

Senator Cruz Questions for the Record for
Cleta Mitchell, Partner at Foley & Lardner LLP
Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts
Revisiting IRS Targeting: Progress of Agency Reforms and Congressional Options
Wednesday, July 29, 2015

I. Possible False Testimony of Koskinen

- During your testimony, when I asked you if you believed that IRS Commissioner John Koskinen had made any false statements or misstatements during his hearing testimony, you indicated you would need to review the hearing transcript and get back to the Committee.
 1. **Please indicate if you believe if Mr. Koskinen made any false statements or misstatements during his hearing testimony on July 22, 2015, or during any prior congressional hearing testimony.**
 2. **If you believe Mr. Koskinen made any false statements or misstatements during his hearing testimony on July 22, 2015, or during any prior congressional hearing testimony, do you believe any of those false statements or misstatements would subject him to criminal liability under:**
 - a. **18 U.S.C. 1001?**
 - b. **Any other provision of Title 18?**

II. Federal Crime Statutes of Limitation

- During your testimony, you specifically stated that you believed former and current IRS employees (and possibly other figures in this Administration) may have violated federal criminal laws.
 3. **Please indicate what the respective statutes of limitation are for the federal criminal statutes you believe current and former IRS employees (and possibly others in this Administration) may have violated.**

III. General Question

4. **Are there any other points or issues that were not explored (or adequately explored) during the hearing that you would like to bring to our attention?**

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Responses from Cleta Mitchell, Esq. to Questions:

1. Please indicate if you believe if Mr. Koskinen made any false statements or misstatements during his hearing testimony on July 22, 2015, or during any prior congressional hearing testimony.

Yes, it is my belief that Mr. Koskinen made false statements during his July 22, 2015 testimony before the Subcommittee. He made material misstatements and false testimony regarding a number of subjects, including but not limited to his false statements about the GAO Report regarding the procedures by which the IRS selects exempt organizations for audit.

Factual background:

At the request of Rep. Peter Roskam (R-IL), Chairman of the House Ways & Means Subcommittee on IRS Oversight, the GAO conducted an examination of the procedures and processes utilized by the IRS for purposes of selecting exempt organizations for audit by the IRS. See *US GAO – 15-514: IRS Examination Selection – Internal Controls for Exempt Organization Selection Should Be Strengthened*, Published: Jul 13, 2015. Publicly Released: Jul 23, 2015 (“GAO Report”)

The GAO Report did not review the selection process related to audits of individual or business taxpayers; rather, the GAO Report reviewed the selection process related to audits of exempt organizations.

The GAO Report further did *not* review any specific audit or taxpayer; rather, the GAO Report reviewed the procedures followed by the IRS, and whether the procedures comply with formal IRS guidelines and whether the formal guidelines are adequate to ensure that no exempt organization could be subjected to political or other bias in being selected for an IRS audit.

The Executive Summary to the GAO Report stated as follows:

“Exempt Organizations (“EO”) uses various controls intended to help it select exempt organizations for examination, in an effort to adhere to TE/GE’s mission of “applying the tax law with integrity and fairness to all.” For example, EO maintains well-documented procedures for several examination selection processes in the Internal Revenue Manual (IRM), IRS’s primary, official source of instructions to staff; staff can deviate from procedures that are included in the IRM only with executive management approval. In focus groups, EO staff generally told GAO that these procedures were valuable tools to help them administer the tax law.”

“However, there are several areas where EO’s controls were not well designed or implemented. The control deficiencies GAO found increase the risk that EO could select organizations for examination in an unfair manner—for example, based on an organization’s religious, educational, political, or other views.”

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False Testimony of Mr. Koskinen Regarding the GAO Report.

- Mr. Koskinen mischaracterized and testified (wrongly) that the GAO Report reviewed selection procedures for audits of individual taxpayers.
 - The GAO Report did not review audit selection procedures for individual taxpayers.
- Mr. Koskinen testified (wrongly) that the GAO reviewed the IRS process and issued a report on exam selection processes, with suggestions on ‘how to make it better, but finding no examples of anyone who was improperly selected for an audit’.
 - Not only did the GAO Report not review the IRS selection process for individual IRS audits, the GAO Report did not review any specific audits or audit ‘targets’. Rather, the GAO reviewed the procedures as to how exempt organizations become subject to an audit. And the GAO Report found that the IRS fails to follow its own procedures, fails to document management override of written protocols and lacks necessary internal controls to ensure that exempt organizations do not fall victim to political bias by IRS agents in being selected for audit.
- Mr. Koskinen testified (wrongly) that the IRS does “not track people by whether they’re bundlers from (sic) one organization”.
 - Not only did Mr. Koskinen flatly state that the IRS does not ‘track people’ who may be bundlers for one candidate, party or organization, he failed to disclose that the GAO Report specifically discussed the fact that the IRS *does* have a “Global High Wealth program” for which EO conducts some examinations. According to the GAO Report, “the Global High Wealth program is managed by IRS’s Large Business and International Division, which monitors high wealth individuals and the networks of enterprises and entities they control.”
 - Mr. Koskinen cannot state truthfully from his personal knowledge that the IRS does “not track people by whether they’re bundlers...” The IRS clearly tracks (“monitors”) high wealth individuals. How exactly *does* the IRS monitor high wealth individuals? What is the source of the surveillance the IRS conducts? Does the “Global High Wealth Program” rely upon publicly available lists of campaign donors and bundlers for purposes of conducting its “monitoring”? Does the Global High Wealth Program rely upon the donor information filed by exempt organizations as a factor in targeting such donors for audit? Mr. Koskinen clearly misled the Subcommittee insofar as

