audits and investigations?"

Mr. GEORGE. Well, I don't recall saying that, but if you're quoting me, I—

Mr. LYNCH. Here's another one. In response to another question, you said, "I think it would behoove all of us to ensure that accurate information is given to Congress so that we don't act precipitously. As you I am sure are aware, many times when information is conveyed to the Hill, it is sometimes not retained on the Hill, and that is not fair to the people who we are investigating."

Do you recall saying that?

Mr. GEORGE. I recall that, definitely.

Mr. LYNCH. So I'm very concerned about this whole process, for your reputational interests, not just for people who are suspected of wrongdoing. I just think it's wrong.

And you're telling me that, once you get this software in 2 weeks' time, you'll be able to do the match, you'll be able to give us some concrete determinations. Right now, this is all speculation, and I think it hurts this hearing.

And this is not an issue that should be sidestepped. I'm not saying that. I'm just saying we should do a very, very good job, and we shouldn't go off half-cocked before you can make the determinations that you need to make and that we have hard evidence here, when you can actually say whether or not there was affirmative withholding here, when you can say whether or not people hid things or, as was said earlier, we were lied to.

Right now, I'm concerned about the due process rights of these people who are being accused in absentia, when we don't have the evidence, we don't have a final—an end to this investigation, and we're doing this halfway through the process. I just think we should be better than that.

And it if takes 2 more weeks—and we have waited a long time. We have waited. And I don't begrudge the chairman from being frustrated. I'm frustrated, too. But I would like—I would like a stone-cold—a full report here so that we can actually do our job. And, right now, there's too much speculation going on from the full spectrum of possibilities.

And I respect your desire and your effort to keep this down to, you know, just the mechanics of what you've been doing, but it's gone far beyond that already. And I think you've impugned, by your own admissions here, the people who you're investigating.

And I think that may come back to bite us and, indeed, hurt the integrity of your own investigation, by doing this prematurely.

I yield back.

Chairman CHAFFETZ. I thank the gentleman.

Now recognize the gentleman from Michigan, Mr. Walberg, for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman.

And I thank you for continuing this investigation. I think they doth protest too much. And the gyrations that are going on, trying to indicate that we are premature, my gracious, if this is premature, I'd hate to see what delayed is.

This is our responsibility, Mr. Chairman—and thank you—to do oversight, to continue to push to get to the answers. 32,000, they may all be duplicates, but we should have had those. We should have 80,000. We have the responsibility and the right to have those. And I appreciate the work that's being done here.

I mean, we're still talking about citizens who have been attacked by their government. Their IRS intimidated. Even to this day, it's still going on. These are people we can't forget.

"If you say the targeting issues have been resolved, how come we still haven't received a determination one way or the other?", asked Rick Harbaugh, leader of the Albuquerque Tea Party, which has been waiting 5 years for its tax exemption. "We are still being targeted." That's in their mind. And so it's good work we're doing here.

In May 2013, the DOJ announced that it would be conducting an independent investigation of the IRS targeting in conjunction with the Treasury Inspector General for Tax Administration, you folks. At the 2013 press conference where Holder made the announcement, he said, "Those were, I think as everyone can agree, if not criminal, they were certainly outrageous and unacceptable. But we're examining the facts to see if there were criminal violations." Good.

But a DOJ official involved in the investigation, who is doing this at Eric Holder's behest, was Barbara Bosserman, who contributed the maximum amount to President Obama's campaign.

The DOJ leaked last year that it did not anticipate any criminal charges being filed. And, earlier this year, February 13, to be exact, our Attorney General, Eric Holder, said, "I'm satisfied with the progress that the Criminal Division has done. The Civil Rights Division, as well. I expect that we will have some final recommendations coming up relatively soon."

Well, if that's the case, then it is important that we do these studies, these questioning right now.

Let me ask Mr. George and Mr. Camus, is TIGTA still participating in the DOJ's investigation of the targeting of conservative nonprofit groups?

Mr. CAMUS. Yes, sir, we are.

Mr. WALBERG. Is this investigation nearing completion?

Mr. CAMUS. That's a DOJ investigation. I can't comment on their behalf.

Mr. WALBERG. Are you aware if any criminal charges are going to be filed?

Mr. CAMUS. I'm not aware of that, sir.

Mr. WALBERG. Considered to be filed?

Mr. CAMUS. I'm not aware of the specifics.

Mr. WALBERG. Are you aware that, in January, Eric Holder Stated that the DOJ's investigation was nearing completion and that DOJ would be making recommendations to IRS?

Mr. CAMUS. I'm not aware of that Statement, sir.

Mr. WALBERG. Do you know what these recommendations will be?

Mr. CAMUS. I do not.

Mr. WALBERG. I think we are getting a trend here.

Another reason for this hearing—to find who's on first, who's on second, what's progressing, what we have to expect, what we need to be looking for.

Isn't it your job and not the job of DOJ to make recommendations to the IRS?

Mr. CAMUS. It is.

Mr. WALBERG. Your job to do that.

Mr. CAMUS. It is.

Mr. WALBERG. So the purposes for which you are undertaking this investigation, you are doing it with diligence.

You may have a question, Mr. George, about one document. We've got 32,000 documents that we're concerned about here.

But more than that, again, I go back to the fact that we are concerned about citizens, private citizens, taxpaying citizens, citizens who have First Amendment liberties, citizens who have the right to know that their government will not go after them in untoward ways simply because of their beliefs, their values, who they join and involve themselves with.

And I thank you for the good work you're doing. I wish that we could receive the information that we requested so we could work alongside in a parallel process to get to the bottom of what ought to be the American ideal, and that's freedom and opportunity.

Mr. George, you have a Statement?

Mr. GEORGE. Just briefly.

I think it's important to note that we had made recommendations to the IRS on this very issue and are in the process of reviewing to see whether or not those recommendations have been implemented. And hopefully that report will be out in the not too distant future.

Mr. WALBERG. Thank you.

I yield back.

Chairman CHAFFETZ. I thank the gentleman.

I recognize the gentleman from Pennsylvania, Mr. Cartwright, for 5 minutes.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Mr. George, in case you or anyone listening does not fully understand why Mr. Connolly and I have filed a complaint against you, here's the beef.

The Council of the Inspectors General on Integrity and Efficiency, or CIGIE, is the organizing entity for IGs across Federal agencies. They issue a handbook for IGs like you on how to conduct investigations in a nonpartisan manner. This is what the handbook says about discussing ongoing investigations with Congress, "IGs should avoid any appearance of partisanship in such engagements.

Bipartisan meetings and outreach is the most appropriate format for such OIG meetings.”

What is troubling to me is that, during this investigation, you and your staff have engaged in a series of activities that contradict this clear guidance.

At the beginning of this investigation more than 3 years ago, your staff held a private meeting with Republican staff working for former Chairman Darrell Issa of this committee—that meeting occurred on March 8, 2012—during which your staff discussed the scope of the investigation. Democrats were not invited, were not informed, and did not participate.

On July 11, a few months later, you sent a private letter to former Chairman Issa confirming these events. This is what you wrote, and I “After our meeting, our Office of Audit recently began work on the issue. We would be happy to provide a status update to the subcommittee staff.” You sent a copy of that letter to Representative Jordan, but you did not send a copy to any Democrats.

On May 15, 2013, you issued your report. So, right there, that means you worked over a year on your audit for this committee with the Democrats on this committee entirely in the dark—you, who are required to be bipartisan and not partisan.

So what did you write in the May 15, 2013, report? You talked about the BOLOs, you talked about the right-wing groups being targeted, but you did not reference any progressive groups that we know were subjected to similar treatment.

When you came before this committee on May 22, a week later, 2013, we asked why your report did not address progressive groups. You said, “Because those groups did not have, again, the Be on the Lookout, ‘Tea Party,’ ‘Patriot,’ or 9/12’ in their names.”

When we asked you about specific reports that the IRS was treating progressive groups similarly, you said this, “I have subsequently received information that what you’re indicating may have occurred, and, as a result, we will be conducting a followup review to determine whether or not that’s the case.”

On July 18, 2013, you testified before this committee again. At that hearing, we showed you internal IRS documents indicating that progressive groups were subjected to this type of scrutiny and were also included on training materials. You said, “We just learned about that recently, and that name was being used by the IRS. So, you know, as I indicated in my opening Statement, we just recently, last week, received new information that is disturbing and we need to pursue.” So you testified it was disturbing that you did not discover these documents about progressive groups earlier.

But, about a month earlier, on June 23, 2013, your communications director Stated publicly that the reason for this was because you were only looking for Tea Party groups. She said Chairman Issa had directed you, “to narrowly focus on Tea Party organizations.” When you testified on July 18, 2013, you said she misspoke, your communications director misspoke. So, apparently, it was your office, on its own, deciding to focus only on conservative groups and not to review progressive groups.

On January 27, 2014, your staff held another meeting with Republican staff, and Democrats were excluded yet again. In fact, on

February 4, Ranking Member Cummings wrote to complain about partisan activities and not including Democrats.

Nevertheless, these partisan activities have continued to this day. About a month ago, on January 22, your staff met privately with Chairman Chaffetz, Chairman Jordan, and others. There were no Democrats present. You did not inform the minority the meeting was going to happen. And it wasn't until 11 days later that your staff finally provided the minority with that briefing.

Mr. George, as you sit here today, this evening, are you aware that your IG handbook says, "IGs should avoid any appearance of partisanship. In such engagements, bipartisan meetings and outreach is the most appropriate format for such OIG meetings"? Are you aware of that this evening?

Chairman CHAFFETZ. The gentleman's time has expired, but the gentleman, Mr. George, may answer the question.

Mr. GEORGE. I mean, that is quite a bit of information there, sir, and there is a lot that I would like to respond to. But suffice it to say I don't control the attendees of meetings. If I'm invited by the chairman of a full committee or a subcommittee to meet with him or her—

Mr. CARTWRIGHT. It's a "yes" or "no" question. Are you aware that that's in your handbook, that you have to be bipartisan?

Mr. GEORGE. I've engaged in bipartisanship my entire political and professional career, sir. So, yes, I—

Mr. CARTWRIGHT. And did you know—

Chairman CHAFFETZ. The gentleman's—

Mr. CARTWRIGHT [continuing]. That that was in your handbook 2 1/2 years ago?

Chairman CHAFFETZ. The gentleman's time has expired.

Mr. GEORGE. I—

Chairman CHAFFETZ. The gentleman's time has expired.

Mr. CARTWRIGHT. I yield back, Mr. Chairman.

Chairman CHAFFETZ. Thank you.

I now recognize the gentleman from South Carolina, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

And, Mr. George, I want you to take heart and I want you to be heartened by the fact that, when one side has good facts, they pound the facts, and when they have good law, they pound the law, and when they don't have either facts or law, then they like to pound the judge. And that's what we've been listening to tonight. I've heard more questions and tougher questions directed to you than I've heard directed to Lois Lerner. So I want you to take heart.

And we'll get back to this bipartisanship here toward the end, because I'd like to invite my friends from the other side of the aisle to write a letter to the Department of Justice. Speaking of the appearance of partisanship, we have a DOJ lawyer who contributed the maximum to the President, and that's who's supposed to be investigating.

So, perhaps, Mr. Chairman, we could have a letter, and we could get some Democrats to sign that letter with us, and we can ask the Department of Justice to update us on the status of the investigation and whether or not Ms. Bosserman is the right person to conduct that investigation.

However, Mr. Camus, I want to ask you this. Mr. Koskinen, Commissioner Koskinen, in June 2014, said that there was no evidence of criminal wrongdoing, which I found to be stunning because I was not aware previously that he was a criminal investigator. I thought he was the Commissioner of the IRS. So I think we both learned something that night.

He had conducted a full investigation and found no criminal wrongdoing, which I found also stunning because the Ways and Means Committee had made a criminal referral to the Department of Justice.

So, to the extent Mr. Koskinen is watching tonight, are there potential criminal statutes at play?

Mr. CAMUS. Yes, there could be. Yes, sir.

Mr. GOWDY. Well, what could they be? I'm not asking you to pre-judge it, but you can't discriminate against someone based on their political ideology, can you?

Mr. CAMUS. No.

Mr. GOWDY. No. That's against the law, and thank the Lord for it.

And you can't disclose confidential taxpayer information, can you?

Mr. CAMUS. No, you cannot.

Mr. GOWDY. No, you cannot.

Nor can you mislead Congress, can you?

Mr. CAMUS. You cannot.

Mr. GOWDY. Could I ask the chairman to engage in a colloquy with me?

Mr. Chairman, I listened—and he is my friend, from Virginia, Mr. Connolly. And I want to say that publicly. It may hurt him in this district, but he is my friend. I listened to him ask Mr. George to respond to a letter that he had written asking for an update on something that clearly Mr. George has no jurisdiction over and can't respond to.

And I would be curious as to whether or not the chairman would ask our friends on the other side of the aisle if they would be willing to write a letter to the Department of Justice. I'd be curious how Ms. Bosserman was chosen out of all the competent—and there are lots and lots of competent attorneys in the Department of Justice. I am curious why she, as a max-out donor to the President, was picked to head this criminal investigation.

And, Mr. Chairman, I'd be interested in whether or not there has even been a grand jury that's been convened. And, Mr. Chairman, I'd be interested in whether or not any grand jury subpoenas have been issued, either for documents or for witnesses. And I'd be interested in whether or not there are any proffer agreements or whether they've made any effort to talk to Ms. Lerner. You and I didn't have any success talking to her. I was hoping that they would have more success.

So I would ask the chairman to investigate, given this bipartisan spirit that I heard tonight, asking our colleagues on the other side of the aisle to join in a letter with us asking for an update on the real investigation, not investigating the investigator, which is what I've heard a lot of tonight—

Mr. CONNOLLY. Would my friend yield?

Mr. GOWDY [continuing]. But actually—I will in just a second. And I will, I promise—not investigating the investigator, which I’ve heard a lot of tonight, Mr. George, but the real underlying investigation into whether criminal conduct was engaged in.

Would the chairman be willing to entertain that thought?

Chairman CHAFFETZ. Yes. I will followup with you on that.

Mr. GOWDY. And I thank the gentleman from Utah.

And I would yield, with great trepidation, to my friend from Virginia.

Mr. CONNOLLY. I thank my friend. And he also is my friend.

Now, I’m not a fancy country lawyer from South Carolina like my friend, but I would say it’s a neat trick to attack folks on partisanship but to try to nullify our concerns about that very subject here with respect to Mr. George himself.

The objectivity, Mr. George, is very much in doubt.

And if my friend wants to draw us into a letter questioning the objectivity of the partisan activities of a lawyer at the Department, we’re happy to entertain that if my friend will join us in the concerns that were enumerated by Mr. Cartwright and by myself in a 26-page complaint—

Mr. GOWDY. Well, reclaiming—

Mr. CONNOLLY [continuing]. About the partisan briefings and the violation of the IG handbook.

And, by the way, if we’re going to condemn people or raise questions, by insinuation, of their partisan affiliations, we can do that with Mr. George, too, because he has a partisan history.

Mr. GOWDY. Reclaiming my time, because I’m out of time, and I know the chairman—

Mr. CONNOLLY. I thank my good friend.

Mr. GOWDY [continuing]. Is going to let me make one conclusory comment.

This is, I think, the third time Mr. George has appeared before this committee. So my point to the gentleman from Virginia is simply this: What’s good for the goose is good for the gander. If this man is going to have to sit here and listen to accusations about his character and his partiality, then I think the least that can be done is that we can have a few questions to the Department of Justice about—I’m not prejudging Ms. Bosserman. I have no idea. I just find it curious, out of all the thousands of lawyers in the Department of Justice, why they stumbled upon one who was a max-out donor to the DNC. That was my question.

And I know I’m out of time, so I’ll yield back to the chair.

Chairman CHAFFETZ. I thank the gentleman.

I now recognize the gentlewoman from Michigan, Ms. Lawrence, for 5 minutes.

Mrs. LAWRENCE. Thank you, Mr. Chair.

And thank you, Ranking Member.

Some of my colleagues—and many of you know that I’m a freshman Congresswoman, so this conversation has preceded me in the previous Congress. So I have some questions of timelines that I would like to validate.

Some of my colleagues continue to claim that there was ill intent surrounding Lois Lerner’s computer crash, that she intentionally crashed it to conceal her emails. I just want to review the timeline.

And, Mr. George, Lois Lerner's computer crashed on June 13, 2011; is that correct?

Mr. GEORGE. That is correct.

But for the technical questions, ma'am, I'm going to defer to Mr. Camus, but I'll do my best to answer the questions that I can.

Mrs. LAWRENCE. And emails produced to the Committee confirm that it crashed on June 13, 2011.

Then, on June 14, 2011, Ms. Lerner sent an email to several IRS employees stating that she could not read her emails because her computer crashed a day earlier. She wrote, "My computer crashed yesterday. My BlackBerry doesn't work in my office, so I just saw this."

Mr. George, according to your audit report on June 29, 2011, Ms. Lerner received a briefing explaining that the IRS employees in Cincinnati were searching for applications that included the terms "Tea Party," "Patriots," and "9/12."

Do I have that date correct?

Mr. GEORGE. Yes, you do.

Mrs. LAWRENCE. So before Ms. Lerner received information from you that there were complaints, her computer had already crashed. Is that correct?

Mr. GEORGE. You know, in all candor, Congresswoman, the timeline, as it relates to—and you're referring to the audit and not the investigation—

Mrs. LAWRENCE. Yes.

Mr. GEORGE [continuing]. So I will have to supply you an answer for the record, if that's permissible.

Mrs. LAWRENCE. Well, according to your report, Ms. Lerner learned about these inappropriate search terms. She wrote—or she stated that she immediately directed that the criteria be changed.

Mr. GEORGE. I've just been informed that the date that you cited is accurate, Congresswoman.

Mrs. LAWRENCE. OK. So if we are following the timeline, June 13, the computer crashed; on June 14, there was an email sent saying, my computer crashed yesterday; and then, on June 29, Ms. Lerner received a briefing explaining that employees in IRS were using these terms.

And if I'm correct, those are the timelines so far, correct?

Mr. GEORGE. My understanding—and, again, I'm getting this from staff—is that most of the dates that you cited were accurate, with one possible exception. And—

Mr. CAMUS. I believe the date that you cite for the computer crash is accurate.

Mrs. LAWRENCE. OK.

So, at the time of Ms. Lerner's computer crash, had TIGTA commenced its audit of IRS employees' handling of applications for tax-exempt status?

Mr. GEORGE. No. No. It hadn't begun.

Mrs. LAWRENCE. No. So she couldn't have known that you were coming in to investigate the past actions or the need for her—she hadn't been notified of any need or any investigation when the audit began.

Mr. GEORGE. Now, I don't know whether she was interviewed, and I can't, in all candor, determine what was in her mind. But that is an assumption I think one could make.

I don't know if anyone—Tim, you would want to add to that?

Mrs. LAWRENCE. I am looking for not assumptions. If the facts that we have is that her computer—we have a date, and her computer crashed on June 13. And it wasn't until June 29 that there was indication that there was going to be an audit based on these terminologies that were being used.

Mr. GEORGE. There is no question——

Mrs. LAWRENCE. That's a fact.

Mr. GEORGE. There's no question it was after——

Mrs. LAWRENCE. OK.

Mr. GEORGE [continuing]. The crash that there was any indication of an audit.

Chairman CHAFFETZ. I——

Mrs. LAWRENCE. And our former chairman did not ask to review this matter until 2012; is that correct?

Mr. GEORGE. Yes.

Chairman CHAFFETZ. I thank the gentlewoman. Time has expired.

So we'll now recognize the gentleman from Kentucky, Mr. Massie, for 5 minutes.

Mr. MASSIE. Thank you, Mr. Chairman.

So, just to go over some of the stuff in your opening Statements, you said that you found 744 backup tapes, Mr. Camus?

Mr. CAMUS. That's correct.

Mr. MASSIE. And this is after we were told in these hearings by Mr. Koskinen that these tapes were unavailable.

When did you first obtain the tapes, those 744 backup tapes?

Mr. CAMUS. July 1st, 2014.

Mr. MASSIE. July 1st of 2014. What I find interesting is that Mr. Koskinen was here on July 9th, 2014, which would be 8 days after you found those tapes. And those tapes were in the possession of IRS employees?

Mr. CAMUS. Yes. They were the backup tapes that were in use.

Mr. MASSIE. Right. And those backup tapes were kept by the IRS in Martinsville, West Virginia?

Mr. CAMUS. Martinsburg, West Virginia.

Mr. MASSIE. Martinsburg. Sorry.

But 8 days later after you found those tapes from IRS employees—and you said you drove there to get them—I asked Mr. Koskinen, I said, “I think you testified earlier that the backup tapes are recycled every 6 months.” And Mr. Koskinen said, “They are kept for 6 months, and then the tapes are put back into being recycled.” I said, “So the tapes are reused?” Mr. Koskinen said, “They are reused, yes. They are reused until they don't work.”

And so my questioning went on further with him, because I don't think it's typical practice that these tapes are reused. They're too cheap to reuse.

Do you have any indication that they were reusing those tapes?

Mr. CAMUS. Yes. I believe they were reusing the tapes.

Mr. MASSIE. So the tapes that you found, had they been overwritten?

Mr. CAMUS. Yes.

Mr. MASSIE. And so you have tapes that cover which dates?

Mr. CAMUS. The tapes that we recovered had been overwritten. However, by obtaining them and looking at them ourselves, we were able to find a backup as far back as November 2012. And that backup contained emails that went all the way back to 2001.

Mr. MASSIE. So those backups had not been overwritten.

Mr. CAMUS. That is correct. There was information on that tape that had not been overwritten that allowed us to see email as far back as 2001.

Mr. MASSIE. And you—

Mr. CAMUS. Now, a distinct—go ahead.

Mr. MASSIE. And you found 32,774 unique emails on those tapes, Lois Lerner emails?

Mr. CAMUS. That are unique to Lois Lerner. But what we have yet to determine is if the IRS ever had possession of those and if they, in fact, turned them over to Congress.

Mr. MASSIE. And you said you found nine tapes that were either blank or erased?

Mr. CAMUS. That's correct.

Mr. MASSIE. And, earlier, you testified you weren't sure whether they were blank or erased, and it was difficult or impossible to tell. Can the FBI discover—I mean, it seems to me, technically, that you could tell with some diligence, maybe not at first glance.

Mr. CAMUS. Well, we were informed by two parties—one, the FBI, and then the other is a private expert on data recovery—that the tapes, when they examined them, were blank. So whether or not they were erased and when they were erased, they weren't able to determine that based on their forensic expertise. That's why we sent them to two separate places.

Mr. MASSIE. All right.

So, another thing I wanted to ask you about. Some of Lois Lerner's cohorts had hard drives that failed, as well, during that same period of time after the investigation started or that the IRS was put on notice that they were going to be investigated.

Do these tapes—or, could these tapes contain emails that may have been lost in the failure of those hard drives of her cohorts?

Mr. CAMUS. Yes. We're also looking into those, as well.

Mr. MASSIE. And so how many of her cohorts had hard drives that failed that you are looking for on these tapes?

Mr. CAMUS. I believe it ended up being a total of five individuals.

Mr. MASSIE. And have you found any of those emails yet?

Mr. CAMUS. We're still in the process of looking. And those individuals were scattered in different places, so their emails were managed out of different email servers.

Mr. MASSIE. Do you think you will be able to retrieve information from the—you said you found 760, is that correct, hard drives?

Mr. CAMUS. That is correct.

Mr. MASSIE. That were in a server-type arrangement, a rack?

Mr. CAMUS. Yes.

Mr. MASSIE. Do you think it will be possible to obtain information for those, based on your interaction with experts?

Mr. CAMUS. It's too early to tell. If the drives are damaged beyond repair, it will be almost impossible to obtain meaningful email off of those.

Mr. MASSIE. All right. Thank you.

I yield back my time.

Chairman CHAFFETZ. I thank the gentleman.

I now recognize the gentlewoman from the Virgin Islands, Ms. Plaskett, for 5 minutes.

Ms. PLASKETT. Yes, thank you, Chairman, Ranking Member.

And, gentlemen, good evening to you.

Mr. Chairman, Mr. Ranking Member, you know, I am a freshman, as well. And it is difficult for me, sitting here as a former prosecutor and a courtroom attorney, not to jump up and shout "objection" at a lot of the things that I've been hearing, which are in some instances hearsay and speculation, subjective conclusions that my colleagues are putting forward. It, quite frankly, is a little frightening for me to hear this without being able to say anything, but I'm learning, and so I will stick to how we are doing things here.

Mr. George, you made a Statement that it's important to keep Congress informed. And I find it a little questionable that you would keep Congress informed of facts that in testimony Mr. Camus has Stated previously changed from day to day and that may negatively impact the integrity of investigations as facts change from day to day, 1 day to the next—which, as a previous investigator, I understand that you must come to the full conclusion before you put something out there which may, in fact, change.

So, Mr. Camus, I wanted to ask you about the process that still needs to take place and that changing the narrative of investigations. I understand about the 32,000 emails which have already been produced to the Committee. And how long do you anticipate, after you've finished your analysis of the emails that you have, how long will that take, please? I think you may have Stated.

Mr. CAMUS. Yes, ma'am. We have not produced any emails to any committee yet until we're finished with the match.

Ms. PLASKETT. And then after the match is done?

Mr. CAMUS. Yes, to the degree the Committee can receive them, some may need to be redacted—

Ms. PLASKETT. Correct.

Mr. CAMUS [continuing]. To take out the 6103 protected information.

Ms. PLASKETT. Exactly.

Mr. CAMUS. So we're hopeful that, as soon as we get our hands on the software and are able to put the match together, we are probably a week or two away. And then the other factors that could play into when we're finished with our investigation and are able to issue a report with findings—

Ms. PLASKETT. Right. How long does it usually take you to draft a report, the final report?

Mr. CAMUS. We're prepared to draft a final report when all the evidence is in, probably within a week or two.

Ms. PLASKETT. A week or two.

Mr. CAMUS. Yes, ma'am.

Ms. PLASKETT. And so some of the information that you may have given tonight, if facts were asked, may in fact change?

Mr. CAMUS. That is correct.

Ms. PLASKETT. And so we put that information out to the general public, which may in fact change.

Mr. CAMUS. That is correct.

Ms. PLASKETT. That's a little troublesome.

And I would ask the chairman and the ranking member that we give them that time period, which, although in the scheme, the long-term scheme of how long we have been investigating, doesn't seem to me to be that much more of a wait.

Thank you.

Mr. CUMMINGS. Would the gentlelady yield?

Ms. PLASKETT. Yes. I will yield to the ranking member.

Mr. CUMMINGS. Thank you.

You know, the question that needs to be asked here—and I've listened to all this, but this is the question.

Mr. Camus, during your investigation, did you ask the question, why did you not have the information about the backup tapes? In other words, did you go to somebody and ask them that in IRS?

Because nobody's asked that question yet. And that seems like a logical question, since we're talking about criminal activity, and I would think that that would possibly be the basis of some of it.

Did you?

Mr. CAMUS. To answer your question, Mr. Cummings, without compromising the investigation——

Mr. CUMMINGS. Right.

Mr. CAMUS [continuing]. When we started our search for missing emails, we were going to leave no stone unturned and we were not going to take an obvious answer. So we were going to find and prove for ourselves whether or not email had been overwritten.

We approached the Internal Revenue Service, and we said, we need all backup tapes that would have been in place between 2008 and 2011 for Ms. Lerner. They provided the 744 tapes. We believed that we were working with the tapes that were in play and had allegedly been overwritten.

After we starting analyzing those tapes and we started seeing email that went all the way back to 2001, we believed that we had found old tapes that had been in place since 2011 in the server. Only until 2 weeks ago were we told and did we find through our investigative efforts——

Mr. CUMMINGS. Well, that's where I'm going. But did you ask the question about that, what you discovered? Like, what happened? I mean, did you say, what's this about?

Mr. CAMUS. Naturally, that's probably the most important part that is left for us to investigate at this point, is to determine how and why all that happened and if there was any ill intent behind any of that.

Mr. CUMMINGS. So you're still looking into that?

Mr. CAMUS. Yes, sir.

Mr. CUMMINGS. All right. Thanks.

Chairman CHAFFETZ. If the gentlewoman would yield.

Is there any evidence that there was an attempt to erase any of the tapes?

Mr. CAMUS. At this point, I don't want to make any conclusions. I believe that some tapes were erased, but I don't have—I'm not to the point in my investigation where I can explain that without jeopardizing my ability to——

Chairman CHAFFETZ. Fair enough.

Mr. CAMUS [continuing]. Figure out if it was done on purpose.

Chairman CHAFFETZ. And as the gentlewoman's time expires here, one of the reasons that we're doing this update, one of the things that causes us great concern is that, back at the Super Bowl, you know, the Super Bowl, the President is interviewed by Bill O'Reilly; he said there's not even a smidgeon of corruption here.

Nobody else has come to conclusions. We still have outstanding questions from the Department of Justice, from the Inspector General, from Congress. Somehow the President came to this conclusion. Fascinated to hear someday how in the world he thinks he can come to that conclusion without the facts.

But there is a lot of evidence, and Congress plays a role. We can't simply sit back. We are, too, also doing an investigation. And we have repeatedly—repeatedly had the Commissioner of the IRS come here and tell us a whole variety of stories that, based on the testimony we hear today, that ain't true. And that's why we continue to investigate.

I now recognize the gentleman from North Carolina, Mr. Meadows, for 5 minutes.

Mr. MEADOWS. Thank you, Mr. Chairman.

And thank each of you for being here.

I was talking to a gentleman from Kentucky the other day, Mr. Phillips, and he was asking me, well, why can't we just get all the emails from everybody else that communicated with Ms. Lois Lerner?

And I think just a few minutes ago you were saying there were five other people that were central to this investigation that we've lost their emails. Is that correct, Mr. Camus?

Mr. CAMUS. We were looking into a total of possibly up to seven.

Mr. MEADOWS. So seven potential people who, miraculously, their emails just disappeared. And so now you're looking for the backup tapes, like you have found with Ms. Lerner?

Mr. CAMUS. Yes. We're trying to account for every single email for every one of the individuals that would have been considered a custodian.

Mr. MEADOWS. Yes. So have you found some of those at this point, or you're still in the process?

Mr. CAMUS. We're still in the process, sir.

Mr. MEADOWS. All right.

Do you find it very ironic that there would be testimony here, at that very table where you're sitting today, a number of times saying that there are no backup tapes, they're gone, all the backup tapes, we've looked, we can't find them? Do you find that as ironic, that you were able to find them so easily? And I'm talking about your personal opinion. Do you find that ironic?

Mr. CAMUS. We're trained investigators, and we don't assume——

Mr. MEADOWS. So you don't find anything ironic.

Mr. CAMUS. Oh, we didn't assume anything, Mr. Meadows.

Mr. MEADOWS. Well, if you were sitting in my position—

Mr. CAMUS. Yes.

Mr. MEADOWS [continuing]. Or, more importantly, if you were the American people, would you believe that Congress had been misled that there was an exhaustive research for these backup tapes? Would that be a logical conclusion for me to draw?

Mr. CAMUS. I could certainly see how somebody could draw that conclusion.

Mr. MEADOWS. So you could see how the American people would think that we have been misled.

So, today, if nothing more comes out of this hearing, the hearing—the title should be, “Congress was misled about backup tapes.” Would you agree with that? Would that be an accurate title?

Mr. CAMUS. As an investigator, I would have to lay against and literally look at everything that's been said and put in record and then compare it to what I know as of today and, also, hopefully, complete my investigation. I would probably know much better when I'm finished.

Mr. MEADOWS. All right. Well, you would know much better when you're finished as to the conclusion of that. But, certainly, as of today, we've been misled.

Do you think new information has come out from this hearing that we didn't know about prior to this hearing? How about that. That's an easier one, isn't it?

Mr. CAMUS. Yes.

Mr. MEADOWS. So we have new information today that you uncovered that you've shared with Members of Congress.

Because my colleagues over on the other side, you know—and some of them are new. And as we go back, we must remember—I haven't always been kind to you, Mr. George, have I?

Mr. GEORGE. You have been fair.

Mr. MEADOWS. OK. Well, thank you for being gracious. But, at the same time, we will ask piercing questions on why this is done.

And so I'd like to put up a slide, because I found this very ironic and would just—it hit when the gentlewoman across the aisle talked about June the 29th. And this is an email from June the 29th when Lois Lerner got briefed. And I didn't put those two together, but it's dated that same exact day. And it's an email from Lois Lerner that's sent to two of her colleagues. And she says, “No one will ever believe that both your hard drive and mine crashed within a week of each other. Isn't that strange?”

Would you agree that that's strange?

Mr. CAMUS. I would agree that—

Mr. MEADOWS. I would agree that it's strange.

I would think that it would be even stranger that those hard drives crashed 10 days after Lois Lerner was informed from Chairman Camp that he wanted to know what's happening with the targeting of Tea Party groups.

Wouldn't you find that strange—or very coincidental? Let's put it that way.

Mr. CAMUS. I would agree with you. Very coincidental.

Mr. MEADOWS. So if we have that and we have all of this, what you would say as an investigator, circumstantial evidence, shouldn't we look a little bit deeper for those emails? And shouldn't we, in a bipartisan fashion, be extremely happy with the fact that you're bringing—that you found evidence that wasn't previously available to us?

Mr. CAMUS. Yes.

Mr. MEADOWS. So you've brought evidence now, you have evidence now that may not have been intentionally withheld from you but certainly wasn't volunteered to you—because we've had all kinds of reports. Mr. George has already given me all kinds of reports. And you know what? Those emails were missing. And they didn't even tell him that they were missing; he had to find those. And you had to find the tapes.

Wouldn't you think that we would draw some kind of a conclusion that we had been misled?

I can see my time has expired, so I'll yield back to the chairman, and I thank his patience.

Chairman CHAFFETZ. I thank the gentleman.

I now recognize the ranking member, the gentleman from Maryland, Mr. Cummings, for 5 minutes.

Mr. CUMMINGS. With all due respect to my colleague, Mr. Meadows, the claims that he has made just now were given three Pinoccios by The Washington Post.

I want to enter into the record an article dated June 24, 2014, "The Letter That Supposedly Led to the Crash of Lois Lerner's Hard Drive."

Chairman CHAFFETZ. Without objection, so ordered.

Mr. CUMMINGS. Thank you.

Mr. George and Mr. Camus, I really want to get to the bottom of this, because, you know, Mr. George, I don't want you to—I mean, I know some of my colleagues apparently filed something against you, a complaint, but there's some deeper stuff going on here, and I just want to understand what is happening.

In May 2013—and this troubles me a lot—Mr. George, you issued your report on the treatment of tax-exempt applicants. Your report was extremely controversial because Republicans used it to argue that this was a political targeting against conservative groups.

But just a few days before you issued your report, the man sitting next to you, your deputy IG for investigations, Mr. Camus, sent an internal email to your senior staff saying that this was not political targeting.

I would like to put the email up on the screen. The email is dated May 2, 2013. And in the very first line, it says he had a conversation with you and they pulled more than 5,000 emails to see if there was any evidence of political motivation.

Then he says this, "The emails indicated the organizations needed to be pulled because the IRS employees were not sure how to process them, not because they wanted to stall or hinder the application. There was no indication that pulling these selected applications was politically motivated."

So, Mr. George, are you aware of this email and did you know about it at the time?

Mr. GEORGE. I am very much aware. And I really want to thank you tremendously for affording myself, as well as Mr. Camus, the opportunity to put in the right context why he wrote that email.

Mr. CUMMINGS. All right. Well, maybe you—let me just continue. And I'm going to get—I want him to do that, because it is troubling.

The email also says,—it says, "The email traffic indicated that there were unclear processing directions, and the group wanted to make sure that they had guidance on processing the applications, so they pulled them." And then it says this: "This is a very important nuance."

Now, I'm going to give you a chance to explain it, but I just want to finish. Mr. George, your deputy inspector general for investigations called this point a very important point, and yet it's not included in your report just 2 weeks later. And why was that?

Mr. GEORGE. Sir, again, I think it would really benefit the Committee to, one, get the context in which that email was drafted—and, ironically, the staffer who made the call not to include it in the report is seated behind me, so we can give you a complete answer here.

Mr. CUMMINGS. All right. Go ahead.

Mr. CAMUS. Mr. Cummings, I—

Mr. CUMMINGS. And, by the way, I think that this is such an important point, that since the staffer isn't sworn in, if we need additional information, I'm sure that we can swear him in. I just wanted an answer.

But go ahead. Because it is quite interesting. Go ahead.

Mr. CAMUS. While the audit staff was looking into the audit and finishing up their audit work, they believed that somebody had said that there was a directive email causing the selection of those applications for improper treatment. They didn't know who sent the email; they had just heard a rumor that such an email existed.

So they brought it to my office, and they asked if we would open an investigation, at which point I declined to do so because I believed the audit of the process was the appropriate treatment stream, and I had no reason to believe that there had been any criminal activity.

But I agreed to take a quick look at some of the emails of the individuals involved in pulling the applications to do a test to see if we found anything that jumped out at us that would indicate there was, in fact, criminal activity. So it was a very small sample, five individuals who were key to the whole situation. And we used keyword search terms that were provided from our audit staff.

After we pulled the emails and we searched them with those keyword search terms, we determined that, based on all the traffic that we had seen from that limited sample, that there was nothing that rose to the level for our office to open a criminal investigation at that time.

And that's why the email was drafted. It was in response to that, is there a, smoking-gun email out there that would indicate that there was any type of focus? It was not a full investigation, and we did look at a very minor sample.

And that last sentence, that it's an important nuance, that was to share with the staff that, based on our quick peek of the emails

that we were looking at, again, using a limited number of individuals and search terms, that there was no indication at that time, looking at that sample, that there was any indication of political motivation in that activity.

Mr. CUMMINGS. Mr. George, what—go ahead.

Mr. GEORGE. Yes. And I'd like to ask Gregory Kutz—and I don't know what the protocol is, Mr. Chairman, as to whether or not—

Chairman CHAFFETZ. The protocol is such that we will only hear from members who have been sworn in at the Committee. And in fairness to all members, we are only going to make available for public comment those that all members on this committee have had an opportunity to question.

So we will leave the answers to Mr. George and Mr. Camus. If there is an appropriate time to followup with the individual staffers, I would welcome the minority and majority to both. But we need to leave the testimony with both Mr. George and Mr. Camus.

Mr. CUMMINGS. Mr. Chairman, I would like a—can I get a written response on that?

Mr. GEORGE. I was just going to ask if—

Mr. CUMMINGS. Yes. Give me a written response in detail. Make sure you get it to the chairman, too. Because we are bipartisan here.

Mr. GEORGE. Yes. Yes.