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this line of questioning by failing to disclose the existence and function of the Global High Wealth Program and what sources of information are used by the IRS agents and employees assigned to this division of the IRS.

- Further to this point, Mr. Koskinen, in response to questions from the Ranking Member, continued to fabricate both what the GAO Report reviewed and what it found, even as Sen. Coons seemed to be extending a ‘lifeline’ to Mr. Koskinen with respect to whether the IRS has (as many suspect) audited more Republican and conservative donors and bundlers than those who donate to and bundle for President Obama’s campaign.
 - Sen. Coons: “If it seems, as you review this aggregate data, that more of one group of bundlers than others (have) been audited, it would also be instructive if you would suggest whether there are neutral IRS-based previously approved auditing principles that might lead towards one group being more heavily audited than the other’.
 - Response from Mr. Koskinen: “...As I say, GAO has looked at our audits of individuals, are all selected automatically. They’ve looked at it and determined that while we need to monitor that to make sure our—we know what our objectives are in how we’re proceeding, they found no evidence that that system, in any way, biases the audit process and the audit selection process.”
 - Mr. Koskinen repeatedly mischaracterized the GAO Report which did not ‘look at the IRS audits of individuals’.
 - The GAO Report did NOT find that exempt organizations subjected to audit were ‘automatically selected’ and, in fact, spent most of the report describing the various ways in which an exempt organization might be selected for audit and reviewing those protocols and procedures – and concluded the systems *are* susceptible to abuse and political targeting and recommended needed changes to guard against that in the future.

Other False Statements by Mr. Koskinen during his Testimony / Response to Questions from the Subcommittee:

- Mr. Koskinen stated that the “major attraction of a c4, if you are a social welfare organization, primarily is you don’t reveal your donors.”
 - That statement is false and indicative of a political bias espoused by the left wing radicals who wish to silence their political opponents.
 - A social welfare organization whose members wish to be involved in grassroots lobbying and the public policy process, then formation as a 501(c)(4) entity is the appropriate legal mechanism and the *primary*

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attraction is that contributions to the organization are not subject to income tax.

- Mr. Koskinen did not truthfully describe the history of his role and statements regarding the ‘missing’ Lois Lerner emails.
 - A complete timeline of Mr. Koskinen’s various statements and misstatements regarding the Lois Lerner emails is included in the record from the House Oversight and Government Reform Committee, placed in the record of the hearing by Sen. Cruz.
 - Mr Koskinen has continued to testify to “facts” about which he has no personal knowledge regarding the fact that the emails were missing, the search for the emails, and that the emails were “destroyed” and could not be retrieved. To this Subcommittee, Mr. Koskinen testified that he was unaware about the investigation into the missing Lerner emails and did not learn of the ‘investigation’ into the missing emails until April (2014). However, he testified under oath to the House Oversight & Government Reform Committee in late March 2014 that ‘all of Lois Lerner’s emails would be turned over to the Committee’.

- Mr. Koskinen testified to the Subcommittee that he had been “advised” that all records relevant to the investigation by Congress into the IRS scandal were “intact” and “would be turned over”.
 - Mr. Koskinen repeatedly testifies based on hearsay and staff representations to him, but testifies as though it is from his personal knowledge. (“That’s what I had been advised. That’s what I believed. I testified *at the time* truthfully to what I knew”). But the point is that Mr. Koskinen has made no effort to avail himself of facts and personal, first-hand knowledge.
 - Mr. Koskinen *failed* to disclose to the Subcommittee on July 29, 2015 that yet another personal email address used by Lois Lerner during her tenure at the IRS has been discovered. When did he learn about this additional email account? Why did he not advise the Subcommittee of its existence during the hearing on July 29, 2015? What has he done since learning of the additional email address to search the IRS records and turn over all emails to/from the newly discovered personal email account used by Lois Lerner? NONE of the emails turned over to Congress have previously included emails using this account. Mr. Koskinen has repeatedly stated that ‘all the emails from Lois Lerner have been turned over to the Congress.’ That is simply not true.