Chairman CHAFFETZ. In the spirit of doing that, the timeframe in which you do it, in the next 2 weeks, is that fair?

Mr. CUMMINGS. We should be able to get it this week. You know he's writing it now.

Chairman CHAFFETZ. He's writing it now. All right.

If he can get this to the Committee in the next few days, that would be most appropriate. And we may have it before the end of the hearing.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman CHAFFETZ. All right.

I will now recognize the gentleman from Florida, Mr. DeSantis, for 5 minutes.

Mr. DESANTIS. Thank you, Mr. Chairman.

Mr. Chairman, I ask unanimous consent that the following article be entered into the record. It responds to this Pinocchio claim about the letter that was sent by Dave Camp 10 days before Lois Lerner's hard-drive crash.

Chairman CHAFFETZ. This is the National Review article, June 25, 2014.

Without objection, so ordered.

Mr. DESANTIS. And it makes the point that the letter didn't specifically say "targeting conservative groups," that's true, but what it did say was that they were concerned that the IRS was targeting donors to conservative groups and (c)(4) groups. And so, either way, Lois Lerner would have been the person who would have been implicated in that.

And I think the article does a good job of showing why the Washington Post analysis was suspect.

Man, if I received a subpoena or the government asked me to produce some documents and I said, "Sorry, they're destroyed," and then it turned out someone could just walk down 10 days later and

find them all, man, I'd be in a world of trouble; 300 million Americans would be in a world of trouble. And yet, here, the IRS, you know, they don't care. Commissioner Koskinen, he's been offended, almost, that we ask him questions about this stuff.

And to look back at his testimony now, with him saying over and over again that those emails were destroyed, the tapes were gone, "Sorry, guys," and then to know what was found very easily by the IG, it is stunning.

And it's very upsetting, because we're supposed to live in a republican form of government based on law, in which the people who are in positions of power are still subject to the law. And, indeed, I think people like Koskinen should have a higher standard than the average American. Instead, this is a lower standard. This type of production would never be acceptable outside of Washington, DC. It's very, very frustrating.

Mr. Camus, you seized the tapes July 1, 2014. Later that month, you submitted an affidavit for a case in the district court of the District of Columbia. It was the True the Vote case, and part of the issue was the production of these emails and the backup tapes.

Do you recall working with the Department of Justice on that?

Mr. CAMUS. I do.

Mr. DESANTIS. And you submitted an—I think you signed your affidavit on July 17, 2014?

Mr. CAMUS. That sounds accurate.

Mr. DESANTIS. And then it was filed in the district court on July 18, 2014.

So, in between July 4 and the time you executed that affidavit, you were in contact with attorneys for the Department of Justice?

Mr. CAMUS. That is correct.

Mr. DESANTIS. And did they ask you about the status of the backup tapes?

Mr. CAMUS. They asked us about the status of our efforts to recover email. I think it was a FOIA litigation, and so any emails that we uncovered would be pertinent to FOIA. So they asked for us to give them a status on did we find new emails and, if not, when we would have them from our search.

Mr. DESANTIS. So did you update them that there were backup tapes filed and that you were going to look into pulling emails off those tapes?

Mr. CAMUS. I can't recall at that point if we knew. I don't think we saw any emails until November. So, in July, I don't believe I was aware that we were going to be able to actually see any emails.

Mr. DESANTIS. So you just knew you had the backup tapes?

Mr. CAMUS. We knew that we had the—when we went to the IRS and we asked for the backup tapes, I knew that they had provided 744 of the backup tapes.

Mr. DESANTIS. OK.

And you discussed the case with Joseph Sergi at the DOJ? Is that the attorney you worked with?

Mr. CAMUS. Yes, sir.

Mr. DESANTIS. OK.

So they filed a pleading in that case, and I think it bears the Committee to followup on that, because I'm not sure some of the

representations made by the Department of Justice—well, they're certainly not consistent with the facts as we know now, but I don't know that they are consistent with the facts as they would have known at the time. So I think that that bears investigation, and I think that the Committee needs to look into it.

This is really, really frustrating me. And this has been going on now for almost 2 years—almost 2 years. And you have somebody who's held in contempt—oh, let me ask just really quickly.

I noticed on this brief that the U.S. attorney for the District of Columbia, Ron Machen, was listed of counsel. Have you had any interactions with U.S. Attorney Machen in this case?

Mr. CAMUS. No, sir.

Mr. DESANTIS. OK.

And so Lois Lerner is held in contempt. Statutes say when you're held in contempt of Congress, you're going to a grand jury at the District of Columbia in Federal district court. Nothing's happened. Nothing's happened at all. That's coming up on almost a year here in a couple of months.

And so we have a situation where I think the IRS has figured they can systematically try to thwart our efforts and there's just not going to be any consequences. And I think that needs to be change. I think the Congress needs to stand up on behalf of the American people for the truth, and I don't think we can allow this to continue to go on the way it has.

And I yield back.

Chairman CHAFFETZ. I thank the gentleman. Impressed with his timeliness in his questioning.

And now recognize the gentleman from North Carolina, Mr. Walker, for 5 minutes.

Mr. WALKER. Thank you, Mr. Chairman.

I imagine it's tough sometimes being on the other side of the panel but do appreciate it and certainly respect your forthrightness there, for both Mr. Camus and Mr. George.

I do want to target just a little bit Mr. George.

How long have you worked in this environment, whether it be an inspector general or just overall in the government?

Mr. GEORGE. I started, believe it or not, at the age of 17 as an intern for then-Senator Bob Dole and have been working on and off in government for over almost 25 years.

Mr. WALKER. Yes. And I don't want to be too self-serving, but how would you say your record is over that time?

Mr. GEORGE. I've been told that I have a good reputation, sir.

Mr. WALKER. OK. Is there anything partisan about your meeting with the former Chairman Issa or even with the current Chairman Chaffetz, in your opinion?

Mr. GEORGE. No, only in that I was not informed in advance that there would not be representation from the minority side.

There is no question that, once this became obvious to me, that one side was holding meetings and not including the other, we immediately—and, again, I would ask for a little bit of flexibility in the use of that word, but we did change our practice and our policies. Because there is no question that the ranking member and the chairman and others are correct; we have an obligation to report to both sides.

Mr. WALKER. Right. Have they ever contacted you about having a meeting with them? And if so, do you remember?

Mr. GEORGE. I do recall getting a letter from the ranking member about complaining that they were being excluded, and that helped.

Mr. WALKER. Would you have met with them if they asked?

Mr. GEORGE. Would I have met with them? Of course. And we have.

Mr. WALKER. All right.

And before, I guess, this setting that we're facing with right now, particularly in this whole hearing, have you ever been accused of being partisan before in your time?

Mr. GEORGE. Never.

Mr. WALKER. OK.

Why do you think you're the target of that? The feeling that I'm getting tonight is that, rather than the IRS and some of these issues, that you guys are sort of, kind of, a target. In your opinion, why do you think that is?

Mr. GEORGE. As one of the Congressmen mentioned, this is very difficult situation, and it's unprecedented for my organization and for me in my professional career to have had this type of interaction and level of attention, sir, to an issue that is of extreme importance to the American people.

The Internal Revenue Service is the revenue-gathering entity of the most important Nation in the world. We have a voluntary compliance system. People have to have trust in that system. And this issue raised questions about trust.

Mr. WALKER. Most definitely, it does. In fact, tonight I've heard, and I guess in respect, in describing you, I've heard the words, "questionable," "partisan," you're "under investigation."

In May 2012, from my understanding, there was nearly a year that goes by before you were even reporting publicly. To me, if you were truly partisan, would you not, in the 2012 elections, have said something or done something outwardly that would have made their case?

Mr. GEORGE. We would have done whatever the law requires. And, again, we have had an extraordinary reputation, sir, "we" being at TIGTA—and, really, forgive me for taking your time, but the men and women who work for me are some of the most top-notch Federal workers I have ever interacted with. And they are doing yeoman's work here, putting in literally 24 hours a day on this very issue, some of them.

So, you know, we would have reported what the law required us to report and would not have reported what was inappropriate at that time.

Mr. WALKER. Sure.

And being new here, it's important for me to make sure the people that are in the panel are rock-solid, they are not partisan. And I believe everybody in the room would agree with that. But I will tell you, I can hear even from your voice and your heart and your passion, I have a lot of confidence that you are doing the right job. Thank you for your work, and Mr. Camus.

I yield back.

Chairman CHAFFETZ. I thank the gentleman.

I now recognize the gentleman, Mr. Carter from Georgia, for 5 minutes.

Mr. CARTER. Thank you, Mr. Chairman.

And thank you all for being here. The hour is late. I know, if you're like me, you're tired. But let me, again, thank you for being here, and thank you specifically—it's never been the question in my mind whether or not it was—that it was duplicate material that you found, but, instead, the point is you found it.

So I want to talk about that specifically. What prompted you—were you asked to look for it?

Mr. CAMUS. Yes, sir. By letter from Senate Finance Committee, they specifically asked us to recover any emails that we possibly could.

Mr. CARTER. OK. So that's what was the impetus for you to start looking for it.

Mr. CAMUS. Correct.

Mr. CARTER. And you found it, as you testified, in, what, 15 days?

Mr. CAMUS. Yes. What we found were—and it's important to note that what we found were a population of emails that were relevant to the investigation, but we have yet to determine, until we do the match, whether or not it's new email.

Mr. CARTER. But the point still remains is that you found emails that we have been—that previous testimony had said that were lost and couldn't be found. That is the point, correct?

Mr. CAMUS. We believe we did find some unique emails, but we won't—

Mr. CARTER. OK.

Mr. CAMUS. We won't know that until—

Mr. CARTER. I understand. I understand. I'm with you on that.

All right. I want to talk about standard operating policy, which—I'm in business, so that's important to me, that we are following SOP and best practices. I mean, all of that type of thing is very important.

Where the emails were being stored, was it in somewhat of a unique place? Or was it standard, that you would expect for them to be here?

Mr. CAMUS. The 744 tapes that we initially obtained on July 1 were in the backup system of the IRS Microsoft Exchange Server. So they were right where you would expect them to be.

Mr. CARTER. Right where you would expect them to be.

Mr. CAMUS. And when we demanded them to fit that period, that's what was supplied to us. Only until 2 weeks later do we find out—or only until 2 weeks ago do we find out that probably the tapes that we are actually looking for we were never told about, if that makes sense.

Mr. CARTER. Anyway. Let me ask you this. When someone's hard drive crashes, who do they report it to? I mean, obviously, you had to have a new computer, right?

Mr. CAMUS. Correct.

Mr. CARTER. You had to put in a requisition that, hey, my hard drive has crashed, I got to have a new—was that done?

Mr. CAMUS. Yes, it was.

Mr. CARTER. So everything was followed, right procedures. And that matches the timeframe with which Ms. Lerner is saying that her hard drive did indeed crash?

Mr. CAMUS. Yes, I think the gentlelady asked earlier the date that her hard drive actually crashed. We believe it was June 11, 2011. It was reported on June 13, 2011, to the IT department.

RPTR YORK

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[9:42 p.m.]

Mr. CARTER. OK. So nothing unusual in that respect.

Mr. CAMUS. Correct.

Mr. CARTER. OK.

I also heard testimony that more than one hard drive had crashed and that it was—isn't that kind of unusual? I mean, all of a sudden, you've got a slew of hard drives crashing right around here.

Mr. CAMUS. Yes, I can't comment on that right now, but we will probably take a look to see if that particular type of machinery, you know, the type of hard drives that they were, were susceptible to multiple crashes. But there were individuals that were in Ms. Lerner's business unit and that were involved in this case that had suffered hard-drive crashes about the same time.

Mr. CARTER. Again, just coincidence, I'm sure.

But, nevertheless, again, thank you for being here tonight. Thank you for reporting this and for finding this. You know, I would congratulate you on being great inspectors and detectives, but it sounds like all you did was ask the right question.

Mr. CAMUS. We are paid to ask good questions, sir.

Mr. CARTER. Great. Thank you.

And I yield back, Mr. Chairman.

Chairman CHAFFETZ. Thank the gentleman.

We now recognize the gentleman from Wisconsin, Mr. Grothman, for 5 minutes.

Mr. GROTHMAN. OK. I think some of these questions may be a followup from what was asked before. They're really for Mr. Camus, but we'll go through them again.

Commissioner Koskinen testified that he had confirmed that Ms. Lerner's emails were unrecoverable. Have you had any findings so far regarding what the IRS did to confirm that information, that he would use the word that he had "confirmed" it?

Mr. CAMUS. What I know is what I've seen in documents that were provided, and, also, the other half of the equation that I know is what we were told when we attempted to recover the emails.

Mr. GROTHMAN. OK. So did they give you any idea as to why they would say it was confirmed, other than just wanting it to be confirmed?

Mr. CAMUS. The only thing I could—that I could say is what we did was we didn't make any assumptions. We went and we questioned people who would have the material, and we ran it to the ground ourselves.

Mr. GROTHMAN. Yes, I know you did. But the question is, why would Commissioner Koskinen make that Statement? Do you, in your investigation, see any reason why he would have made that Statement?

Mr. CAMUS. I don't know that. But we are continuing investigating that.

Mr. GROTHMAN. OK.

Commissioner Koskinen testified before Congress that the backup-tape emails were unrecoverable. OK, that's what he said. Do you know why he would've said that? Or would that have been an accurate Statement?

Mr. CAMUS. He could possibly believe that to be accurate, because they may not have looked as hard as we did.

Mr. GROTHMAN. OK. Did they give you any clue as to how hard he looked, or do you know why he would have made that Statement?

Mr. CAMUS. I don't know why he would make that Statement. But I can tell you that, when we started our search, we asked the people that we were interviewing if anybody else had asked them to do the same type of the search that we had, and they said no.

Mr. GROTHMAN. OK. So you don't even know—based on your investigation, you did not unturn anything—or overturn anything that would indicate that they had made anything, any real investigation that you could determine.

Mr. CAMUS. So far, we haven't seen that, but we're not finished with our investigation yet, sir.

Mr. GROTHMAN. OK. Thanks.

I'll yield the rest of my time.

Chairman CHAFFETZ. Thank the gentleman.

Recognize the gentleman from Alabama, Mr. Palmer, for 5 minutes.

Mr. PALMER. I'm the guy you're looking for, the last one, I guess.

Mr. Camus, back in 2010—well, I guess it may have been 2013, information came out that indicated that Ms. Lerner had contacted the Department of Justice regarding the possibility of pursuing a criminal investigation into election crimes targeting 501(c)(4) organizations.

Do you know if any of the tapes contain the emails that would cover that?

Mr. CAMUS. I don't know that at this time, sir.

Mr. PALMER. If that were in there—and I know this is a supposition, a hypothetical—but if it were in there, would that indicate an animus toward those groups, particularly in regard to what we believe was going on, denying certain 501(c)(4) organizations the tax status that they were seeking?

Mr. CAMUS. There could be emails that we uncover that do indicate that type of behavior, but until we get to the point where we find unique emails, it's hard to speculate.

Mr. PALMER. I believe I should direct this to Mr. George. If not, Mr. Camus, you can answer it.

But the timeline that's been referenced repeatedly tonight, that was based on the initial evidence that you got, the initial emails. Would it be possible that the timeline could change based on new evidence?

Mr. GEORGE. Yes.

Mr. PALMER. OK.

We had several members of the—several inspector generals in before this committee a few weeks ago, and the hearing revolved

around the fact that this administration had not always been forthcoming, various agencies not always been forthcoming with documents.

Is there any indication that evidence or documents may have been withheld? In your investigation, have you had that problem?

Mr. CAMUS. As we're not complete with our investigation yet, I can't draw a conclusion that anything has been withheld from us.

Mr. GEORGE. And—

Mr. PALMER. I just want—go ahead, Mr. George.

Mr. GEORGE. Yes, sir. I was just going to add, too, that is the unique role that we have, we as IGs have, with the agencies that we oversee. Because if you don't ask the right questions and—you have some authority to subpoena certain things, but you can't force someone to speak to you, as of now. So it would be easy for an agency to fail to provide information if you don't pose the right question.

Now, there is a proposal out there, I understand, that would change that and would give IGs additional authority. But, as Tim indicated, he could not give you a definitive answer at this stage.

Mr. PALMER. Well, I have to wonder—obviously, the big issue is the supposedly erased emails or lost emails—but why the IRS didn't inform Congress sooner that they may have had the tapes that had the information on it and then whether or not they were forthcoming to the inspector general's office. Because I would assume that you were asking those questions.

Mr. CAMUS. That is correct. And we will include that in our investigation.

Mr. PALMER. My last question is—you mentioned seven individuals that—I'm not sure if it was you that mentioned it or Mr. Meadows or Mr. DeSantis, and it is getting late—that there were seven other individuals who may have missing emails, as well, that were in that communication circle.

My question is, have you talked with them?

Mr. CAMUS. We've included them in our investigation.

Mr. PALMER. Have they secured counsel?

Mr. CAMUS. I do not know that, sir.

Mr. PALMER. OK.

Thank you, Mr. Chairman.

Chairman CHAFFETZ. I thank the gentleman.

Now recognize the gentleman from Maryland, the ranking member, Mr. Cummings.

Mr. CUMMINGS. Mr. George and Mr. Camus, we've spent a lot of time on the conservative groups, and I want to go to—I mean, I'm concerned about the conservative groups, but I'm also concerned about the progressive groups. And I want to ask you about the status of your investigation, the one reviewing how progressive groups are treated.

The report you issued in 2013, Mr. George, did not address progressive groups. When you testified here on May 23, 2013, we asked why you did not evaluate progressive groups, and you said this: "Because those groups did not have the Be on the Lookout terms "Tea Party," "Patriot," or "9/12" in their names."

When we asked about specific reports that progressive groups were treated similarly to Tea party groups, you said this, "I have

subsequently received information that you're indicating may have occurred. And, as a result, we will be conducting a followup review to determine whether or not that is the case and, if so, the extent of it."

Do you remember that?

Mr. GEORGE. I do, sir.

Mr. CUMMINGS. And when you came before us on July 18, 2013, we showed you internal documents indicating that progressive groups were subjected to similar types of scrutiny and they were also included in the training materials for the Be on the Lookout list.

In response, you said this, "We, just as recently as last week, received new information that is disturbing and that we need to pursue."

Do you remember that?

Mr. GEORGE. I—yes, I vaguely recall that, sir.

Mr. CUMMINGS. So that was more than a year and a half ago, when you said you were going to do a new investigation to determine how progressive groups were treated. Can you tell us where that investigation stands today?

Mr. GEORGE. Yes.

What I can say is—and just to make sure that everything is clear, the IRS had different Be on the Lookout lists. And the list that we were initially charged with looking at was not a list that included—was a list that included the "Tea Party," "9/12," "Patriot" groups.

There was one tab, and people, for some reason—and I can understand why, because it wasn't focused on. There was a footnote in the original audit report that indicated that there were groups other than, "conservative" groups, but that was not the purpose of this review.

And subsequent to all of that, with everything that's developed, I, at the request of Members of Congress, made a commitment that we would review the handling, the treatment of, "progressive" groups by the IRS.

So we are right now in the process of reviewing 17 other search criteria, including "progressive," going back to 2004. And both majority and minority staffs have been briefed on this. And the timing is—OK.

Apparently, all of this is tied in—and I was just informed, until the DOJ investigation is concluded, we won't have access to certain witnesses that are necessary to be interviewed, as it relates to this new review.

Mr. CUMMINGS. So you—there—have any witnesses been interviewed with regard to the progressive groups?

Mr. GEORGE. Well, we're reviewing 600 cases, and so—have witnesses been interviewed?

Not yet. Not yet.

Mr. CUMMINGS. And—

Mr. GEORGE. We've identified 600 cases that we are going to look at, but we're stymied, we're stymied by the lack of conclusion of the FBI/Justice Department—

Mr. CUMMINGS. Now, I assume you've reviewed some documents with regard to the progressive groups. I guess you had to do that

just to determine that there are witnesses that you needed to talk to, right?

Mr. GEORGE. That's true. Yes, I've just been——

Mr. CUMMINGS. Do you know how many pages you've looked at or——

Mr. GEORGE. What's this?

Mr. CUMMINGS. Do you know how many pages of documents you've looked at with regard to progressive groups?

Mr. GEORGE. We do not know the answer to that, sir.

Mr. CUMMINGS. So you can't—it's hard for you to give us any idea as to when the progressive-group investigation will be complete; is that right?

Mr. GEORGE. You know, generally, a review takes a year, sir, but given the importance of this matter, we'll put it on a fast track. But I cannot give you a time commitment at this stage.

Mr. CUMMINGS. But it seems like you don't even have control over it, because you said something about the other investigation going on.

Mr. GEORGE. And that's part of the problem. We have absolutely no control over when the Justice Department will, you know, conclude their review so that we can have unfettered access to witnesses—unless you have information that I don't have?

All right. That's the latest, sir.

Mr. CUMMINGS. Thank you very much.

Mr. GEORGE. Mr. Chairman, I'm sorry to interrupt you, but I have that information in response to Mr. Cummings.

Chairman CHAFFETZ. We're about to conclude this hearing. If you could come up and hand it to him, I think that would be very appropriate.

Mr. GEORGE. Deal.

Chairman CHAFFETZ. Thank you.

Listen, the hour's late. I appreciate the staff who's staying here working late, other Members that are here.

And, certainly, we appreciate you and your testimony here. The work that you do within your organization is vital. It's important to Congress. Please let the men and women who work so hard day-in and day-out know that it is appreciated, it is needed, we do pay attention to it. And we thank them for their good, hard work.

This committee stands adjourned.

[Whereupon, at 9:56 p.m., the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

NATIONAL REVIEW

Yes, There Is Reason to Be Suspicious about the Timing of Lois Lerner's Hard Drive 'Crash'

By Ian Tuttle — June 25, 2014

Over at the *Washington Post*, fact checker Glenn Kessler has the facts right but the conclusions wrong about "The letter that supposedly led to the crash of Lois Lerner's hard drive." Kessler takes as his starting point the following remark from Representative Peter Roskam (R., Ill.) at the June 20, 2014, House Ways and Means Committee hearing on IRS targeting:

The IRS is not a victim today. And here is [the] fundamental problem. Chairman [Dave] Camp [R., Mich.] sent a letter on this whole issue. And then 10 days later — so think about the duration of 10 days. Ten days is the ability to panic at the IRS, reflect, plan, talk and execute. And there was a crash — 10 days after the chairman's letter.

Fox News's Chris Wallace repeated the claim on Sunday, asking Julian Epstein, a former top Democratic House staffer:

Chairman [Dave] Camp, House Ways and Means, asked the IRS about the targeting of conservative groups seeking tax-exempt status. June 13th, just 10 days later, Lerner reports that her hard drive has crashed. . . . How do you explain this apparent coincidence that it is 10 days after Congress starts asking about the e-mails that Lois Lerner says, oh, the hard drive has crashed?

Referring to the letter in question, sent by Camp to then-IRS Commissioner Douglas Shulman on June 3, 2011, Kessler rightly notes that the letter is concerned with "the IRS's decision to send letters to the donors of [501(c)(4)] organizations that their contributions might be subject to gift taxes," but he juxtaposes that with the charges against Lois Lerner: "The targeting of conservative advocacy groups applying for 501(c)(4) status." However, the two are far from distinct, as Kessler claims.

Following its decision in 1982 not to apply the federal gift tax to donations to groups formed under Section 527(e) of the Internal Revenue Code (Revenue Ruling 820-216), the IRS had issued no further guidance, despite many queries, and the provision had gone almost entirely unenforced. The sudden decision in 2011 to examine five taxpayers' donations to 501(c)(4) organizations predictably raised eyebrows. It was subsequently revealed that the taxpayers in question had all donated (in 2008) to the now-defunct conservative 501(c)(4), Freedom's Watch. Because of pressure from congressional Republicans, the IRS dropped the audit. It's difficult to see the episode as anything other than political targeting, albeit against an organization that already had its 501(c)(4) status.

However, Camp was not the only congressman asking questions about the curiously timed enforcement. Two weeks earlier, May 18, 2011, six Republican members of the Senate Finance Committee sent a letter to IRS Commissioner Shulman asking the same question. And their insinuation was unmistakable:

In spite of [501(c)(4) organizations'] legal status and administrative approval, President Obama and his White House staff have made it clear that they view these organizations with deep hostility. The President himself, in a heated political context, referred to certain 501(c)(4) organizations as "a threat to our democracy." His White House Communications Director, Dan Pfeiffer, charged that the "powerful interests" supporting some of these organizations "are literally buying elections."

In awarding Roskam three "Pinocchios," Kessler claims that he "went too far in describing the contents of the letter" as part of "this whole issue," and makes much of the fact that Camp's letter does not include the word "conservative." But it is clear from the senators' letter what type of groups congressional Republicans were concerned about.

Lois Lerner would almost certainly have had a leading, if behind-the-scenes, role in this incident. Senate sources tell NATIONAL REVIEW ONLINE that, as the person in charge of tax-exemption organizations (e.g. 501(c)(4) groups), Lerner would have been the person to handle such a letter — and likely would have been charged with drafting the initial response.

Lois Lerner's position put both the enforcement of gift taxes and the decisions about tax-exempt status in her purview. As members of Congress caught onto suspicious activity with

regard to the former, it is not hard to imagine how she might have begun to worry about her below-board role in the latter. This is no proof of a straightforward cause-and-effect relationship between the IRS's receipt of the letters and Lerner's mysterious hard-drive crash, but questions ought to linger.

Glenn Kessler handily deconstructs Camp's letter so as to isolate each fact into a meaningless datum. But taken as a whole — and in congress with the Senate Finance Committee letter that predated it — the facts show that Kessler deserves a couple Pinocchios himself.

From: Seidell Thomas F TIGTA
Sent: Friday, May 10, 2013 9:51 AM
To: Medina Cheryl J TIGTA
Subject: FW: Review of E-Mails

Purpose: To document results of OI search of IRS emails.

From: Kutz Gregory D TIGTA
Sent: Tuesday, May 07, 2013 8:39 AM
To: Paterson Troy D TIGTA; Seidell Thomas F TIGTA
Subject: FW: Review of E-Mails

See below. I forgot to ask, but did we remove reference to OI in the footnotes and the related referral?

From: Camus Timothy P TIGTA
Sent: Friday, May 03, 2013 3:34 PM
To: Phillips Michael R TIGTA; McKenney Michael E TIGTA; McCarthy Michael T TIGTA; Kutz Gregory D TIGTA
Cc: Silvis Randy M TIGTA; Jackson James S TIGTA
Subject: Review of E-Mails

Gentlemen,

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

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

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

Tim

Timothy Camus
 Deputy Inspector General for Investigations

The Washington Post

Fact Checker

The letter that supposedly led to the crash of Lois Lerner's hard drive

By Glenn Kessler June 24, 2014

"The IRS is not a victim today. And here is fundamental problem. Chairman Camp sent a letter on this whole issue. And then 10 days later — so think about the duration of 10 days. Ten days is the ability to panic at the IRS, reflect, plan, talk and execute. And there was a crash — 10 days after the chairman's letter."

— Rep. Peter Roskam (R-Ill.), remarks at House Ways and Means Committee hearing on IRS investigation, June 20, 2014

Despite reader requests, we have not delved into questions about the IRS's explanation for the disappearance of former official Lois Lerner's e-mails after her hard drive crashed. It is suspicious whenever data crucial to an investigation disappears — and certainly the IRS's disclosure of this problem has not been timely. But we do not see a way to prove, to our satisfaction, that the hard drive could have been saved or recovered.

Nevertheless, Roskam's assertion last week caught our attention. It was also highlighted by Chris Wallace of Fox News on June 22, in a question he asked of a

The letter that supposedly led to the crash of Lois Lerner's hard drive - The Washington P... Page 2 of 6

Democrat: "Chairman [Dave] Camp, House Ways and Means, asked the IRS about the targeting of conservative groups seeking tax-exempt status. June 13th, just 10 days later, Lerner reports that her hard drive has crashed.... How do you explain this apparent coincidence that it is 10 days after Congress starts asking about the e-mails that Lois Lerner says, oh, the hard drive has crashed?"

But is this really what the letter was about?

The Facts

We have embedded a copy of the letter below. Here is a link to the news release issued at the time by Camp.

[Camp Gift Tax Letter](#) by [GlennKesslerWP](#)

The letter that supposedly led to the crash of Lois Lerner's hard drive - The Washington P... Page 3 of 6

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Recall that the issue involving Lois Lerner was the targeting of conservative advocacy groups applying for 501(c)(4) status. But this letter concerned something different — the IRS's decision to send letters to the donors of such organizations that their contributions might be subject to gift taxes. This issue had first emerged in early May of 2011, when Ofer Lion, a tax adviser, sent a notice to clients about the issue. The New York Times reported on the issue on May 12, suggesting that the IRS effort would target donors to both liberal and conservative groups. Stephanie Kittredge, a spokeswoman for Roskam, and Sarah Swinehart, a spokeswoman for the Ways and Means Committee, defended the

reference to the letter on the grounds that it was the first indication that the IRS was targeting conservative groups, though they conceded the letter does not actually mention conservative groups.

"This letter from Chairman Camp to the IRS is one of the first communications from the committee to the IRS that put the agency on notice that Ways and Means investigators were aware that IRS officials were treating conservative individuals and groups differently," Kittredge said.

"Then-acting Commissioner Steve Miller made the announcement that they were going to audit five donors for gift taxes early May 2011," Swinehart said. "Also in May 2011, we started hearing from conservative groups that they were concerned that their donors were receiving audits/could be audited. We sent the letter and asked to see the files of the five individuals. The IRS and Miller knew who the five individuals were when the information was requested, and after reviewing the files with our 6103 authority we were able to see that these were conservative donors that were audited."

The 6103 authority allows Camp to review tax documents and audit files without disclosing it, and Camp had said in his release he would exercise the authority.

Within weeks, the IRS canceled the audits. It appears the early news reporting assuming that liberal donors were also being targeted was, in fact, not correct. Swinehart argued that, within the context of the time, the Camp letter is significant because it put the IRS on notice that any targeting of conservative groups would face scrutiny. "That was the tip of the iceberg," she said.

Kittredge maintained Roskam was simply noting that 10 days had passed from when the letter was sent to the crash of the hard drive. But he still takes a large rhetorical leap. The IRS, after all, had disclosed its plans to audit donors three

weeks before Camp's letter was sent. The Treasury inspector general report that led to Lerner's departure from the IRS says that it was not until June 29 — 26 days after the letter was sent — that Lerner learned about the inappropriate screening terms for applicants for 501(C)(4) status. And yet Lerner intentionally trashed her hard drive after the IRS commissioner received one of many letters from Congress requesting documents?

The Pinocchio Test

The timing may seem suspicious, and perhaps Roskam has every right to jump to conclusions. But in claiming that Camp “sent a letter on this whole issue,” he went too far in describing the contents of the letter. In fact, at least one person, Chris Wallace, was misled into thinking the letter concerned the applicants; there were probably many other listeners as well. We wavered between Two and Three Pinocchios on this. We can appreciate the argument that this was an important letter, but the causal connection to Lerner's hard drive appears far too tenuous for Roskam to make such claims, given that the letter does not mention conservative groups.

Three Pinocchios

(About our rating scale) **Send us facts to check by filling out this form**
Follow The Fact Checker on Twitter and friend us on Facebook

Glenn Kessler has reported on domestic and foreign policy for more than three decades. He would like your help in keeping an eye on public figures. Send him statements to fact check by emailing him, tweeting at him, or sending him a message on Facebook.

Congressman Gerald E. Connolly (VA-11)
Questions for the Record Submitted to Mr. Timothy Camus,
Deputy Inspector General for Investigations
Treasury Inspector General for Tax Administration
Committee on Oversight and Government Reform
February 26, 2015 Hearing: “IRS: TIGTA Update”

1. Please provide the Committee with a detailed explanation as to why the public was never notified of the findings contained in your email that was sent to TIGTA officials on Friday, May 3, 2013, at 3:34 p.m., which stated:

From: Seidell Thomas F TIGTA
Sent: Friday, May 10, 2013 9:51 AM
To: Medina Cheryl J TIGTA
Subject: FW: Review of E-Mails

Purpose: To document results of OI search of IRS emails.

From: Kutz Gregory D TIGTA
Sent: Tuesday, May 07, 2013 8:39 AM
To: Paterson Troy D TIGTA; Seidell Thomas F TIGTA
Subject: FW: Review of E-Mails

See below. I forgot to ask, but did we remove references to OI in the footnotes and the related referral?

From: Camus Timothy P TIGTA
Sent: Friday, May 03, 2013 3:34 PM
To: Phillips Michael R TIGTA; McKenney Michael E TIGTA; McCarthy Michael T TIGTA; Kutz Gregory D TIGTA
Cc: Silvis Randy M TIGTA; Jackson James S TIGTA
Subject: Review of E-Mails

Gentleman,

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

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

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

Tim

Timothy Camus
Deputy Inspector General for Investigations
Treasury Inspector General for Tax Administration

RESPONSE: This e-mail captures the effort that went behind a very limited review to determine if there existed an e-mail that directed the inappropriate selection of certain applications for review and processing. I was told that during their work, the auditors heard that an e-mail directing the inappropriate selection of applications existed. This e-mail review effort was limited to a small number of specific individuals using key word searches. At the conclusion of the Office of Investigations' limited review, no e-mail directing the inappropriate selection or treatment of applications was identified. Further, the results of this limited review confirmed one of the findings of the audit at that time; the inappropriate selection of applications and the treatment of the applicants was the apparent result of IRS employee confusion and lack of direction, not a directive based on political motivation or bias.

2. While testifying before the House Appropriations Subcommittee on Financial Services and General Government on February 26, 2014, Inspector General George stated (emphasis added):

Mr. Serrano: *Mr. George, your lead investigator reviewed 5,500 emails and concluded that there was no indication of political motivation, yet you failed to mention this until months after your audit was published. Furthermore, you never mentioned that progressive groups were targeted for scrutiny, as well.*

Your report repeatedly emphasized the Tea Party and other conservative groups while using the term "other" to refer to the two-thirds of the applications that were examined that did not involve Tea Party groups. External studies of similar information have found that terms like "progressive" and "Occupy" were also used as part of the inappropriate criteria in subjecting groups to extra scrutiny.

Are you concerned about how your initial report has been used? Do you think you should have been more forthcoming or comprehensive in your analysis? At last year's hearing, I thought that you said you planned to take another look at the groups. Have you done so?

And I should have prefaced my comments by saying that I join my colleagues in denouncing anything that went wrong, in terms of scrutinizing people and groups. But your report indicates basically that it was the Tea Party when, in fact, it has been proven that there were other groups. And we want to know why you omitted that and why you did not clarify later on when it was known not to be the case.

Mr. George: *There are obviously a number of issues there, and I beg your indulgence, Mr. Serrano; I may ask you to repeat, you know, one or two of them.*

But let me start with the initial comment that you made, and that is about the 5,000-plus emails. It was during the course of the initial report when I was informed by staff that there existed a, quote/unquote, "smoking gun memo," which I haven't seen, which perhaps--which purported to say, hey, IRS, do this as it relates to the groups that were the subject of this, for lack of a better word, poor treatment by the determination unit in Cincinnati and, as we subsequently learned, some of the people in Washington.

My auditors indicated to me that they did not have system access to employee emails. My Office of Investigations did have software and access which would allow them to do a quick-scan search to see if that memorandum existed and could be located.

And so I did not learn about the memo that you noted in your comment until I was literally sitting in a hearing, I believe it was before the House Oversight and Government Reform Committee, and so was not aware that that assertion was made by the Deputy for Investigations. And I am not going to say that it is invalid in its conclusions, but I was just as surprised to learn about that conclusion as many others were.

So it is not that I was hiding anything; it was that I was unaware that that review of the documents had been completed and that that was the opinion of that member of my staff. Now, as it relates to progressive groups----

Mr. Serrano: *So this was a member of your staff who came to this conclusion but didn't tell you?*

Mr. George: *Did not tell me directly, correct. That is correct.*

Please explain to the Committee:

- a) Did you directly tell the Inspector General about the conclusion contained in your May 3, 2013 email that is reprinted above?

RESPONSE: I may have mentioned in general terms that we did not identify a “smoking gun” e-mail, but I have no specific recollection of any discussion and cannot point to a specific circumstance, date, or time. However, I more than likely did not share that our review of the e-mails found no indication of political bias because that observation was consistent with the audit finding at that point in time.

- b) If the answer is “no” to a) – did you **indirectly** tell the Inspector General about the conclusion contained in your May 3, 2013 email that is reprinted above?

RESPONSE: If I mentioned it, then it would have been in general terms that we did not locate a “smoking gun” e-mail.

- c) If you failed to directly or indirectly tell the Inspector General about the conclusion contained in your May 3, 2013, please explain why you decided not to notify the Inspector General, and whether the Inspector General had previously directed that you not share such information with him, either informally or formally.

RESPONSE: The Inspector General did not direct me to shield him from the results of our e-mail review.

- d) Please explain why you did not include the Inspector General on the May 3, 2013, email. Include in your response whether the Inspector General has ever directed you personally, or through staff, not to email him on certain topics, or for any reason.

RESPONSE: I do not know why I did not include the Inspector General in the distribution of this e-mail. I can say that it was not the result of him directing me not to include him. Subsequent to the concern over this e-mail, and to avoid future problems of this sort, I will be more cautious in sharing conclusions based on limited reviews (such as this e-mail review). I realize my observations can be misinterpreted and that e-mails I write and send to colleagues need to clearly state whether the e-mail represents a full investigation or a limited review as was the case here. It is critically important that I note that this e-mail review was not an investigation. It was a review of a limited number of e-mails of a small number of IRS employees using key word searches looking for a specific document thought to exist.

- e) Please identify any TIGTA personnel that you shared the findings of the review of 5,500 IRS emails with, including when and how you shared the conclusion reached by TIGTA's Office of Investigations (OIS) with each individual.

RESPONSE: I sent the e-mail to Michael Phillips, Acting Principal Deputy Inspector General; Michael McKenney, who was at the time the Acting Deputy Inspector General for Audit; Michael McCarthy, then TIGTA Chief Counsel; Gregory Kutz, the Assistant Inspector General for Audit who was the Audit executive overseeing the audit, and I copied two of my executives, Randy Silvis, the Assistant Inspector General for Investigations, Field Operations; and James Jackson, the Deputy Assistant Inspector General for Investigations. I have no recollection of mentioning it to other function heads.

- f) If you shared this information with TIGTA employees not listed in the email, please describe whether any of the employees told you that they had sent the information to Inspector General George.

RESPONSE: After the congressional hearing when the existence of the e-mail was discussed, I understand that the Inspector General asked Mike McCarthy, then TIGTA Chief Counsel, to share the e-mail with him. I also provided a copy to the Inspector General. I am not aware of anyone else sharing the e-mail with him at any time.