- Mr. Koskinen testified that ‘there’s no evidence that anybody outside the IRS had ...any conversations with her (Lois Lerner) about that (targeting of tea party groups) or that she even had directives internally.’

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- However, Mr. Koskinen also testified that he has conducted *no* investigations or reviews of the targeting scandal.
- Mr. Koskinen’s statements that there is “no evidence” that anyone outside the IRS had involvement with the targeting cannot be truthful when he has admitted that he has conducted no separate inquiry. He testified that he has “no information” about the meeting on April 23, 2012 attended by the IRS Chief Counsel William Wilkins at the White House, a meeting with President Obama and 12 others, that lasted seven hours. If Mr. Koskinen has ‘no information’ about that meeting, how can he truthfully testify to the Subcommittee that there is ‘no evidence’ that anyone outside the IRS had ‘any conversations’ with Lois Lerner or that she had any internal directives.’The point is that he is not truthfully testifying to the Congress on this subject. He has made it a point NOT to ask questions about what transpired and then testifies in blanket statements that no evidence exists regarding the subject about which he refuses to inquire. His testimony is false. The correct statement is that he does not know the answers because he has not asked the questions.
- Mr. Koskinen falsely stated during the hearing that the 21 disks containing information about more than 12,000 exempt organizations were ‘shared with the public’ and not turned over solely to the Department of Justice.
 - The House committees investigating the IRS targeting of conservative and tea party groups discovered during the course of its investigation that Lois Lerner communicated with the Public Integrity Section of the Department of Justice regarding possible criminal investigation of citizens groups, which was followed by the delivery by the IRS to the FBI of millions of pages of files regarding these organizations, including information and materials that are confidential under the statute and which should not have been disseminated by the IRS to another agency.
 - There is *no* evidence that these files were ‘publicly released’ and Mr. Koskinen’s testimony to the contrary is false.

2. If you believe Mr. Koskinen made any false statements or misstatements during his hearing testimony on July 22, 2015, or during any prior congressional hearing testimony, do you believe any of those false statements or misstatements would subject him to criminal liability under:

- a. **18 U.S.C. 1001?**
- b. **Any other provision of Title 18?**

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Response: It is my belief that Mr. Koskinen has repeatedly violated 18 U.S.C. §1001 in his testimony to various congressional committees, including this Subcommittee, as indicated above. It is also my belief that Mr. Koskinen has violated the general perjury statutes 18 U.S.C. §1621.

II. Federal Crime Statutes of Limitation

- During your testimony, you specifically stated that you believed former and current IRS employees (and possibly other figures in this Administration) may have violated federal criminal laws.
- 5. Please indicate what the respective statutes of limitation are for the federal criminal statutes you believe current and former IRS employees (and possibly others in this Administration) may have violated.**

Response:

1. The statute of limitations for violation of 18 U.S.C. §1001 is five years from when the crime was committed: which would be the date of the false statement or the date a false document is submitted to a federal official.
2. The statute of limitations for violation of 18 U.S. C. §1621 is also five years from the date of the false statement.

III. General Question

- 6. Are there any other points or issues that were not explored (or adequately explored) during the hearing that you would like to bring to our attention?**

Response:

The Subcommittee should inquire further into the existence, role, activities and purposes of the “Global High Wealth Program” within the IRS.

What is it?

What does it do?

How does it “monitor” taxpayers?

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Has that program – or *any* program within the IRS – searched, obtained, reviewed, or relied upon publicly available lists of campaign donors and bundlers for purposes of conducting its “monitoring” and selecting individuals or entities for audit?

Does the Global High Wealth Program rely upon the donor information filed by exempt organizations as a factor in targeting such donors for audit?

What other units of the IRS ‘monitor’ high wealth individuals and entities?
What is the definition of ‘high wealth’ and what is the impact of such monitoring?

What other “surveillance” is conducted by the IRS regarding taxpayers?

In other words, Mr. Koskinen testified to the Subcommittee that the IRS relies solely on the tax return for purposes of determining who is selected for an IRS audit. That is clearly false, and Mr. Koskinen misled the Subcommittee by failing to disclose the existence and function of the Global High Wealth Program and the sources of information and procedures used by the IRS agents and employees assigned to this division of the IRS to monitor and subject certain taxpayers to “surveillance”.

The existence of this ‘unit’ should be investigated by the Subcommittee and its tactics and activities carefully reviewed.

If the IRS is obtaining and reviewing campaign finance reports to identify donors and bundlers to candidates, campaigns – and if the IRS is using the confidential donor schedules required to be filed by exempt organizations – as a basis for subjecting those donors to additional scrutiny, audit and IRS targeting, that is a clear violation of the First Amendment and must be stopped.