- g) Is it common at TIGTA for the Inspector General to convene a meeting with senior TIGTA officials; direct an entity, such as the Office of Investigations to carry out a review; and then never inquire about the results of said review?

RESPONSE: It is not common. During a meeting a task or study project may be assigned; however, if it does not result in something significant, it may not be further discussed. In this case, I would have certainly reported to everyone had we found an e-mail that impacted the findings of the audit.

- h) Is it your general practice that when you have an in-person meeting with the Inspector General and your office is tasked to carry out a review by the Inspector General, that neither you nor any of your staff would communicate the results of the Inspector General-directed review to the Inspector General?

RESPONSE: As I noted in earlier questions, I believe I may have mentioned to the Inspector General that we did not find a “smoking gun” e-mail, but I have no specific recollection of it.

- i) Are you surprised that Inspector General George told the Senate Permanent Subcommittee on Investigations (PSI) that none of the senior TIGTA managers who received your email forwarded it to him or informed him of the review’s results – even though your email was sent eleven days before the audit report was released to the public? Why or why not.

RESPONSE: I am not surprised, as the purpose of the review was to determine whether there existed a “smoking gun” e-mail. Absent finding a “smoking gun” e-mail, the findings in the audit at that stage appeared to be accurate. If we would have found such an e-mail through our e-mail review, it could have changed the conclusions of the audit, and I would have requested that the audit report not be issued until we could further investigate.

- j) Did you have any conversations with TIGTA employees with respect to management allowing Inspector General George to testify at four congressional hearings while unaware that the Office of Investigations had reached a conclusion that the IRS documents showed the IRS had not been politically motivated when it subjected applications from conservative groups to additional review? If yes, please describe these conversations in detail. If no, please explain why you were not concerned that the Inspector General was testifying before Congress without knowledge of a key finding of your office on a very sensitive topic.

RESPONSE: I attended all of the congressional hearings, and I recall the Inspector General testifying on several occasions that there was no indication of political motivation in the selection and review process. If I would have heard otherwise, I would have notified the Inspector General of my observations from

our e-mail review. The Inspector General's testimony matched the observations in my e-mail.

- k) Do you believe that the failure of you and other TIGTA employees to inform the Inspector General of the Office of Investigations conclusion on an issue central to the TIGTA audit constituted a serious mistake?

RESPONSE: I would only characterize not telling the Inspector General of my observations as a serious mistake if the Inspector General or the final audit report would have claimed (based on the information available at the time) there was political motivation, when my office's limited e-mail review did not find a "smoking gun" e-mail or indication that there was political motivation behind the selection of applications and the process for reviewing the applications at the time of our review.

- l) According to PSI, in an April 22, 2014, interview, Inspector General George stated that he had been "very disappointed" with your email because he indicated that in his view, the email contained a conclusion that you should not have reached. Rather, the Inspector General indicated that your review should have confined itself to determining whether or not a "smoking gun" email existed at the IRS.

Do you believe that Inspector General George's disappointment with your email is warranted? Did you overstep your bounds and reach a conclusion that you should not have reached?

RESPONSE: I believe the last sentence in my e-mail was accurate and that it was important to share with the team that based on the limited e-mails we reviewed; we had confirmed the audit finding at that time. In hindsight, I would have provided more qualifiers about the limited scope of the review in the last sentence of my e-mail.

3. According to the Senate Permanent Subcommittee on Investigations, you told PSI that you felt "uncomfortable" conducting the type of IRS email search, retrieval, and review that Gregory Kutz, Assistant Inspector General, requested TIGTA's Office of Investigations conduct in a February 13, 2013 memorandum. According to the PSI Majority Staff Report (emphasis added):

"Mr. Camus told the Subcommittee that he had felt "uncomfortable" conducting the type of IRS email search, retrieval, and review that Mr. Kutz wanted, describing it as a

*“fishing expedition.” Mr. Camus told the Subcommittee that, at the time, he responded to Mr. Kutz by indicating that he did not feel comfortable using law enforcement tools to search and retrieve the emails of ten IRS employees, **until Mr. Kutz provided more specificity as to who wrote or received the “smoking gun” email. Mr. Camus indicated that Mr. Kutz was unable to provide the name of any IRS employee who was suspected of writing or receiving the email.** When asked about Mr. Camus’ reaction, Mr. Kutz disagreed that the request was a “fishing expedition,” explaining that it was “prudent to look through emails for the reasons stated in the February referral letter.”*

- a) As the head of the Office of Investigations with expertise in law enforcement operations, please explain to the Committee why you felt uncomfortable with a request that the Assistant Inspector General justified to Subcommittee staff by noting that it was “prudent to look through emails for the reasons stated in the February referral letter” – and not a “fishing expedition.”

RESPONSE: The techniques, tools, and procedures for conducting audits and investigations differ. In my opinion, utilizing law enforcement tools and techniques to generally support an audit is problematic. I did not feel that based on the information Mr. Kutz provided me there was enough specificity to utilize the Office of Investigations to conduct an e-mail review. Ultimately, I agreed to conduct the limited review to determine if there was a “smoking gun” e-mail, because if a “smoking gun” e-mail existed, it would have been an indication that someone at the IRS obstructed the audit by trying to conceal the existence of said e-mail. The existence of a “smoking gun” e-mail could have changed the audit’s finding that the inappropriate criteria that were used to select and process the applications were the result of ineffective management.

- b) Please share with the Committee whether Gregory Kutz has ever provided you with the name of any IRS employee who was suspected of writing or receiving the “smoking gun” email.

RESPONSE: I have not received the name of any IRS employee suspected of writing or receiving the “smoking gun” e-mail.

- c) If you concur with Gregory Kutz’s description that his request to OIS was a prudent step and not a fishing expedition, please explain to the Committee why you felt the need to hinder and obstruct the TIGTA investigation from proceeding efficiently.

RESPONSE: Please see my answer to a) above.

Congressman Gerald E. Connolly (VA-11)
Questions for the Record Submitted to the Honorable J. Russell George
Treasury Inspector General for Tax Administration
Committee on Oversight and Government Reform
February 26, 2015 Hearing: "IRS: TIGTA Update"

1. Provide, by March 18, 2015, a complete, unredacted copy of the response that you submitted to the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency addressing the allegations contained in a letter drafted by myself and Representative Cartwright, dated February 5, 2014.

My Office initially requested a copy of your response in an email sent to your Counselor, Matthew Sutphen, on September 17, 2014. Mr. Sutphen, beginning on September 18, 2014, provided multiple assurances that we would receive an answer addressing whether you would be willing to provide your response. However, to date, we have not received a copy of the response, nor an indication as to whether you would even be willing to provide it.

RESPONSE: It is my understanding that you have other avenues to acquire the information you have requested. Accordingly, I am not waiving my rights under the Privacy Act, Title 5 United States Code Section 552a.

2. A September 5, 2014, Majority staff report prepared by the United States Senate Permanent Subcommittee on Investigations, *IRS and TIGTA Management Failures Related to 501(c)(4) Applicants Engaged in Campaign Activity*, contained three critical findings of fact pertaining to TIGTA.

Do you concur with or reject the Report's finding that:

***(5) Flawed Audit Report.** The TIGTA audit report presented a distorted description of how the IRS handled 501(c)(4) applications, by omitting TIGTA's determination that the audit had "found no evidence of political bias; by restricting its analysis to conservative groups and omitting comparative data for nonconservative groups; by failing to disclose the BOLO listings for liberal groups; and by omitting mention of the email review by the TIGTA Office of Investigations which, after conducting a thorough review of over 2,200 emails and other documents, found "no indication" that IRS actions in pulling Tea Party applications for heightened scrutiny were politically motivated.*

If you reject this finding, please provide a detailed explanation as to why each finding listed above is not accurate.

RESPONSE: We disagree with the conclusion that our audit report was flawed.

While the Subcommittee Majority had concerns with our report, the Majority and Minority staff agreed with many of TIGTA's conclusions. The Majority staff stated in its report's Executive Summary: "The Subcommittee investigation has reached many of the same conclusions as the TIGTA audit of the 501(c)(4) application process. The Subcommittee investigation found that the IRS used inappropriate screening criteria when it flagged for increased scrutiny applications based upon the applicants' names or political views rather than direct evidence of their involvement with campaign activities."¹ In addition, the Minority concurred with TIGTA's report and took issue with the Majority report.²

TIGTA did not omit from the audit report that the audit had found no evidence of political bias. While the audit's purpose was not to determine political bias, we did ask IRS officials about outside influence in the creation of its criteria and included IRS officials views on political bias in our report. Specifically, TIGTA's report stated, "We asked the Acting Commissioner, Tax Exempt and Government Entities Division; the Director, EO [Exempt Organizations]; and Determinations Unit personnel if the criteria were influenced by any individual or organization outside the IRS. All of these officials stated that the criteria were not influenced by any individual or organization outside the IRS." In addition, our report included a section entitled "The team of specialists processed applications by organizations with names other than Tea Party, Patriots, and 9/12." In this section, we include IRS officials view that "the fact that the team of specialists worked applications that did not involve the Tea Party, Patriots, or 9/12 groups demonstrated that the IRS was not politically biased in its identification of applications for processing by the team of specialists." In addition, I testified before Congress on multiple occasions that we were not aware of any political motivation on the part of the IRS at the time.

TIGTA did not restrict its analysis to conservative groups. We reviewed more than 600 cases (all political advocacy cases and samples of cases that were not identified as political advocacy cases) without regard to the organizations' names or policy positions, and TIGTA's report does not use the terms conservative or liberal to characterize any of the organizations.

TIGTA's audit did not compare conservative and nonconservative groups; that was not its purpose. Its purpose was to determine whether allegations concerning § 501(c)(4) organizations were founded that the IRS: 1) targeted specific groups applying for tax-exempt status, 2) delayed processing of targeted groups' applications, and 3) requested unnecessary information from targeted groups. This involved reviewing the IRS's process for selecting and reviewing political advocacy cases from May 2010 to May 2012. As part of a subsequent review, we were provided an internal e-mail from the Senior Technical Advisor to the Director, Exempt Organizations, at the time showing that the IRS did a comparative analysis of political advocacy cases. The IRS did not discuss or share this analysis with TIGTA during our prior audit. The IRS analysis found that:

¹ United States Senate Permanent Subcommittee on Investigations, *IRS and TIGTA Management Failures Related to 501(c)(4) Applicants Engaged in Campaign Activity* (Sept. 5, 2014).

² United States Senate Permanent Subcommittee on Investigations, *IRS Targeting Tea Party Groups* (Sept. 5, 2014).

- More than half of 84 § 501(c)(3) applicants appeared to be conservative leaning, while the remainder did not obviously lean to either side of the spectrum;
- Approximately 75 percent of 199 § 501(c)(4) applicants appeared to be conservative leaning, while the majority of the remaining applicants did not obviously lean to either side of the political spectrum. Fewer than 10 of the applicants were “liberal/progressive.”³

TIGTA reported the criteria that the IRS stated it used for political advocacy cases. The IRS reviewed our report and never stated that additional criteria were being used to identify political advocacy cases during the period of May 2010 through May 2012.

TIGTA’s Office of Investigations (OI) e-mail review was very limited in scope and its objective was not to determine political bias. As such, the results could not be used as sufficient evidence to conclude that there was no political bias. Therefore, not including the results was not a flaw in the audit. This e-mail review was limited to several specific IRS individuals in Cincinnati, Ohio, for a limited time frame, and for the purpose of trying to locate a specific e-mail that IRS officials said existed. The e-mail search was limited to several Cincinnati staff due to the resource intensive nature of reviewing e-mails manually and our view that an e-mail on selection criteria would have to have been received in Cincinnati to have been acted upon. The Deputy Inspector General for Investigations concluded that the findings of ineffective management in the audit report were supported by the OI e-mail review.

Do you concur with or reject the Report’s finding that:

(6) TIGTA Management Failures. TIGTA management failed to adequately supervise and ensure a balanced audit process, excluded key information from the audit report, omitted the key determination that the audit had “found no evidence of political bias,” and inaccurately and unfairly damaged public confidence in the impartiality of the IRS.

If you reject this finding, please provide a detailed explanation as to why each finding listed above is not accurate.

RESPONSE: We disagree that TIGTA management failed to adequately supervise and ensure a balanced audit process and excluded key information from the audit report by omitting that the audit had found no evidence of political bias. The purpose of TIGTA’s audit was not to determine political bias. Its purpose was to determine whether allegations concerning § 501(c)(4) organizations were founded that the IRS: 1) targeted specific groups applying for tax-exempt status, 2) delayed processing of targeted groups’ applications, and 3) requested unnecessary information from targeted groups. This involved reviewing the IRS’s

³ E-mail from Senior Technical Advisor, Internal Revenue Service, to Director, Exempt Organizations, Internal Revenue Service, on *Bucketed Cases* (July 18, 2012) (on file with author).

process for selecting and reviewing political advocacy cases from May 2010 to May 2012. In fact, TIGTA's report does not use the terms conservative or liberal to characterize any of the organizations. Instead, we reviewed all 298 political advocacy cases identified by the IRS as of May 2012 and more than 300 other cases based on the content of the applications and not the names or political views of the organizations. In addition, TIGTA's report stated "We asked the Acting Commissioner, Tax Exempt and Government Entities Division; the Director, EO [Exempt Organizations]; and Determinations Unit personnel if the criteria were influenced by any individual or organization outside the IRS. All of these officials stated that the criteria were not influenced by any individual or organization outside the IRS." Also, our report included a section entitled "The team of specialists processed applications by organizations with names other than Tea Party, Patriots, and 9/12." In this section, we include IRS officials view that "the fact that the team of specialists worked applications that did not involve the Tea Party, Patriots, or 9/12 groups demonstrated that the IRS was not politically biased in its identification of applications for processing by the team of specialists." Further, I testified before Congress on multiple occasions that we were not aware of any political motivation on the part of the IRS at the time.

Do you concur with or reject the Report's finding that:

(7) TIGTA Failure to Disclose. After TIGTA senior officials learned that the audit report omitted important information about IRS BOLO listings for liberal as well as conservative groups, TIGTA failed to disclose the new information for weeks, even though it was directly relevant to TIGTA's audit objective and could have helped alleviate public concern about potential IRS political bias.

If you reject this finding, please provide a detailed explanation as to why the finding listed above is not accurate.

RESPONSE: We disagree with the assertion that TIGTA did not provide information about the other BOLO entries and omitted important information about IRS BOLO listings for liberal as well as conservative groups. Our reviews of IRS documentation show that the IRS may have used more than 250 different terms to identify applications for review over time. Our audit focused on the criteria used to identify political advocacy cases during the period of May 2010 through May 2012. We reviewed all cases that the IRS identified as political advocacy cases as of May 2012. Shortly after the completion of our audit, TIGTA briefed IRS Acting Commissioner Werfel on other BOLO tabs and entries in late May of 2013. In addition, TIGTA briefed the Tax Committees (Senate Finance and House Ways and Means) in early June of 2013.

3. In the course of this Committee's oversight, serious concerns have arisen over the troubling activities of the Treasury Inspector General for Tax Administration (TIGTA), including noncompliance with respect to conducting a performance audit in accordance with generally accepted government auditing standards (GAGAS) issued by the Comptroller General of the United States and head of the U.S. Government Accountability Office (GAO). GAGAS

standards are intended to provide a framework for conducting high quality audits with competence, integrity, objectivity, and independence.

TIGTA's May 14, 2013 final audit report, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (Reference Number: 2013-10-053) described the specific standards for a performance audit in its GAGAS compliance statement:

"We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective."⁴

In reviewing the actions of TIGTA, it appears that TIGTA failed to follow GAGAS, particularly with respect to conducting an effective assessment of audit risk and taking steps to reducing audit risk. This resulted in TIGTA publishing findings and conclusions that were improper and incomplete.⁵

"The audit report should be fair and not misleading, and should place the audit results in perspective. This means presenting the audit results impartially and guarding against the tendency to exaggerate or overemphasize deficient performance. In describing shortcomings in performance, auditors should present the explanation of responsible officials including the consideration of any unusual difficulties or circumstances they faced and violated common sense standards of integrity and fairness."

TIGTA produced a fundamentally flawed performance audit of the activities of the Internal Revenue Service's (IRS) Tax Exempt and Government Entities Division that harmed the public interest to such a severe extent that trust and confidence in TIGTA's independence, ethics, competence, and quality control have been called into question and its effectiveness is threatened.

In reviewing the evidence that has emerged since the issuance of TIGTA's final audit report, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (Reference Number: 2013-10-053), one reluctantly concludes that contrary to your assertion⁶

⁴ U.S. Treasury Inspector General for Tax Administration, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*, Reference Number: 2013-10-053 (Washington, D.C.: May 14, 2013)(online at: <http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf>) p. 4.

⁵ For a full description of audit risk concepts and principles see: U.S. Government Accountability Office, *Government Auditing Standards 2011 Revision* GAO-12-331G (Washington, D.C.: December 2011)(online at: <http://gao.gov/assets/590/587281.pdf>) pp. 125-129.

⁶ U.S. Treasury Inspector General for Tax Administration, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*, Reference Number: 2013-10-053 (Washington, D.C.: May 14, 2013)(online at: <http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf>).

in the final audit report, under your leadership, TIGTA failed to conduct its performance audit in accordance with GAGAS.

Please provide the Committee with a detailed explanation as to why TIGTA failed to meet GAGAS, including a description of the factors that accounted for TIGTA's failure to mitigate the possibility of audit risk.⁷

RESPONSE: TIGTA's audit was performed in accordance with Generally Accepted Government Auditing Standards (GAGAS). The evidence we obtained provided a reasonable basis for our findings and conclusions based on our audit objective. You specifically identify a concern that audit results should be presented impartially and audit organizations should guard against the tendency to exaggerate or overemphasize deficient performance. In our report, we presented the IRS's criteria regarding how it identified political advocacy cases during the period covered by our audit (May 2010 to May 2012). We determined the IRS's criteria were inappropriate because the criteria focused solely on names and policy positions of organizations. As noted in our report, about one-third of the political advocacy cases the IRS selected included specific names from the inappropriate criteria. We reviewed not only those cases with names the IRS had mentioned in its criteria, but all 298 political advocacy cases selected by the IRS as well as more than 300 other cases not selected by the IRS. Our audit focused on reviewing the contents of the case files for indications of significant political campaign intervention, without considering names or policy positions. We did not overemphasize deficient performance when we concluded that ineffective management: 1) allowed inappropriate criteria to be developed and stay in place for more than 18 months, 2) resulted in substantial delays in processing certain applications, and 3) allowed unnecessary information requests to be issued.

In addition, you mention that, in describing shortcomings in performance, auditors should present the explanation of responsible officials including the consideration of any unusual difficulties or circumstances they faced. Our report noted the difficulties that Determinations Unit specialists and applicants were having identifying what activities are allowed by § 501(c)(4) organizations, and we made a recommendation for the IRS to consider providing them guidance. Further, the views of IRS officials are included throughout our report. In fact, we provided the IRS several opportunities to comment on our report. In its official response included in our report, the IRS agreed to take action on all nine TIGTA recommendations.

4. Questions persist over your professional judgment, competence, and ability to exercise quality control over TIGTA's final work products. Further, your subsequent statements and testimony in response to congressional inquiries over the objectivity and independence of TIGTA's work have been incomplete and, at times, outright misleading – calling into question the credibility of TIGTA's May 14 final audit report and casting serious doubts over

⁷ Factors may include "...evidence that is not sufficient and/or appropriate, an inadequate audit process, or intentional omissions or misleading information due to misrepresentation or fraud" see: U.S. Government Accountability Office, *Government Auditing Standards 2011 Revision*, GAO-12-331G (Washington, D.C.: December 2011) p. 125.

your integrity in directing this specific audit and responding to questions concerning its methodology and findings.

Evidence not only support the conclusion that TIGTA failed to follow GAGAS in conducting the May 14 performance audit, but also indicates that following the publication of TIGTA's performance audit, you exhibited poor professional judgment by providing vague, defensive, and cryptic responses to legitimate oversight questions surrounding the surprising revelations that TIGTA inadvertently or willfully, ignored evidence of the IRS utilizing inappropriate criteria to identify and select tax-exempt applications of liberal or progressive groups.

For example, on June 28, 2012, Representative Darrell Issa, Chairman of the Committee on Oversight and Government Reform, and Representative Jim Jordan, Chairman of the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending, sent TIGTA a letter stating:

"On March 8, 2012, Committee staff and Treasury Inspector General for Tax Administration (TIGTA) staff discussed potential problems with IRS's recent efforts to increase scrutiny of organizations operating under 501(c)(4) status. We understand that because of our March meeting, TIGTA is conducting ongoing work to better understand this IRS initiative. We would greatly appreciate if you provided Committee staff periodic updates and a copy of TIGTA's final report on this matter."

To the credit of Chairman Issa and Chairman Jordan, the Democratic Ranking Members were cc'd on the June 28, 2012, written request.⁸ Thus, we were dismayed that you chose to unilaterally delete the Democratic Ranking Members who were cc'd on the original request letter from the subsequent correspondence chain. Further, we were astonished that an experienced IG such as you, who claims to be independent and non-partisan, would unilaterally choose to **only respond to Republican Members** of the Committee, as you did in TIGTA's July 11, 2012, identical response letters sent only to Chairman Issa and Chairman Jordan.⁹

In addition, your July 11 letter that you chose to address to, and only send to, Republican Members of the Committee references TIGTA's Office of Audit meeting with "Committee staff," when in reality, you or your staff only met with *Republican* Committee staff:

⁸ Letter from Chairman Darrell E. Issa, House Committee on Oversight and Government Reform, and Chairman Jim Jordan, Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending, to Inspector General J. Russell George, Treasury Inspector General for Tax Administration (June 28, 2012)(<http://oversight.house.gov/wp-content/uploads/2013/05/2012-06-28-DEI-Jordan-to-George-TIGTA-tax-exempt-status-questionnaire.pdf>).

⁹ Identical Letters from Inspector General J. Russell George to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform, and Chairman Jim Jordan, Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending (July 11, 2012)(online at: <http://oversight.house.gov/wp-content/uploads/2013/05/2012-07-11-George-TIGTA-to-DEI-tax-exempt-status-questionnaire-re-6-28.pdf>).

“As stated in your letter, after our meeting with the Committee staff, our Office of Audit recently began work on this issue. We would be happy to provide a status update to the Subcommittee staff and provide a copy of our interim and final reports on the matter when they are issued.”¹⁰

It is peculiar that neither you nor your staff raised concerns over even the appearance of partisan impropriety that one might reasonably expect to result from holding pre-audit meetings with only Republican committee staff, particularly in light of your troubling decision to not provide Full Committee Ranking Member Elijah Cummings and Subcommittee Ranking Member Dennis Kucinich with copies of his July 11 response to Chairman Issa and Chairman Jordan, despite both members having been cc'd on the original letter.¹¹

At a July 19, 2013, hearing held by the Committee on Oversight and Government Reform, Congressman Danny Davis provided you with an opportunity to clear the record and explain TIGTA's seemingly partisan decision to consult only with Republican staff:

“Did anyone ever raise any concerns that there may not have been any Democratic staffers present?”

Your response, “No one raised concerns to me about that. I don't know if – I wasn't there,”¹² is surprisingly passive, and features a striking omission that not a single member of TIGTA's Office of Audit demonstrated sound professional judgment in raising concerns with you directly or indirectly over TIGTA holding Republican-only staff level meetings on a politically-volatile subject matter.

In addition, by signing the July 11 letter, you officially sanctioned audit processes and procedures that both in appearance, and in reality, indicate TIGTA's Office of Audit was conducting an audit on behalf of, and in consultation with, Republican Members – to the exclusion of Democratic Members and staff.

The Congressional Relations Handbook of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) states:

“IGs should avoid any appearance of partisanship in such engagements. Bipartisan meetings and outreach is the most appropriate format for such OIG meetings. If a

¹⁰ *Id.*

¹¹ Letter from Chairman Darrell E. Issa, House Committee on Oversight and Government Reform, and Chairman Jim Jordan, Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending, to Inspector General J. Russell George, Treasury Inspector General for Tax Administration (June 28, 2012)(online at: <http://oversight.house.gov/wp-content/uploads/2013/05/2012-06-28-DEI-Jordan-to-George-TIGTA-tax-exempt-status-questionnaire.pdf>).

¹² House Committee on Oversight and Government Reform, *Hearing on The IRS's Systematic Delay and Scrutiny of Tea Party Applications* (July 18, 2013) (<http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg82435/pdf/CHRG-113hhrg82435.pdf>).

bipartisan meeting is not feasible, it is a best practice to ensure the Majority and Minority understand the willingness of the OIG to meet separately.”

Please provide a detailed explanation as to:

- a) Whether you concur that “bipartisan meetings and outreach is the most appropriate format for such OIG meetings”;**

RESPONSE: We agree with the CIGIE Congressional Relations Handbook that bipartisan meetings are preferred. Even though the Handbook was not available until January 2015, TIGTA has always expressed a preference for bipartisan meetings and, when TIGTA initiates meetings and briefings, we do so in a bipartisan, bicameral manner. However, TIGTA does not set the terms of meetings with committees or their staffs.

- b) Why a bipartisan meeting was not feasible in the aforementioned example;**

RESPONSE: The Majority requested to meet with TIGTA to discuss completed work in the tax-exempt organizations area. During the meeting, Majority staff asked questions and discussed concerns from constituents. In other instances, my staff has met with Democratic staff at their request without Republican staff in attendance. As I mentioned previously, TIGTA does not control or dictate the terms of meetings with congressional committees or their staffs, but we prefer bipartisan meetings. Our practice has been to include both the Majority and Minority when we initiate briefings. If a meeting is requested by Members of Congress or their staff, they determine who to invite.

- c) Why none of your staff raised this issue with you, and whether you held staff accountable for this failure, including what specific officials were reprimanded and how; and**

RESPONSE: To clarify my response to Congressman Davis’ question during the July 18, 2013 hearing, I was not aware of who from the Committee attended the March 2012 meeting until my staff notified me after the meeting had occurred.

- d) Why you made the unilateral decision, following the commendable decision by Chairman Issa and Chairman Jordan to cc’ the relevant respective Democratic Ranking Members on their own correspondence, to delete the Democratic Ranking Members who were cc’d on the original request letter from the subsequent correspondence chain?**

RESPONSE: When we composed the letter, we inadvertently did not include the respective Democratic Ranking Members on the cc’d line. In addition, my staff has addressed this issue with both Majority and Minority Committee staff on several occasions.

- e) **Whether you believe your decision to delete Democratic Members from the correspondence chain was consistent with CIGIE's Congressional Relations Handbook guidance.**

RESPONSE: My response in subsection d) addresses this matter.

5. TIGTA's incomplete, inaccurate, and misleading responses to audit questions and concerns raised by Members of Congress remains deeply troubling. For instance, on June 26, 2013, Representative Sander Levin, Ranking Member of the Committee on Ways and Means, sent you a letter cataloguing troubling statements attributed to your Communications Director, Karen Kraushaar, which were widely reported by news outlets. This is the relevant excerpt from Ranking Member Levin's letter to you:

"At first your office issued the following statement: 'TIGTA's audit focused on the criteria the IRS used to select cases for expanded review for potential political campaign intervention. The "Be On the Look Out" listings discussed in our report were the ones used to refer cases for this type of scrutiny...'

Then these statements were made to and reported by the following news outlets:

CNN: Dana Bash: "An Inspector General spokesman responded that he focused on conservatives because that's what the Republican led committee asked him to do."

NPR: "So why did the IG release a 50-page audit with no mention of progressives being targeted too? A spokeswoman for the inspector general says that's outside of the scope of the audit, which was originally requested by Issa. The spokeswoman says the IG was asked to look at the targeting and treatment of tea party groups and that's exactly what the audit did and not much more. Another reason progressives weren't mentioned, the IG spokeswoman tells NPR, investigators were not aware of any BOLOs listing progressive organizations when conducting the review."

POLITICO: "'Our audit report answered the questions it was asked to address. Other questions that are now being raised are the subject of additional review,' a TIGTA spokeswoman said."

HUFFINGTON POST: "As for why the report failed to mention that progressive groups, along with tea party groups, had been placed on IRS so-called Be On The Lookout lists for special scrutiny, Karen Kraushaar, the Communications Director at the Treasury Inspector General's office, said investigators had been constrained by their mission statement. House Oversight Committee Chairman Darrell Issa (R-Calif.) had specifically requested that investigators 'narrowly focus on tea party organizations.'"

These new disclosures are not consistent with the description of your audit work in the FY 2013 Audit Plan that failed to disclose that you were only looking for Tea Party organizations and not all potential political activities:

“Consistency in Identifying and Reviewing Applications for Tax-Exempt Status Involving Political Advocacy Issues (FY 2012 – Work in Progress – Audit Number: 201210022) Audit Objective: Assess the consistency of the EO function’s identification and review of applications for tax-exempt status involving potential political advocacy issues.”

They are also not consistent with stated objective on the first page of the May 14, 2013 audit report which was “to determine whether allegations were founded that the IRS 1) targeted specific groups applying for tax-exempt status, 2) delayed processing of targeted groups’ applications, and 3) requested unnecessary information from targeted groups.” There is no mention of your audit being limited to only one political side—Tea Party and conservative organizations.¹³

When you were confronted with the stark contradictions and troubling revelations contained in the statements of TIGTA’s Communications Director – an individual, who based on TIGTA’s own online description of TIGTA Offices, is one of only three officials within the “Inspector General” component of TIGTA’s Headquarters – you failed to even attempt to provide Ranking Member Levin with a serious, detailed explanation. Rather, your cryptic response to the Ranking Member raised new questions without providing a single concrete answer:

“In your June 26, 2013, letter, you raised concerns about statements attributed to TIGTA sources by members of the media. Many of the press reports are not accurate. Please rely on our statements in this letter, my testimony, and our published materials for an accurate portrayal of our position.”¹⁴

Your utilization of the imprecise term “Many” raises questions about precisely which reports *were* accurate. Further, you failed to address the glaring contradiction between the public statements made (not by “TIGTA sources”) by your own Communications Director, and the official description of TIGTA’s work contained in its performance audit publications, including the May 14, final audit report.

Your refusal to explain this unusual sequence of events is particularly notable given the sheer magnitude of the discrepancies between your own description of TIGTA’s work and your

¹³ Letter from Ranking Member Sander M. Levin, Committee on Ways and Means, to Inspector General J. Russell George, Treasury Inspector General for Tax Administration (June 26, 2013)(online at: <http://democrats.waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/Letter%20to%20TIGTA%206-26.pdf>).

¹⁴ Letter from Inspector General J. Russell George, Treasury Inspector General for Tax Administration, to Ranking Member Sander M. Levin, Committee on Ways and Means (June 26, 2013)(online at: <http://online.wsj.com/public/resources/documents/TIGTAFinalResponseToRepLevin06262013.pdf>).

Communications Director's description, combined with your evasive answers on this topic, call into question your ethics, independence, professional judgment, and competence to conduct a performance audit in a fair and objective manner.

At the July 18, 2013, hearing held by the Committee on Oversight and Government Reform, you were provided an opportunity to clarify and explain his Communications Director's troubling statements. However, you remained steadfast in refusing to provide any additional details:

Mr. Connolly: Mr. George, there have been reports with respect to the scope of your audit or review, including by the spokesperson in your office, that you met with the Chairman of this committee and essentially he helped limit the scope of the review.

Mr. George: That's incorrect, sir.

Mr. Connolly: That is incorrect?

Mr. George: The report, I did see, but that did not occur.

Mr. Connolly: So Karen Kraushaar, your spokesperson, who quoted – who said – and I quote, that Darrell Issa had specifically requested that investigators, quote, “narrowly focus on tea party organizations,” unquote, so they did just that, according to Kraushaar. That is an inaccurate statement?

Mr. George: That is correct.

Mr. Connolly: On what basis would she make such a statement on your behalf to the press?

Mr. George: Well, it was not without my authorization, and she misspoke, sir.

Mr. Connolly: She misspoke. Did you in fact have meetings with the chairman of this committee about the nature of this audit?

Mr. George: I had one meeting with the chairman, and if anything, I was berated because he thought I failed to provide information to him that he thought he was entitled to. I'm sorry, what? (Off mic.)

Oh, and this was actually, sir – and it was just pointed out to me that this was after the audit was issued, so there was no meeting prior at all.

The transcript clearly demonstrates that approximately one month after providing a cryptic, evasive answer to Ranking Member Levin, you continued your troubling practice of dissembling and refusing to provide straightforward answers while testifying under oath before Congress. Your response to a simple query over how your communications director could have released such an inflammatory, and according to you, inaccurate statement, provided no insight and was wholly insufficient:

“Well, it was not without my authorization, and she misspoke, sir.”

To date, you have refused to publicly provide information explaining why you would authorize such an inaccurate statement to be made on your office's behalf, or why your communications director would provide information that directly calls into question the very independence and ethics of his performance audit.

In addition, based on your later testimony at that same hearing, it appears that your own assertions that no meeting took place between yourself and the chairman prior to the audit being issued was technically true, but only if you accept zero responsibility for the actions of your own staff, who met only with Republican Committee staff who work for Chairman Issa.

Please provide this Committee with a specific list of which press reports were not accurate, and which press reports were accurate, that you referenced in your response to Ranking Member Levin.

RESPONSE: Any press report that suggests or states that I or my office narrowed the scope of the audit to focus on the targeting of just conservative groups at the request or directive of then Chairman Darrell Issa, any other Member of Congress, or anyone else is not accurate. Neither I nor my staff narrowed the scope of the audit to focus on just conservative groups.

Further, please provide an explanation as to whether you approved the statement of your Communications Director, either directly or indirectly.

If you did not approve the quote, please provide the Committee with the individual who did approve the statement, and also explain why your Communications Director misspoke in such a manner. In addition, please share whether you took any actions to address this apparently incorrect statement that was highly damaging with respect to TIGTA's credibility and appearance of non-partisanship.

RESPONSE: I stated that Ms. Kraushaar misspoke when she made the statement because her statement was not accurate. Neither I nor my staff narrowed the scope of the audit to focus on just conservative groups. Neither I nor anyone else approved Ms. Kraushaar's statement. Shortly after the statement was made, Ms. Kraushaar reached out to the press in an effort to correct it. In April 2014, Ms. Kraushaar was interviewed by the United States Senate Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs, concerning her statement. In responding to the Subcommittee's questions concerning her statement – the same one to which you seek my response – Ms. Kraushaar stated, as an explanation for why she made the statement, that she got "imprecise" information "subject to misinterpretation" from an auditor.

Finally, please confirm whether you believe that you, as the head of TIGTA, are ultimately responsible for the actions of your staff, including meetings that your staff participates in that are exclusively with a Republican Congressional Committee Chairman.

RESPONSE: As the head of the agency, I am ultimately responsible for the actions of my staff. However, my staff did not bring to my attention who attended the March 2012 meeting requested by then Chairman Issa's staff until after the meeting had occurred.

While I believe that bipartisan meetings with Members of Congress or their staffs are preferred, TIGTA does not set the terms of such meetings when initiated by Members of Congress or their staffs; however, we express our preference for bipartisan meetings. When TIGTA initiates meetings and briefings, we do so in a bipartisan, bicameral manner. As I have testified before this Committee, we have an obligation to report to both sides.

6. The May 14, 2013, final audit report is notable for several glaring omissions that created a misleading perception of TIGTA's final audit findings. For example, the July 12, 2013, disclosure by the minority office of the Committee on Oversight and Government Reform of documents from the IRS and TIGTA that demonstrate there was no political motivation and that applications across the political spectrum were screened using key words, was highly troubling. As Ranking Member Levin described the disclosures in a July 12, 2013, statement:

“This new information underscores the fact that the Treasury Inspector General's audit was fundamentally flawed and created widespread misperceptions that Republicans seized on in an effort to attack the White House. It is now all the more important that Inspector General George return to Congress to explain his glaring omissions and reasons for releasing a highly misleading report. Contrary to what the Inspector General asserted in his audit and during subsequent testimony, TIGTA investigations conducted a review of whether the screening of tax-exemption applications was politically motivated and concluded – after having scrutinized 5,500 emails – that it was not. The fact that this information was not included in the final audit, nor disclosed in subsequent testimony, further highlights that the audit was fundamentally flawed.

What's more, it is now clear that screeners were instructed, in a 2010 PowerPoint presentation using images of a donkey and an elephant, to look for the term 'progressive' alongside 'tea party' in reviewing tax-exemption applications. This directly contradicts the Inspector General's statement on June 26, 2013 that 'I did not find any evidence that the criteria you identified labeled 'Progressives' were used by the IRS to select potential political cases during the 2010 to 2012 timeframe I audited.’”¹⁵

At the July 18 hearing, you were provided an opportunity to set the record straight on why TIGTA's final audit report failed to mention, even in a footnote, the fact that TIGTA's Head of Investigations met with him personally “a couple of weeks” before May 3, 2013, and it was agreed that the Office of Investigations would:

¹⁵ Release from Ranking Member Sander M. Levin, Committee on Ways and Means, *Levin: New IRS Information Underscores that IG Report Fundamentally Flawed* (July 12, 2013) (online at <http://democrats.waysandmeans.house.gov/press-release/levin-new-irs-information-underscores-ig-report-fundamentally-flawed>).

“...pull e-mails from identified staff members of the EO organization in Cincinnati to find out 1). If an e-mail existed that directed the staff to “target” Tea Party and other political organizations and 2). If there was a conspiracy or effort to hide e-mails about the alleged directive.”

And further that according to the Deputy Inspector General for Investigations:

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

Review of these e-mails revealed that there was a lot of discussion between the employees on how to process the Tea Party and other political organization applications. There was a Be On the Lookout (BOLO) list specifically naming these groups; however, the e-mails indicated the organizations needed to be pulled because the IRS employees were not sure how to process them, not because they wanted to stall or hinder the application. There was no indication that pulling these selected applications was politically motivated. The e-mail traffic indicated there were unclear processing directions and the group wanted to make sure they had guidance on processing the applications so they pulled them. This is a very important nuance.”¹⁶

Your failure to disclose this investigative action by TIGTA’s Office of Investigations, which was initiated after a meeting with you, is inexcusable. Further, your failure to include even a footnote in TIGTA’s May 14 final audit report noting the Deputy Inspector General for Investigations’ conclusion – reached by reviewing 5,500 e-mails, **not** by directly asking employees questions – that “the e-mails indicated the organizations needed to be pulled because the IRS employees were not sure how to process them, **not because they wanted to stall or hinder the application,**” and “**There was no indication that pulling these selected applications was politically motivated,**” and “The e-mail traffic indicated there were unclear processing directions and the group wanted to make sure they had guidance on processing the applications so they pulled them. **This is a very important nuance.**”¹⁷ raises serious questions with respect to your professional judgment, competence, and objectivity.

At the July 18 hearing, you were provided an opportunity to clarify this glaring omission from the final audit report, and yet you declined to provide a sufficient explanation. This left more questions, including that of why you were so quick to dismiss his Head of Investigations’ conclusion as merely “his opinion”:

¹⁶ Email from Deputy Inspector General for Investigations, Treasury Inspector General for Tax Administration, to the Principle Deputy IG, Head of Audits, TIGTA Chief Counsel, Tax Exempt Audit Head, and two individuals whose names have been redacted (May 3, 2013)(online at <http://democrats.waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/HeadOfInvestigationsEmail.pdf>).

¹⁷ *Id.*

Mr. Tierney: Mr. George, in your testimony, you made a statement that raised some concern the with me, and I quote, your statement was, "the letter from Ranking Member Cummings to the chairman dated July 12, 2013, states that I failed to disclose to Congress that we found no evidence of political motivation." I think, you know, when I read the letter from Mr. Cummings to Mr. Issa, that's not what it says. Let me, in fact, read to you what it says. It says, Mr. George did not disclose to the committee either in his report or during his testimony that he met personally with his top investigator and tasked him to conduct the review of 5,500 emails of IRS employees and that this official concluded after this review that there was, "no indication of pulling these selected applications was politically motivated," a fact that this official reported was, "very important."

That's quite a distinction from what you were saying in your testimony, Mr. Cummings, had said, and so I wanted to make sure that we were all on the same page here.

But the fact of the matter is, Mr. George, you never told this committee, you never disclosed about your meetings with your top investigator, did you?

Mr. George: Yeah. Well, sir, for two reasons: one – and, again, you weren't in the room when I explained this earlier – I was told by my staff that there was a smoking gun email in which an IRS employee either, and this is not verbatim, but acknowledged that he or she was charged with targeting Tea Party people – and, again, I know there's a nuance here that my colleague can address in a moment – and that there were, again, roughly 5,000 emails that the auditors had not had a chance to review, but that my investigators—

Mr. Tierney: I guess the point is, if I can be so – to interrupt you, but you never told us that you charged your investigator with looking at the 5,500 emails.

Mr. George: Well, sir, but because it's very important, this was an audit. It was no more than an audit, sir.

Mr. Tierney: All right. So he reported to you that the emails showed no indication of any political motivation, and you didn't think it was important to share that information with this committee?

Mr. George: Well, sir, because I don't know whether there was an email that was destroyed. This was done very quickly. There may have been an email that was destroyed.

Mr. Tierney: Well, it certainly wasn't amongst the 5,500 that he reviewed.

Mr. George: Yeah.

Mr. Tierney: --that he thought that it was very important that he found nothing in there that was politically motivated.

Mr. George: Well----

Mr. Tierney: And then you just thought you weren't going to share that with the committee?

Mr. George: Well, that was one--*that was his opinion*. And--and, then, so if--under oath, when people are subject to a lot more, you know, potential penalties regarding their behavior and responses to questions and additional information available, who knows whether or not this email will surface. I don't know, sir.

Mr. Tierney: Well, no. I'm not asking about one that may service in the future. I'm asking about the 5,500 that you charged your investigator to look through, and he reported--let me tell you what he reported back. The emails indicated the organizations needed to be pulled because the IRS employees were not sure how to process them.

Mr. George: Right.

Mr. Tierney: Not because they wanted to stall or hinder the application. There was no indication that pulling these selected applications was politically motivated.

Mr. George: Yeah.

Mr. Tierney: The email traffic indicated that there was unclear processing directions, and the group wanted to make sure they had guidance on processing the applications, so they pulled them. This is a very important nuance. So your investigators went through 5,500. That's what I found. I think it's an important nuance. *You then had it in an earlier draft report, and you scrubbed it.*

Mr. George: I'm going to ask----

Mr. Tierney: What's that all about?

Mr. George: Well, there's a reason for that.

Mr. Kutz: Because the investigator said that our report support--that their work supported the fact that we said ineffective management. Our report also said there was no political motivation. He's testified to that today.

Mr. Tierney: Right. But you didn't give us the--I mean, I--you don't think it's important that you look through 5,500 emails and had a report from an investigator that said the words I just quoted? You don't think it would be important for us know to that, when everybody's running around here trying to make allegations and, you know,

hyperventilating about it being something more than it is? You don't think that was important?

Mr. Kutz: Well, we thought it was important because it confirmed our report. And he told us that it confirmed our report.

Mr. Tierney: So why didn't you put it in there?

Mr. Kutz: We----

Mr. Tierney: I think it's important because it confirms your report as well. I think it gives us the kind of substance that may have stopped some of this, you know, allegations that are running around here rampant and people, you know, going off, you know, and taking these positions that don't make any sense when the facts are out there. These are facts that support your report that are pretty important. Mr. George. Sir, this is an ongoing matter. If, at the conclusion of this, if you were to make the same allegations, mea culpa. I would join you in admonishing me. This is an ongoing review, and we're working with the FBI. We're working with the Department of Justice. We're doing subsequent work looking at various other treatment of taxpayers. That's fair. But it would have been helpful to have that----

Mr. George: Hindsight's 20/20, sir.

Mr. Tierney: --at the appropriate time, because it opened the door to a lot of people going off in directions that are just----

Mr. George: But not at my----

Mr. Tierney: --helter-skelter.

Mr. George: Sir, I didn't suggest they do that.

Mr. Tierney: No, no. You did not suggest it, but *I'm suggesting that if you had left it in your report instead of scrubbing it out, if you had wanted to tell us that you did have an investigator involved even though it was audit, that he looked through 5,500 emails, that he found out that, you know, there was no indication that pulling these selected applications was politically motivated, all of those things, I think, would have been important at the right time on that.*¹⁸

When one combines your efforts to hide clearly relevant information about TIGTA's performance audit and ongoing review processes and procedures from the public with your

¹⁸ House Committee on Oversight and Government Reform, *Hearing on The IRS's Systematic Delay and Scrutiny of Tea Party Applications* (July 18, 2013)(online at: <http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg82435/pdf/CHRG-113hhrg82435.pdf>).

introduction of an unprompted and irrelevant reference to disgraced President Richard Nixon at a June 3 House Appropriations Subcommittee hearing¹⁹ and your peculiar phrasing in response to basic questions, such as the following interaction at the July 18 hearing, serious questions arise over your objective, non-partisan status.

They hint at your desire, perhaps even unconscious, to expand the strike zone with respect to TIGTA's efforts to find IRS malfeasance against conservative groups, while shrinking it when it comes to TIGTA's efforts to identify IRS misconduct against liberal or progressive organizations. Consider this following exchange at the July 18 hearing:

Mr. Davis: Thank you. Reclaiming my time. Mr. George, there's been a great deal of discussion about whether you found any White House involvement or political motivation in your investigation, in your report. And I believe the statements on page 9 of your written testimony make clear that you found nothing of the kind, no witnesses, nothing. Is that correct?

Mr. George: That is correct as of the time of that audit, sir.

Mr. Davis: Are you suggesting that at some other time you found something else?

Mr. George: I'm—I'm suggesting, sir, that this is an ongoing review, and I'm not going to make any conclusions beyond what we have already done with a concluded—an audit report that has been concluded, but this is an ongoing matter, and I'm not going to prejudge the findings.

Mr. Davis: So as of this moment, nothing has been found that would suggest any kind of political motivation or involvement coming from the White House?

¹⁹ *The New Front in the IRS Scandal: The Inspector General's Office*, The Atlantic (June 25, 2013)(online at: <http://www.theatlantic.com/politics/archive/2013/06/the-new-front-in-the-irs-scandal-the-inspector-generals-office/277189/>). In the article, Ms. Garance Franke-Ruta noted: "When the Treasury Department inspector general for tax administration appeared before a House Appropriations subcommittee hearing on June 3, he did not shy away from introducing a highly politicized framework for understanding the Internal Revenue Service's actions in targeting conservative groups seeking tax-exempt status. 'This is unprecedented, Congressman During the Nixon Administration, there were attempts to use the Internal Revenue Service in manners that might be comparable in terms of misusing it,' J. Russell George, the George W. Bush appointee who leads the IG's office, told the committee in the closely watched hearing. 'I'm not saying that ... the actions that were taken are comparable, but I'm just saying, you know, that the misuse of the -- causing a distrust of the system occurred sometime ago. But this is unprecedented,' he continued. It seemed a needlessly inflammatory statement. The impartial investigator within the Treasury Department had just, unprompted, introduced the historic specter of presidential involvement in directing abusive tax treatment of White House enemies, despite a total lack of evidence that such a thing had occurred under President Obama, according to his own findings thus far. It was the first mention of Nixon at the hearing, albeit delivered with a deliberative caveat. He wasn't saying, he was just saying, you know?"

Mr. George: That is correct, sir. *Nothing as of now.*²⁰

In addition, at the same July 18 hearing, your testimony created the appearance that you may be prioritizing the speed of an audit over completeness and accuracy. For example:

Ms. Maloney: And Mr. George, you've been in politics a long time. You know the Democrats and Republicans out there. You know that there's liberals and conservatives. How -- it's hard for me to believe in my -- I am -- it's beyond belief that you would conduct an audit that only looked at tea party. That makes no sense whatsoever.

I know that I wrote a letter of recommendation in support of you, even though you were Republican, because we worked together and I respected your work. Yet I cannot believe that you called for an audit that only looked at tea party when you know that there's a whole array of political activity. That's called targeting. That's called going after people.

Some Republicans in their public statements, and I have a list of them, have tried to smear the president and said he did this and he did that. I would say that your audit tried to smear, I don't know who, someone, or tried to blame someone by excluding a whole swath of the political establishment. I think an 8th grade class that was asked to do an audit of what was happening politically for people asking for status would look at both sides. That's common sense.

How in the world did you get to the point that you only looked at tea party when liberals and progressives and Occupy Wall Street and conservatives are just as active, if not more active, and would certainly be under consideration? That is just common, plain sense. And I think that some of your statements have not been -- it defies logic, it defies belief that you would so limit your statements and write to Mr. Levin and write to Mr. Connolly that of course no one was looking at any other area."

It's common sense if they have certain regulations that they thought was the law--I think the law should be changed, I don't think there should be any exemption or tax deduction for political activity. But you know that there's political activity on both sides, right? Why wouldn't you look at both sides? That would be the fair thing to do. That would be the commonsense thing to do. That would be an appropriate audit. It's like saying look for wrongdoing in the bank but only look at overdraft fees. Everybody knows there are a lot, a whole swath of areas that you could look at.

So to limit it defies logic, defies--I am mystified that a distinguished professional would put forth an audit that looks at only a very thin sliver when the training documents, when the letters, when plain common sense dictates that there is a whole array of political activity in our great country.

²⁰ House Committee on Oversight and Government Reform, *Hearing on The IRS's Systematic Delay and Scrutiny of Tea Party Applications* (July 18, 2013)(online at: <http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg82435/pdf/CHRG-113hhrg82435.pdf>).

Mr. Issa: I thank the gentlelady. And I know there wasn't a question there, but, Mr. George, I think you've got an answer.

Mr. George: Yes, thank you, sir. I appreciate this.

Ms. Maloney, first of all, we received allegations from Members of Congress and from media reports about a particular activity that was occurring, all right? And it wasn't just Tea Parties, it was patriots, it was 9/12. So we were charged, you know, both through a request from Congress, as well as through our audit process, and this was in our audit plan, to look at how tax-exempt organizations were treated.

Now, never once did I ever indicate that we would limit our review to just how these particular groups were treated.

Ms. Maloney: *But you did.*

Mr. George: *Well, ma'am, it takes a year. This audit took a year. And, yes, if you wanted us to wait another year before completing, you know, a fuller audit, we can, but that doesn't serve the American people; it doesn't serve the IRS well.* Once we find the IRS is engaged in inappropriate behavior -- and there are many examples of this -- we alert them so that they can stem that behavior so that American taxpayers aren't unduly harmed and that the IRS can take corrective action.²¹

In the aftermath of your highly misleading and fundamentally flawed final audit report, it appears that you should have taken the time to ensure TIGTA's audit findings were complete, accurate, and valid, to best serve the American people and the IRS. Unfortunately, the undeniable fact is that under your leadership, TIGTA did not. And as a result of your poor judgment, a false narrative has shifted the landscape, which hinders real IRS reform and harms taxpayers who deserve an effective and efficient IRS.

Your assertion that TIGTA values prompt notification of inappropriate behavior by the IRS also does not square with your deliberate and perhaps misleading, disclosures to Congress about BOLOs that contained references to Progressive groups.

Please explain why you chose to make a comparison with a caveat to the misconduct of former President Richard Nixon at a congressional hearing, a reference that appeared unprompted, irrelevant, and was the first mention of President Nixon. Specifically, did TIGTA uncover any evidence of political bias in conducting its audit that would have warranted your inflammatory decision to introduce the example of former President Nixon into the congressional discussion?

²¹ *Id.*

RESPONSE: My reference to former President Nixon was not intended to be inflammatory. When I referenced this at the June 3, 2013, House Appropriations Committee hearing, I attempted to qualify my statement noting that “I’m not saying that what—the actions that were taken are comparable, but I’m just saying, you know, that the misuse of the—causing distrust in the system occurred some time ago.”²² Subsequently, at the July 18, 2013, House Government and Oversight Reform Committee hearing, Representative Cardenas asked “[d]uring the course of your investigation have you identified any evidence that the administration tried to use the IRS to target the president’s political enemies?” I answered “[w]e have not found anything to that effect, sir.”

The purpose of TIGTA’s audit was not to determine political bias and no evidence of political bias came to our attention during the audit. We did ask several IRS employees about whether there was outside influence, and we included this in our report. Specifically, TIGTA’s report stated “We asked the Acting Commissioner, Tax Exempt and Government Entities Division; the Director, EO [Exempt Organizations]; and Determinations Unit personnel if the criteria were influenced by any individual or organization outside the IRS. All of these officials stated that the criteria were not influenced by any individual or organization outside the IRS.” In addition, our report included a section entitled, “The team of specialists processed applications by organizations with names other than Tea Party, Patriots, and 9/12.” In this section, we include IRS officials view that the fact that the team of specialists worked applications that did not involve the Tea Party, Patriots, or 9/12 groups demonstrated that the IRS was not politically biased in its identification of applications for processing by the team of specialists.” Further, our audit report states that ineffective management was the cause of the problems identified in our report, including substantial delays in processing cases selected for additional review for potential political campaign intervention.

In addition, if any of the information contained in this question is inaccurate, please provide detailed response that explains why the information is not correct. Failure to respond will be taken as indication that the charges above are valid.

RESPONSE: TIGTA’s audit was performed in accordance with Generally Accepted Government Auditing Standards (GAGAS). The audit identified and brought to the attention of IRS management and the Congress significant breakdowns at the IRS in its processing of political advocacy cases from May 2010 through May 2012. The focus of our audit was the IRS’s processing of political advocacy cases from May 2010 to May 2012. The audit findings were that ineffective management: (1) allowed inappropriate criteria to be developed and stay in place for more than 18 months, (2) resulted in substantial delays in processing certain applications, and (3) allowed unnecessary information requests to be issued. TIGTA made nine recommendations to the IRS to address the breakdowns in management oversight and control of political advocacy case processing that, if implemented, would provide taxpayers and the Congress with reasonable assurance that future applications would be processed without

²² *Oversight Hearing – Internal Revenue Service before the Subcomm. on Fin. Servs. and Gen. Gov’t of the H. Comm. on Approps.*, 113th Cong. 21 (June 3, 2013) (statement of J. Russell George Treas. Inspect. Gen. for Tax Admin.) (LEXIS, Federal News Service).

unreasonable delays and in a fair and impartial manner. We have issued a report on the IRS's implementation of all nine of these recommendations.²³

With respect to specific concerns raised in this question, we provide the following response:

- The purpose of the Office of Investigations' review of the e-mails of a limited number of individuals was not to determine whether there was political bias. Instead, it was a very limited search to determine whether there existed an e-mail directing the inappropriate criteria for selecting political advocacy cases for review. During the audit, TIGTA auditors had indications that there was such an e-mail, but they did not locate it among the e-mails the IRS produced as part of the audit. The Office of Investigations' limited search did not locate this e-mail.

There was no intent to hide information regarding the Office of Investigations' review of IRS e-mails. The Office of Investigations concluded that its e-mail review confirmed the findings of ineffective management in the report. The Office of Audit was requested by the Office of Investigations to remove the reference to its referral to the Office of Investigations because the referral was not accepted as an investigation. It is important to note that TIGTA's limited e-mail search did not include key individuals such as the Director, Exempt Organizations and other key individuals because it was focused on a potential e-mail from May 2010 regarding screening criteria in Cincinnati.

- TIGTA did not find evidence as part of the audit that screeners were instructed to look for the term "progressive" alongside "tea party" in reviewing tax-exempt applications for political advocacy. In fact, as part of our audit, we requested the IRS provide us all relevant documents and correspondence (including e-mail) regarding the IRS's response to and decision-making process concerning political advocacy issues, but we were not provided the 2010 PowerPoint presentation mentioned in the question. The documents and interviews the IRS did provide TIGTA support the facts and criteria as described in the report. The IRS was provided three drafts of the report to review and did not represent to TIGTA that the screening criteria identified in the report were inaccurate. In addition, we obtained documentation showing that, in June of 2011, the Director, Exempt Organizations, was briefed on the criteria used to screen cases for political campaign intervention by her staff. The IRS criteria we listed in our report not only included the political advocacy criteria from the BOLO listing, but additional criteria that were included in this briefing. Neither the BOLO criteria for political advocacy cases nor the criteria presented to the Director, Exempt Organizations, included the term "Progressive." In May of 2013, prior to TIGTA issuing our report, the Director, Exempt Organizations, apologized for the inappropriate criteria that are described in our report.

It is important to note that TIGTA did disclose in its report that the IRS's use of organization names on the BOLO listing was not unique to the processing of political

²³ TIGTA, Ref. No. 2015-10-025, *Status of Actions Taken to Improve the Processing of Tax-Exempt Applications Involving Political Campaign Intervention* (Mar. 2015).

advocacy cases and we did not determine whether their use was appropriate. Further, TIGTA has identified more than 250 screening criteria that may have been used by the IRS going back to 2004. As discussed in briefings with Majority and Minority staff of this Committee, TIGTA is taking a further look at 17 of these criteria including “Progressive.” It is also important to note that, in our review of the 298 political advocacy cases as of May 2012 that were selected for further review of political campaign intervention, only three had the word “Progressive.” All three of these cases were selected for further review after the Director, Exempt Organizations, directed the change of the selection criteria in July 2011 from “Various local organizations in the Tea Party movement...applying for exemption under 501(c)(3) or 501(c)(4)” to “Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4).” In addition, these three cases were all 501(c)(4) cases. The “Progressive” entry on the historical tab of the BOLO was for § 501(c)(3) cases.

- The scope of this audit did not result in a highly misleading and fundamentally flawed audit that prioritized the speed of the audit over completeness and accuracy. This audit took over a year to plan and complete and the only part of the audit that was accelerated was the final report issuance after the IRS leaked the results of the audit on Friday, May 10, 2013 at an American Bar Association conference. At that time, the audit work was complete. We performed redactions and final processing of the audit report and issued the final report on May 14, 2013. The focus of our audit was the IRS’s processing of political advocacy cases from May 2010 to May 2012. We clearly noted in the report that the IRS’s use of organization names on the BOLO listing was not unique to the processing of political advocacy cases and we did not determine whether their use was appropriate. There are more than 250 other screening criteria that may have been used going back to 2004. We are currently reviewing 17 of these including the “Progressive” historical entry. The vast majority of the applications we are reviewing under these criteria, including “Progressive,” are for § 501(c)(3) applications. In our May 14, 2013 audit, however, the majority of the cases screened for potential political campaign intervention were § 501(c)(4) applications. There are differences between § 501(c)(4) and § 501(c)(3) organizations; § 501(c)(3) organizations can have no political campaign intervention, while § 501(c)(4) social welfare organizations generally can be involved in political campaign intervention, provided it is not their primary activity. To the extent possible,²⁴ we plan to report to Congress on these 17 criteria, specifically how many cases were impacted, whether the cases experienced any substantial processing delays and/or whether applicants received requests for unnecessary information.
 - Finally, every effort has been made to answer all the concerns and charges raised in your question. We have responded to them to the best of our knowledge and information.
7. Concerns remain over TIGTA’s transparency and selective disclosure, as well as TIGTA’s Failure to notify Congress in a timely fashion of new developments and emerging information.

²⁴ Personnel and complete documentation may not be available related to all 17 criteria due to the passage of time.

You have still not explained precisely how and when TIGTA learned that IRS used BOLO lists containing the "Progressives" identifier, and that the group of 202 "other" cases included liberal organizations. As you testified at the July 18 hearing, you were aware that "there were BOLOs about liberal or progressive groups" prior to the May 22 hearing:

Mr. Cartwright: Let's go at it this way, Mr. George. As of today, are you aware that there were BOLOs out about progressive or liberal groups?

Mr. George: There were BOLOs----

Mr. Cartwright: And when did you first find out?

Mr. Kutz: On which ones?

Mr. Cartwright: I'm asking Mr. George. When did you first find out there were BOLOs about liberal or progressive groups?

Mr. George: It was the night before I was testifying before the Senate Finance Committee, at around 6:30 p.m.

Mr. Cartwright: And was that before your testimony here on May 22nd?

Mr. George: That was before, yes.

Mr. Cartwright: So you were here on May 22nd testifying about BOLOs about Tea Party groups, and when Mr. Issa questioned you specifically about other groups, you said there were no others.

Mr. George: Well----

Mr. Cartwright: But you didn't say a word about BOLOs that you knew were about progressive or liberal organizations, even though you just admitted today----

Mr. George: Yeah.

Mr. Cartwright: --that you were aware of that as of your May 22nd----

Mr. George: Sir----

Mr. Cartwright: --testimony. Am I correct on that, Mr. George?

Mr. George:--I need to clarify something. One, it was on--the BOLO group name was on "Occupy." And I can use that word because it's generic. We had no information whatsoever how, if at all, that information was used or misused.

Mr. Cartwright: It doesn't matter. You knew there were BOLOs about "Occupy"----

Mr. George: But we----

Mr. Cartwright: --and you didn't say a word about it in your last testimony here in this committee, May 22nd.

Mr. George: Yeah.

Mr. Cartwright: You knew people's heads would explode if you talk about Tea Party BOLOs, and you didn't mention any other ones.

Mr. George: Sir----

Mr. Cartwright: What do you think we are doing here?

Mr. George: Sir, if you look at *page 6, footnote 16 of my audit report, it acknowledges the existence of other BOLOs and the fact that we did not--the charge of that audit was not on how they were utilized.*

Mr. Cartwright: You knew there were BOLOs about liberal groups----

Mr. Jordan: The gentleman's time has expired.²⁵

Yet, when Chairman Issa asked you a straightforward question on May 22, you responded while under oath as follows:

Mr. Issa: Thank you. I think that makes it clear. Oh, one more thing. There were 479 or so of these Tea Party groups that were targeted in total. Were there any BOLOs issued for progressive groups, liberal groups?

Because I'm assuming that your investigation--we can't see them--but your investigation showed liberal groups that flew right through during the same time and got their 501(c)(4)s. They were not stopped; isn't that correct?

Mr. George: Sir, this is a very important question. Please, I beg your indulgence.

Mr. Issa: Of course.

Mr. George: *The only "be on the lookout," that is, BOLO, used to refer cases for political review were the ones that I described within our report.*

²⁵ *Id.*

There were other BOLOs used for other purposes. For example, there were lookouts for indicators of known fraud schemes so that they could be referred to the group that handles those issues. For nationwide organizations, there were notes to refer State and local chapters to the same reviewers.

As we continue our review of this matter, we have recently identified some other BOLOs that raised concerns about political factors. I can't get into more detail at this time as to the information that is there because it's still incomplete--that I've uncovered, rather, because it's still incomplete. And there are 6103 issues--

Mr. Issa: Of course.

Mr. George: --involved here, too. I hope that provides context --

Mr. Issa: So, clearly, it's fair to say, though, that there was a BOLO for Tea Party but not a BOLO for MoveOn or Progressive?

Mr. George: I'm not in a position to give you a definitive response on that question at this time, Mr. Issa--Mr. Chairman.

Mr. Issa: So are you saying today that there were other 501(c) (4)s, not specific, so much as one other 501(c) (4) not previously identified during your IG audit that were, in fact, targeted and held in a similar way?

Mr. George: I cannot give you a definitive answer, sir, at this time. But I certainly will when--

Mr. Issa: I only ask if there's at least one. Are you aware of at least one that was targeted using a BOLO that was a 501(c) (4) in which they were targeted politically but did not fall into this current report we have before us?

I'm not asking for privileged information. I'm asking--

Mr. George: No, no, no.

Mr. Issa: --for one.

Mr. George: *Under the report, the review--the purposes of the audit that I conducted, which was to determine whether they were looked for in the context of political campaign intervention, there were no others.*

Mr. Issa: Thank you.²⁶

²⁶ House Committee on Oversight and Government Reform, *Hearing on The IRS: Targeting Americans for their Political Beliefs* (May 22, 2013)(online at: <http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg81742/pdf/CHRG-113hhrg81742.pdf>).

Your response above to Chairman Issa appears to fit a pattern of eagerness to make definitive statements with respect to the treatment of conservative or Tea Party organizations at congressional hearing paired with your peculiar reluctance to disclose the use of inappropriate criteria identifying liberal or progressive organizations.

For instance, this interaction towards the end of the July 18 hearing is typical of the troubling pattern that has emerged at TIGTA under your leadership:

Mr. Issa: ...I have just a closing question for you, Mr. George. With what you and your organization know today, do you know that there was special scrutiny on organizations lumped together as the term tea party, but obviously 9/12 and the other search terms, do you know there was special scrutiny of those organizations and that it was, in your opinion, inappropriate in -- at least in the time of delay?

Mr. George: *Yes.*

Mr. Issa: And as of what you know today, from what you've been able to ascertain, I know it's ongoing, do you know of similar treatment of specific scrutiny because of their key name and delay for groups other than those? In other words, do you know of progressive groups that as of today were scrutinized for being progressive advocacy groups and delayed?

Mr. Kutz: *We don't know that. The 202 names -- as I mentioned, I don't know who was what.*

Mr. Issa: Okay. So as this committee continues to look, we will close today knowing that Tea Party groups, patriot groups, 9/12 groups are held to have been -- held up to special scrutiny here in Washington, delay, including perhaps through the office of Lois Lerner and certainly individuals in the Office of the Counsel caused an unreasonable delay to Tea Party groups, and to this day we know of no specific equivalent among groups, specifically left-wing groups, progressives, and so on.

That is what we have learned today. We certainly charge you, as our representative with eyes and ears where we cannot look, to continue looking, to use all your resources, and to leverage other resources at the IRS to find this and other areas within the IRS.

[No further response from Mr. George or Mr. Kutz]²⁷

Mr. Kutz's response above is consistent with your own responses at the May 22 hearing when you were asked whether out of the 202 groups TIGTA listed as "other" -- could any of those groups have been progressive groups:

²⁷ House Committee on Oversight and Government Reform, *Hearing on The IRS's Systematic Delay and Scrutiny of Tea Party Applications* (July 18, 2013)(online at: <http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg82435/pdf/CHRG-113hhrg82435.pdf>).

Mr. Connolly: But 202 are listed as “other” – *were those all conservative groups, or could some of them have been progressive groups?*

Mr. George: We were unable to make that determination sir, because in many instances the names were neutral, in that you couldn’t necessarily attribute it to one particular affiliation or another.²⁸

Yet, based on information provided by the Committee on Ways and Means, TIGTA’s work papers contained a BOLO that featured the term “Progressive.” It still appears that TIGTA was, or should have been, aware that IRS was also processing cases using the “Progressives” identifier.

However, your answer to the question posed at the May 22 OGR Committee hearing, “But 202 are listed as other – were those all conservative groups, or could some of them have been progressive groups?” failed to mention, or even hint at, these facts.²⁹

Further, in your July 3, 2013, response to a letter sent to TIGTA addressing this very issue – though you confirmed under oath on May 22 that TIGTA “looked at” but could not make a determination as to whether certain names were progressive groups “because in many instances the names were neutral” – you also asserted that “it would be inappropriate for a **nonpartisan** Inspector General, with responsibility for tax administration and law enforcement, to apply political labels to organizations based solely on the name of the organization and subjective assumptions about what those names mean.”³⁰

Presuming this is true, it is odd that your response under oath on May 22 did not simply state that you declined to even attempt to determine political affiliation based solely on an organization’s name **because “it would be inappropriate” for a nonpartisan IG to do so**, but rather, indicated that you in fact attempted to determine political affiliation – which by his your definition would be the action of a **partisan** IG – and simply were unsuccessful in your attempt:

“We were **unable to make that determination sir, because in many instances the names were neutral**, in that you couldn’t necessarily attribute it to one particular affiliation or another.”³¹

²⁸ House Committee on Oversight and Government Reform, *Hearing on The IRS: Targeting Americans for their Political Beliefs* (May 22, 2013)(online at: <http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg81742/pdf/CHRG-113hhrg81742.pdf>).

²⁹ *Id.*

³⁰ Letter from Inspector General J. Russell George to Chairman Gerald E. Connolly, Subcommittee on Government Operations (July 3, 2013).

³¹ House Committee on Oversight and Government Reform, *Hearing on The IRS: Targeting Americans for their Political Beliefs* (May 22, 2013)(online at: <http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg81742/pdf/CHRG-113hhrg81742.pdf>).

Based on your July 18 testimony under oath, it appears that your position is the term “Progressive” could be equally likely to apply to a Democrat or Republican in the year 2013; due to uncertainty caused by former President Theodore Roosevelt running under the Progressive Party banner in the Presidential Election of 1912:

Mr. Connolly: All right. And so other statements, either attributed to you or others in your operation, that, for example, looking at those 202 -- if you remember, you and I had a conversation about the pie chart. 202 of 298 organizations were not identified. And do you remember your answer under oath to me when I asked you, could that 202 include progressive organizations?

Mr. George: And I recall the discussion. I don't recall verbatim what I said.

Mr. Connolly: Let me read to you what you said: quote, “I was unable to make that determination, sir, because in many instances the names were neutral in that you couldn't necessarily attribute it to one particular affiliation or another.”

And yet, that's not exactly what you said to me in July in your letter to me on this very same subject. You said it would be inappropriate for a nonpartisan inspector general with responsibility for tax administration and law enforcement to apply political labels to an organization based solely on the name of the organization and subjective assumptions about what those names mean.

Mr. George: I don't ---

Mr. Connolly: That seems to be at variance with what you said to me in May.

Mr. George: I beg your -- I beg to differ, sir. I don't see an inconsistency in that at all.

I believe that, one, the statement that I made about the inappropriateness of a nonpartisan inspector general to determine “progress” -- *I have no idea what that stands for, sir. Teddy Roosevelt ran for president under the Progressive Party banner.* Would you consider him a Democrat or a Republican?³²

This assertion is difficult to accept, especially when you appear to understand perfectly well that terms such as 9/12 and Tea Party refer to conservative organizations.

Please respond in detail to each allegation presented in the body of this question.

RESPONSE: TIGTA did not assess the political affiliation of the organizations whose applications we reviewed as part of the audit, nor did we label any of the organizations as

³² House Committee on Oversight and Government Reform, *Hearing on The IRS's Systematic Delay and Scrutiny of Tea Party Applications* (July 18, 2013)(online at: <http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg82435/pdf/CHRG-113hhrg82435.pdf>).

“conservative” or “liberal/progressive.” As part of a subsequent review, we were provided a July 2012 internal e-mail from the Senior Technical Advisor to the Director, Exempt Organizations, showing that the IRS did a comparative analysis of political advocacy cases at the time. The Senior Technical Advisor concluded the following:

- More than half of 84 § 501(c)(3) applicants appeared to be conservative leaning, while the remainder did not obviously lean to either side of the spectrum;
- Approximately 75 percent of 199 § 501(c)(4) applicants appeared to be conservative leaning, while the majority of the remaining applicants did not obviously lean to either side of the political spectrum. Fewer than 10 of the applicants were “liberal/progressive.”³³

During TIGTA’s audit, we did not review the 202 “other” cases for their political leaning. Instead, we reviewed all 298 political advocacy cases identified by the IRS as of May 2012 and more than 300 other cases for whether they had indications of significant political campaign intervention. While not part of our audit, after our report was issued and we received inquiries about whether applicants in these 202 cases were conservative or liberal/progressive, we researched the 202 cases, as well as other § 501(c)(4) cases not identified as political advocacy cases, for applicants including “progressive” in their name. It is clear that the Director, Exempt Organizations, and the IRS knew the answer to this question and did not provide that information to TIGTA during our audit, nor to the Congress during any of the hearings held on this matter. If the IRS had provided the information to TIGTA, we could have disclosed in our report the results of IRS’s analysis showing that the vast majority of the organizations impacted by IRS’s ineffective management of the application process for political advocacy cases were conservative leaning or not obviously leaning to either side of the spectrum, while less than 3.5 percent (less than 10 out of 283 at the time of the analysis) were liberal/progressive leaning. The Director, Exempt Organizations also knew the results of her Senior Technical Advisor’s analysis when she responded to a planted question at the ABA conference on May 10, 2013, prior to the issuance of our report. The Director, Exempt Organizations outlined the findings of our report and did not assert that progressive/liberal organizations were involved in the inappropriate application selection criteria we identified in our report.

The IRS concluded, before the issuance of our audit, that the vast majority of political advocacy cases were conservative leaning or “did not obviously lean to either side of the political spectrum.” In addition, less than 3.5 percent of the cases (fewer than 10 out of 283) appeared to be liberal/progressive organizations. The IRS’s own analysis supports my statement, following a post-audit review of the cases, that “in many instances the names were neutral.” We continue to believe that as part of our audit, it would have been inappropriate for TIGTA to apply political labels to the organizations applying for tax-exempt status, or to otherwise label them using subjective assumptions based on their names.

³³ E-mail from Senior Technical Advisor, Internal Revenue Service, to Director, Exempt Organizations, Internal Revenue Service, on *Bucketed Cases* (July 18, 2012) (on file with author).

TIGTA did not review the more than 250 other selection criteria that may have been used to screen tax-exempt organizations going back to 2004. We clearly disclose in our report on page 6 that the IRS's use of organization names on the BOLO listing was not unique to the processing of political advocacy cases and we did not determine whether their use was appropriate. TIGTA focused on the specific BOLO and other criteria that were being used to screen applications for political campaign intervention as shown in our report during May 2010 through May 2012. The entry for "Progressive" was on a historical tab; during the audit and three separate reviews of the report, the IRS never represented to TIGTA that it was relevant to the process we audited. Given the fact that the BOLO entry for "Progressive" was for § 501(c)(3) organizations, it is not surprising the IRS did not mention it. In our review of the 298 political advocacy cases the IRS selected for further review as of May 2012, none of them were § 501(c)(3) organizations with the name "Progressive." This does not mean that the Progressive BOLO entry on the historical tab was appropriate, and was not improperly used in some way. We are reviewing that now and will report our findings to the Congress when we complete our review.

8. At the July 18, 2013, OGR hearing, you indicated multiple times that Members of Congress questioning your performance audit methods and conclusions was unprecedented and perhaps damaging in some way. For example, you stated:

"And I have to admit, I am a little concerned that this type of forum could have a chilling effect on the operations of inspectors general. I mean, again, I have been around for, you know, a while, and so I've seen this before, but not to this extent. And believe me, we shall be issuing some reports shortly that's going to show a lot more of not the best behavior on the part of the Internal Revenue Service, just as we recently did with their \$50, you know, million dollars' worth of conferences and a few other things that we have recently reported about.

And so those reports will be coming out. They have no nexus to this at all. But I took an oath to uphold the law. I intend to do so as long as I'm in this position. And we have to rely on--believe me, when I was sitting in that back row as the staff director under Steve Horn, we relied tremendously on both GAO as well as IGs to help us do our jobs, and we could not with a staff of five people have done it on our own.

So, believe me, I know the role of the IG. You know, Mr. Horn, we never treated an IG office like this. I mean, if it were an allegation of personal wrongdoing on my behalf or on my organization's behalf, that's one thing, but to just try to suggest that an audit could have been done differently, you know, this is--you know, this is unprecedented, sir, too. This is unprecedented."³⁴

Yet, recent history contradicts such dramatic claims of "unprecedented" treatment of an IG auditing-type office. For instance, in recent years another prominent government auditing agency, the GAO, received withering criticism over an August 2010 investigative report

³⁴ *Id.*

examining for-profit schools, with Chairman Issa going so far as to open up an investigation of the Forensic Audit and Special Investigations unit (FSI) of GAO over a report that the Chairman asserted was “tarnishing the GAO’s credibility.”³⁵

As you may be aware, far beyond mere criticism of audit methodology, Chairman Issa actually pushed for actionable reform, lauding the organizational changes that removed a GAO managing director Chairman Issa believed was responsible for a flawed audit. In a March 4, 2011, letter to the Comptroller General of the United States, he states:

“Congress and the American people trust the GAO to provide impartial and objective information about Federal programs that enable Congress to make informed decisions and take necessary action. This important change in leadership and organization increases my confidence these initial steps will address issues that this Committee’s ongoing investigation has identified”³⁶

In fact, making baseless charges that legitimate congressional inquiries could have a “chilling effect on the operations of inspectors general”³⁷ – with no evidence to back up this statement – **could itself be viewed as an attempt to intimidate or shut off criticism from Members of Congress by IG George.**

Please confirm whether your statements above were part of a concerted effort and strategy on your part to intimidate and dissuade Members of Congress from conducting oversight over TIGTA and its compliance with GAGAS.

RESPONSE: My statements were not part of any such effort.

³⁵ Republican Press Release, House Committee on Oversight and Government Reform, *Chairman Issa Lauds Leadership Change in Troubled GAO Unit* (Washington, D.C.: March 4, 2011)(online at: <http://oversight.house.gov/release/chairman-issa-lauds-leadership-change-in-troubled-gao-unit/>).

³⁶ Letter from Chairman Darrell E. Issa, Committee on Oversight and Government Reform, to the Comptroller General of the United States (March 4, 2011).

³⁷ House Committee on Oversight and Government Reform, *Hearing on The IRS’s Systematic Delay and Scrutiny of Tea Party Applications* (July 18, 2013)(online at: <http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg82435/pdf/CHRG-113hhrg82435.pdf>).